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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

RIN 0503–AA51

Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) to reflect changes in the coordination of Departmental remote sensing activities. These responsibilities are consolidated within the Office of the Chief Information Officer (OCIO) to create a single focal point for coordinating all Departmental geospatial activities.

DATES: Effective March 14, 2012.

FOR FURTHER INFORMATION CONTACT: Stephen Lowe, (202) 720–0880.

SUPPLEMENTARY INFORMATION:

Office of the Chief Economist—Remote Sensing Activities

The Chief Economist, by delegation from the Secretary of Agriculture (Secretary), is responsible for coordinating USDA remote sensing activities (7 CFR 2.29(a)(6)). Within the Office of the Chief Economist (OCE), these responsibilities are further delegated to the Chairman of the World Agricultural Outlook Board (WAOB) (7 CFR 2.72(a)(4)). WAOB coordinates USDA remote sensing activities by chairing the Remote Sensing Coordination Committee (RSCC). RSCC convenes remote sensing experts from multiple USDA agencies to promote information sharing and to help ensure the most efficient and cost effective use of remote sensing data and technologies within USDA.

Office of the Chief Information Officer—Geospatial Activities

The Assistant Secretary for Administration, by delegation from the Secretary, is responsible for coordinating USDA geospatial activities (7 CFR 2.24(a)(2)(xi)(G)). Within the Departmental Management organization, this responsibility is further delegated to the Chief Information Officer (7 CFR 2.89(a)(11)(vii)). The Office of the Chief Information Officer (OCIO) coordinates Departmental geospatial activities by chairing the Enterprise Geospatial Management Office (EGMO) Agency Advisory Council. A part of the responsibility of OCIO is to fulfill the leadership requirements of the Senior Agency Official for Geospatial Information (SAOGI) and ensure the effective implementation in the Department of OMB Circular No. A–16, ''Coordination of Geographic Information and Related Spatial Data Activities.'' This Circular defines geospatial data as: information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the Earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies.

Consolidating Coordination Activities

Departmental remote sensing and geospatial activities are currently managed by two separate USDA Offices, OCE and OCIO. Because remote sensing data are a subset of geospatial information, the authorities related to remote sensing that are delegated to the Chairman of the WAOB, through the Chief Economist, are being transferred to the Chief Information Officer, through the Assistant Secretary for Administration. This transfer of authority benefits USDA by providing a single focal point for coordinating all Departmental geospatial activities, remote sensing or other, and enabling spatial data and service lifecycle performance management to increase the value of USDA assets for stakeholders.

This transfer of authority does not alter existing delegations of authority to the Administrator of the Foreign Agricultural Service relating to the support of remote sensing activities and research with satellite imagery (7 CFR 2.43(a)(45)), or to the Under Secretary for Research, Education, and Economics and the Administrator of the Agricultural Research Service, relating to the conduct of remote-sensing and other weather-related research (7 CFR 2.21(a)(1)(lxix)); 7 CFR 2.65(a)(33)).

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*), or the Congressional Review Act (5 U.S.C. 801 *et seq.*), and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

For the reasons discussed in the preamble, the Department of Agriculture amends 7 CFR part 2 as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

■ 2. Amend § 2.24 by redesignating paragraphs (a)(2)(xi)(H) through (a)(2)(xi)(P) as paragraphs (a)(2)(xi)(I) through (a)(2)(xi)(Q) and adding new paragraph (a)(2)(xi)(H), to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *
(2) * * *
(xi) * * *

(H) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to ensure full

consideration and evaluation of advanced technology; designate the Executive Secretary for the Remote Sensing Coordination Committee; and coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(*1*) Inter- and intra-agency meetings, correspondence, and records;

(*2*) Budget and management tracking systems; and

(*3*) Inter-agency contacts and technology transfer.

* * * * *

§ 2.29 [Amended]

■ 3. Amend § 2.29 by removing and reserving paragraph (a)(6).

§ 2.72 [Amended]

■ 4. Amend § 2.72 by removing and reserving paragraph (a)(4).

■ 5. Amend § 2.89 by redesignating paragraphs (a)(11)(viii) through (a)(11)(xvi) as paragraphs (a)(11)(ix) through (a)(11)(xvii) and adding new paragraph (a)(11)(viii), to read as follows:

§ 2.89 Chief Information Officer.

(a) * * *

(11) * * *

(viii) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to ensure full consideration and evaluation of advanced technology; designate the Executive Secretary for the Remote Sensing Coordination Committee; and coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

* * * * *

Signed in Washington, DC, this day: March 5, 2012.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2012–5957 Filed 3–13–12; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority within the Department of Agriculture (USDA) to reflect the delegation of authorities related to civil rights from the Secretary of Agriculture directly to the Assistant Secretary for Civil Rights (ASCR). Previously, these authorities were delegated to the Assistant Secretary for Administration and re-delegated to the ASCR.

DATES: This rule is effective March 14, 2012.

FOR FURTHER INFORMATION CONTACT: USDA's, Assistant General Counsel Civil Rights, Tami Trost at 202–690–3993 or email *tami.trost@ogc.usda.gov.*

SUPPLEMENTARY INFORMATION: Previously, USDA's Office of the Assistant Secretary for Civil Rights, overseen by the Assistant Secretary for Civil Rights (ASCR), was aligned within USDA's Departmental Management organization, overseen by the Assistant Secretary for Administration (ASA). To strengthen the visibility of USDA's Civil Rights program, this reporting structure was realigned so that the ASCR now reports directly to the Secretary of Agriculture (Secretary).

This rule amends the delegations of authority within USDA to reflect that realignment. The authorities of the Secretary related to civil rights that previously were delegated to the ASA and re-delegated to the ASCR are now delegated directly to the ASCR.

Specifically, this rule amends the delegations of authority from the Secretary to the ASA in 7 CFR 2.24 by removing the delegations related to civil rights. The rule also removes the re-delegation of those authorities from the ASA to the ASCR in 7 CFR 2.88. These authorities are now delegated from the Secretary directly to the ASCR, as reflected in a new 7 CFR 2.25. The rule also makes changes to the text of some of the delegations to clarify scope and adds a new delegation regarding establishment of an Alternative Dispute Resolution process for program complaints. Additionally, the delegation of authority in 7 CFR 2.300 from the ASCR to the Deputy ASCR is amended by making a technical change to correct the cross-reference. Finally, the delegations of authority in 7 CFR 2.24 (ASA), 2.89 (Chief Information Officer), 2.90 (Chief Financial Officer), 2.91 (Director, Office of Human Resources Management), and 2.98 (Director, Management Services) are revised to clarify that certain services performed by the Office of the Chief Information Officer, Office of the Chief Financial Officer, Office of Human Resources Management, and Management Services will continue to be performed by those entities for the Office of the Assistant Secretary for Civil Rights.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq., or the Congressional Review Act, 5 U.S.C. 801 et seq., and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

■ 2. The heading of subpart C is revised to read as set forth above.

■ 3. Amend § 2.24 as follows:

■ a. Remove and reserve paragraph (a)(1);

■ b. Redesignate paragraph (a)(2)(xi)(C)(*4*) as paragraph (a)(2)(xi)(C)(*5*) and add a new paragraph (a)(2)(xi)(C)(*4*);

■ c. Revise paragraph (a)(2)(xi)(D);

■ d. Redesignate paragraph (a)(3)(xxv)(D) as paragraph (a)(3)(xxv)(E) and add a new paragraph (a)(3)(xxv)(D);

■ e. Redesignate paragraph (a)(4)(xx)(C)(*4*) as paragraph (a)(4)(xx)(C)(*5*) and add a new paragraph (a)(4)(xx)(C)(*4*);

■ f. Redesignate paragraph (a)(11)(i)(D) as paragraph (a)(11)(i)(E) and add a new paragraph (a)(11)(i)(D); and
■ g. Redesignate paragraph (a)(11)(v)(D) as paragraph (a)(11)(v)(E) and add a new paragraph (a)(11)(v)(D).

The revisions and additions read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *
(2) * * *
(xi) * * *
(C) * * *
(*4*) The Office of the Assistant Secretary for Civil Rights.

(D) Manage a comprehensive set of end user office automation services, including setting rates to recover the cost of goods and services within approved policy and funding levels; and oversee the delivery of goods and services associated with end user office automation services, with authority to take actions required by law or regulation to perform such services for any offices or agencies of the Department as may be agreed (except for the Office of the Secretary, the general officers of the Department, the agencies and offices reporting to the Assistant Secretary for Administration, and the Office of the Assistant Secretary for Civil Rights, as specified in § 2.24(a)(11)(i)).

* * * * *

(3) * * *
(xxv) * * *
(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(4) * * *
(xx) * * *
(C) * * *
(*4*) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(11) * * *
(i) * * *
(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(v) * * *
(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

■ 4. Add § 2.25 to read as follows:

§ 2.25 Assistant Secretary for Civil Rights.

(a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs.

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment.

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded or conducted by the Department.

(vi) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Analyze and evaluate program participation data and equal employment opportunity data, and make its analyses available to other appropriate Departmental entities, including the Office of Advocacy and Outreach and affected agencies and mission areas.

(4) Provide leadership and coordinate the Department-wide programs of public notification regarding the availability of USDA programs and employment opportunities on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title, which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination and that actions taken to correct such findings are adequate.

(13) Investigate (or make determinations that program complaint investigations establish a proper basis for final determinations), make final determinations on both the merits and required corrective action, and, where applicable, make recommendations to the Secretary that relief be granted under 7 U.S.C. 6998(d) notwithstanding the finality of National Appeals Division decisions, as to complaints filed under parts 15a, 15b, and 15d of this title.

(14) Conduct civil rights investigations and compliance reviews Department-wide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Related to Equal Employment Opportunity (EEO). Is designated as the Department's Director of Equal Employment Opportunity with authority:

(i) To perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority:

(A) To make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program.

(B) To provide EEO services for managers and employees.

(C) To make final agency decisions on EEO complaints by Department employees or applicants for employment and order such corrective measures in response to such complaints as may be considered necessary. Corrective measures may include recommending to the Office of Human Resources Management and the affected agency or office that appropriate disciplinary action be taken when an employee has been found to have engaged in a discriminatory practice.

(ii) Administer the Department's EEO program.

(iii) Oversee and manage the EEO counseling function for the Department.

(iv) Process formal EEO complaints by employees or applicants for employment.

(v) Investigate Department EEO complaints and make final decisions on EEO complaints, except in those cases where the Assistant Secretary for Civil Rights (or a person directly supervised by the Assistant Secretary for Civil Rights) has participated in the events that gave rise to the matter.

(vi) Order such corrective measures in EEO complaints as may be considered necessary. Corrective measures may include recommending to the Office of Human Resources Management and the affected agency or office that appropriate disciplinary action be taken when an employee has been found to have engaged in a discriminatory practice.

(vii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(viii) Conduct EEO evaluations and develop policy regarding EEO programs.

(ix) Provide liaison on EEO programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(17) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority, and provide timely notice of such appeals to the Office of General Counsel and the Civil Rights Director of the affected agency.

(18) Make final determinations, or enter into settlement agreements, on discrimination complaints in federally conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including Commodity Credit Corporation and Federal Crop Insurance Corporation funds to satisfy such an award.

(19) Make final determinations in proceedings under part 15f of this title where review of an administrative law judge decision is undertaken.

(20) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

(21) Establish, within the Office of the Assistant Secretary for Civil Rights and in coordination with the Department's duly Designated Alternative Dispute Resolution (ADR) Official, an process for program complaints alleging civil rights violations.

(22) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.88 [Removed]

■ 5. Remove § 2.88.

■ 6. Amend § 2.89 as follows:

■ a. Redesignate paragraph (a)(11)(iii)(D) as paragraph (a)(11)(iii)(E) and add a new paragraph (a)(11)(iii)(D); and

■ b. Revise paragraph (a)(11)(iv).

The addition and revision read as follows:

§ 2.89 Chief Information Officer.

(a) * * *

(11) * * *

(iii) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

(iv) Manage a comprehensive set of end user office automation services and oversee the delivery of goods and services associated with end user office automation services, with authority to take actions required by law or regulation to perform such services for any offices or agencies of the Department as may be agreed (except for the Office of the Secretary, the general officers of the Department, the agencies and offices reporting to the Assistant Secretary for Administration, and the Office of the Assistant Secretary for Civil Rights, as specified in § 2.98(a)(1)).

* * * * *

■ 6. Amend § 2.90 by redesignating paragraph (a)(25)(iv) as paragraph (a)(25)(v) and adding a new paragraph (a)(25)(iv), to read as follows:

§ 2.90 Chief Financial Officer.

(a) * * *

(25) * * *

(iv) The Office of the Assistant Secretary for Civil Rights.

* * * * *

■ 7. Amend § 2.91 by redesignating paragraph (a)(20)(iii)(D) as paragraph (a)(20)(iii)(E) and adding a new paragraph (a)(20)(iii)(D), to read as follows:

§ 2.91 Director, Office of Human Resources Management.

(a) * * *

(20) * * *

(iii) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

■ 8. Amend § 2.98 as follows:

■ a. In paragraph (a)(1) introductory text add the designation ''(i)'' after ''including:'' and before ''Procurement'';

■ b. Redesignate paragraph (a)(1)(i)(D) as paragraph (a)(1)(i)(E) and add a new paragraph (a)(1)(i)(D);

■ c. Add reserved paragraph (a)(1)(ii); and

■ d. Redesignate paragraph (a)(5)(iv) as paragraph (a)(5)(v) and add a new paragraph (a)(5)(iv).

The additions read as follows:

§ 2.98 Director, Management Services.

(a) * * *

(1) * * *

(i) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(ii) [Reserved].

* * * * *

(5) * * *

(iv) The Office of the Assistant Secretary for Civil Rights.

* * * * *

Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

■ 9. Revise § 2.300 to read as follows:

§ 2.300 Deputy Assistant Secretary for Civil Rights.

Pursuant to § 2.25, the following delegation of authority is made by the Assistant Secretary for Civil Rights to the Deputy Assistant Secretary for Civil Rights, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers, which are now or which may hereafter be delegated to the Assistant Secretary.

Signed in Washington, DC, on March 6, 2012.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2012–5956 Filed 3–13–12; 8:45 am]

BILLING CODE 3410–14–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 240

[DOD–2008–OS–0050]

RIN 0790–AI28

DoD Information Assurance Scholarship Program (IASP)

AGENCY: Department of Defense (DoD), DoD Chief Information Officer (DoD CIO)

ACTION: Final rule.

SUMMARY: This part implements policy, responsibilities and procedures for executing an information assurance scholarship and grant program, known as the DoD Information Assurance Scholarship Program (IASP). The DoD IASP will be used to recruit and retain the nation's top information assurance and information technology talent, which is critical as DoD progresses into the cybersecurity arena.

DATES: This rule is effective April 13, 2012.

FOR FURTHER INFORMATION CONTACT: Joyce France, (571) 372–4652.

SUPPLEMENTARY INFORMATION: This rule will add a part to DoD regulations to implement policy, responsibilities and procedures for executing an information assurance scholarship and grant program, known as the DoD Information Assurance Scholarship Program (IASP). Authorized by 10 U.S.C. 2200, the DoD IASP will be used to recruit and retain the nation's top information assurance and information technology talent, which is critical as DoD progresses into the cybersecurity arena.

The DoD IASP proposed rule, 32 CFR part 240, was published to the **Federal Register**, (75 FR 9142) on Monday, March 1, 2010 for public comments. The comment period ended on April 30, 2010. DoD received no comments. However, the Department did make minor changes to the final rule that were not included in the proposed rule. These changes were based upon additional coordination of the rule document within the Department and will help clarify policy, responsibilities, and procedures pertaining to the implementation of the scholarship program.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 240 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 240 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 240 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

Section 240.7 of this rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: DoD Information Assurance Scholarship Program (IASP).

Type of Request: New.

Number of Respondents: 422.

Responses per Respondent: 1.

Annual Responses: 422.

Average Burden per Response: 4.16 hours.

Annual Burden Hours: 1,755 hours.

Needs and Uses: The National Security Agency (NSA) is the Executive Administrator of the DoD Information Assurance Scholarship Program (IASP), serving on behalf of the DoD Chief Information Officer. Those who wish to participate in the DoD IASP Recruitment program must complete and submit an application package through their college or university to NSA. Centers of Academic Excellence in Information Assurance Education and Research (CAEs) interested in applying for capacity-building grants must complete and submit a written proposal, and all colleges and universities subsequently receiving grants must provide documentation on how the grant funding was utilized and the resulting accomplishments. In addition, DoD IASP participants and their faculty advisors (Principal Investigators) are required to complete annual program assessment documents. Without this written documentation, the DoD has no means of judging the quality of applicants to the program or collecting information regarding program performance.

Affected Public: ''Individuals or households,'' specifically college students at institutions designated as CAEs who are interested in, and qualified to, apply for a scholarship; CAEs interested in submitting proposals for capacity-building grants, and faculty advisors (Principal Investigators).

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 240 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 240

Scholarships and grants.

Accordingly 32 CFR part 240 is added to read as follows:

PART 240—DOD INFORMATION ASSURANCE SCHOLARSHIP PROGRAM (IASP)

Sec.
240.1 Purpose.
240.2 Applicability.
240.3 Definitions.
240.4 Policy.
240.5 Responsibilities.
240.6 Retention program.
240.7 Recruitment program.

Authority: 10 U.S.C. 2200, 10 U.S.C. 7045.

§ 240.1 Purpose.

This part implements policy, responsibilities and procedures for executing the DoD Information Assurance Scholarship Program (IASP).

§ 240.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the ''DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 240.3 Definitions.

The following definitions are used in this part:

CAE. A collective term that refers to both CAE/IAE and CAE–R.

CAE/IAE. An institution of higher education that has met established criteria for IA education and has been jointly designated by the Department of Homeland Security and the NSA as a national center of excellence.

CAE–R. An institution of higher education which has met established criteria for IA research and has been jointly designated by the Department of Homeland Security and the NSA as a national center of excellence.

IA. For the purpose of this part, the term ''IA'' includes computer security, network security, cybersecurity, cyber operations, and other relevant IT related to information assurance pursuant to 10 U.S.C. 2200e.

IT. For the purpose of this part, the term ''IT'' refers to any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. ''IT'' includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.

Institution of Higher Education. For the purpose of this part and as defined in 20 U.S.C. 1001, an ''institution of higher education'' refers to an educational institution in any state that:

(1) Admits as regular students only individuals who possess a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized to provide a program of education beyond secondary education;

(3) Provides an educational program that awards bachelor's degrees, or provides no less than a 2-year program that is acceptable for full credit toward a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Partner University. A CAE that has joined in academic partnership with the NDU IRMC to award master's and doctoral degrees through the DoD IASP.

Principal Investigator. The primary point of contact at each CAE, responsible for publicizing the DoD IASP to potential recruitment students and working with students during the application process. Principal investigators also serve as the primary contact for recruitment students and retention students who have transferred from the IRMC to a partner university.

Recruitment Program. The portion of the DoD IASP available to qualified non-DoD students currently enrolled or accepted for enrollment at a designated CAE.

Recruitment Students. Non-DoD students currently enrolled at a designated CAE who are active participants in the DoD IASP recruitment program.

Retention Program. The portion of the DoD IASP available to full-time, active duty Service personnel and permanent civilian employees of the DoD Components.

Retention Students. Full-time active duty Service personnel and permanent civilian employees of the DoD Components who are active participants in the DoD IASP retention program.

§ 240.4 Policy.

It is DoD policy that:

(a) The Department of Defense shall recruit, develop, and retain a highly skilled cadre of professionals to support the critical IA and information technology (IT) management, technical, digital and multimedia forensics, cyber, and infrastructure protection functions required for a secure network-centric environment.

(b) The DoD IASP shall be used to attract new entrants to the DoD IA and IT workforce and to retain current IA and IT personnel necessary to support the DoD's diverse warfighting, business, intelligence, and enterprise information infrastructure requirements.

(c) The academic disciplines, with concentrations in IA eligible for IASP support include, but are not limited to: biometrics, business management or administration, computer crime investigations, computer engineering, computer programming, computer science, computer systems analysis, cyber operations, cybersecurity, database administration, data management, digital and multimedia forensics, electrical engineering, electronics engineering, information security (assurance), information systems, mathematics, network management/operations, software engineering, and other similar disciplines as approved by DoD Chief Information Officer (DoD CIO).

(d) Subject to availability of funds, the DoD may provide grants to institutions of higher education for faculty, curriculum, and infrastructure development and academic research to support the DoD IA/IT critical areas of interest.

§ 240.5 Responsibilities.

(a) The Department of Defense Chief Information Officer (DoD CIO) shall:

(1) Establish overall policy and guidance to conduct and administer the DoD IASP pursuant to Deputy Secretary of Defense Memorandum, ''Delegation of Authority and Assignment of Responsibility under section 922 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001,'' October 30, 2000.

(2) Develop an annual budget recommendation to administer the DoD IASP and provide academic scholarships and grants in accordance with 10 U.S.C. 2200 and 7045.

(3) Oversee program administration and execution by the Director, National Security Agency (DIRNSA).

(4) Chair the DoD IASP Steering Committee, established pursuant to DoD Instruction 5105.18, to oversee and provide program direction over:

(i) Student eligibility criteria.

(ii) Grant and capacity building selection criteria for awards to CAEs.

(iii) Final approval for the allocation of individual DoD IASP scholarships and grants.

(iv) Communications and marketing plans.

(v) DoD IASP metrics and analysis of performance results, including student and CAE/IAE feedback.

(b) The DIRNSA, under the authority, direction, and control of the Under Secretary of Defense for Intelligence, shall:

(1) Serve as the DoD IASP Executive Administrator to:

(i) Implement the DoD IASP and publish in writing all of the criteria, procedures, and standards required for program implementation. Responsibilities are to:

(A) Implement the scholarship application and selection procedures for recruitment and retention students.

(B) Establish procedures for recruiting students to meet service obligations through employment with a DoD Component upon graduation from their academic program.

(C) Ensure that all students' academic eligibility is maintained, service obligations are completed, and that reimbursement obligations for program disenrollment are fulfilled.

(D) Establish procedures for CAEs and employing DoD Components to report on students' progress.

(E) Maintain appropriate accounting for all funding disbursements.

(F) Execute the debt collection process on the behalf of the DoD and in accordance with Volume 5 of DoD 7000.14–R for scholarship recipients who fail to complete a period of obligated service resulting from their participation in the DoD IASP. This includes, but is not limited to, exercising the authority under 10 U.S.C. 2200a(e), consistent with the relevant provisions of 37 U.S.C. 303a(e), to determine an amount owed and to take necessary actions to collect the amount owed, and to act upon requests for waivers, in whole or in part, when determined to be appropriate.

(ii) Subject to availability of funds, make grants on behalf of the DoD CIO to institutions of higher education to support the establishment, improvement, and administration of IA education programs pursuant to 10 U.S.C. 2200, 2200b, and 7045.

(A) Develop and implement the annual solicitation for proposals for grants.

(B) Coordinate the review process for grant proposals.

(C) Distribute grant funding and maintain appropriate accounting.

(D) Establish annual reporting procedures for grant recipients (CAEs) to detail the resulting accomplishments of their grant implementations.

(E) Obtain written documentation from grant recipients (CAEs) on how grant funding was utilized and the resulting accomplishments.

(2) Provide representation to the DoD IASP Steering Committee and provide briefings and reports, as required, to effect proper oversight by the DoD CIO and the DoD IASP Steering Committee.

(3) Maintain databases to support the analysis of performance results.

(c) The Chancellor of the Information Resources Management College (IRMC) of the National Defense University, under the authority, direction and control of the Chairman of the Joint Chiefs of Staff, shall:

(1) Establish partner university agreements with CAEs to provide master's and doctoral degree opportunities to current, former, and future IRMC students who are awarded retention scholarships.

(2) Maintain records of DoD IASP student enrollments and graduates and provide data to the DoD IASP Executive Administrator and the DoD CIO as required.

(3) Serve as the liaison between IRMC retention students, their follow-on partner university, and the DoD IASP Executive Administrator.

(4) Provide academic representation to the DoD IASP Steering Committee and provide briefings and reports, as required, on the IRMC portion of the DoD IASP retention program.

(d) The Heads of the DoD Components shall:

(1) Determine the requirement for DoD IASP usage as a primary vehicle to recruit and retain IA and IT personnel.

(2) Identify the office of primary responsibility for administering the DoD IASP within their DoD Component.

(3) Establish DoD Component-specific nomination, selection, and post-academic assignment criteria for DoD IASP retention students.

(i) Nominated personnel shall be high performing employees who are rated at the higher levels of the applicable performance appraisal system and demonstrate sustained quality performance with the potential for increased responsibilities. All individuals must be US citizens and be able to obtain a security clearance.

(ii) Nominations must fulfill specific personnel development requirements for both the individual nominee and the nominating organization.

(iii) Salaries of retention scholarship recipients shall be paid by the nominating DoD Component. When deemed necessary, DoD Components are responsible for personnel backfill while recipients are in school.

(iv) Payback assignments of graduated students shall provide relevant, follow-on utilization of academic credentials in accordance with DoD Component mission requirements.

(v) Retention students shall fulfill post-academic service obligations pursuant to 10 U.S.C. 2200 and 7045. Members of the Military Services shall serve on active duty while fulfilling designated DoD Component service obligations. DoD civilian employees shall sign a continued service agreement that complies with section 2200 of title 10, United States Code, prior to commencement of their education, to continue service within the Department of Defense upon conclusion of their education, for a period equal to three times the length of the education period. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be. Individuals, who fail to complete the degree program satisfactorily, or to fulfill the service commitment, shall be required to reimburse the United States pursuant to 10 U.S.C. 2200a(e) for payments paid to them through the DoD IASP unless a waiver, in whole or in part, is granted by the DoD IASP Executive Administrator. Head of Components are responsible to ensure enforcement of these agreements.

(4) Determine annual billet requirements for recruitment students (the number of DoD IASP recruitment scholars who will be placed in full-time employment positions with the Component upon graduation). This is required to ensure that IASP recruitment graduates have placement upon graduation. DoD Components who identify billet requirements for recruitment students shall:

(i) Assess DoD Component skill requirements to determine skill gaps and providing the annual recruitment student requirement to the DoD IASP Executive Administrator.

(ii) Participate in the selection process for recruitment students.

(iii) Coordinate and process security clearances for selected recruitment scholarship recipients.

(iv) Allocate billets for an internship period (if applicable).

(v) Assign mentors to recruitment students.

(vi) Determine post-academic billet assignments for recruitment students

prior to the end of the students' academic program.

(5) Participate in the evaluation processes to assess and recommend improvements to the DoD IASP.

§ 240.6 Retention program.

(a) The DoD IASP retention program is open to qualified DoD civilian employees and Service members. Active duty military officers and permanent DoD civilian employees may apply for a master's or doctoral degree program; enlisted personnel may apply for a master's program. DoD Components may further restrict the eligibility of applicants based on Component requirements.

(b) There are three DoD academic institutions participating in the DoD IASP: the Air Force Institute of Technology (AFIT) at Wright-Patterson Air Force Base in Dayton, Ohio; the IRMC of the National Defense University (NDU) at Fort McNair in Washington, DC; and the Naval Postgraduate School (NPS) in Monterey, California. Students at AFIT and NPS attend full-time programs. Participants may attend the IRMC either full or part-time to complete the first part of their required courses and then select a follow-on partner university to complete their remaining degree requirements either full or part-time. There are no part-time doctoral programs. All candidates must meet the eligibility requirements for their selected program, which are outlined in DoD IASP Academic Programs for Retention Students.

(1) Military officers and DoD civilian employees may apply to attend any one of the three DoD academic institutions.

(2) Enlisted personnel may attend AFIT or the NPS, which is authorized to enroll enlisted DoD IASP participants pursuant to 10 U.S.C. 2200 and 7045.

(c) Students must select a degree program in one of the academic disciplines listed in § 240.4(c) and in accordance with DoD Component requirements.

(d) Scholarship funding for AFIT, IRMC, the partner universities, and NPS includes full tuition costs and required fees and books. All travel costs and necessary position back-fill for individuals selected for the program must be paid by the nominating DoD Component. Retention students shall continue to receive their military pay or civilian salary from their DoD Component throughout their course of study.

(e) DoD Component nominations are due by January 31st each year. The student nomination process is outlined in the DoD IASP Nomination Process for Retention Students.

(f) Retention students shall fulfill post-academic service obligations pursuant to 10 U.S.C. 2200a and 7045. Service members shall serve on active duty while fulfilling designated DoD Component service obligations. DoD civilian employees shall sign a continued service agreement that complies with 10 U.S.C. 2200a, prior to commencement of their education, to continue service within the DoD upon conclusion of their education, for a period equal to three times the length of the education period. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be. Individuals who fail to complete the degree program satisfactorily or to fulfill the service commitment shall be required to reimburse the United States pursuant to 10 U.S.C. 2200a(e) for payments made to them through the DoD IASP unless a waiver, in whole or in part, is granted by the DoD IASP Executive Administrator.

(g) DoD IASP retention participants are obligated to remain in good standing in their degree programs, to continue in service as civilian employees or members of the Military Services, and where applicable, to repay program costs for failure to complete the degree program satisfactorily, or to fulfill the service commitment pursuant to 10 U.S.C. 2200 and 7045, DoD policy, and the policies of the respective DoD Component.

§ 240.7 Recruitment program.

(a) Annually, in November, the DoD IASP Executive Administrator announces a solicitation for proposal from CAEs interested in participating in the DoD IASP. Graduate students and rising junior or senior undergraduates accepted at or enrolled in one of these institutions may apply for full scholarships to complete a bachelor's, master's, or a doctoral degree, or graduate (post-baccalaureate) certificate program in one of the disciplines defined in § 240.4(c). Student application requirements are included in the solicitation proposal released by NSA.

(b) DoD Component recruitment student requirements are due to the DoD IASP Executive Administrator each year by January 31st.

(c) The student selection process occurs annually in April. The selection process is outlined in the DoD IASP Nomination Process for Recruitment Students.

(d) Recruitment students are provided scholarships, covering the full cost of tuition and selected books and fees. Students are also provided a stipend to cover room and board expenses.

(e) Recruitment students may be required to complete a student internship, depending on the length of their individual scholarship. For example, if a scholar receives a scholarship their junior year, an internship is required. If they receive the scholarship their senior year, an internship is not required. DoD Components typically use the authority granted in 5 CFR 213.3102(r) to arrange the internship.

(f) Pursuant to 10 U.S.C. 2200a, all recruitment students shall sign a service agreement prior to commencement of their education and incur a service commitment, which commences after the award of the DoD IASP authorized degree on a date to be determined by the relevant DoD Component. The obligated service in DoD shall be as a civilian employee of the Department or as an active duty enlisted member or officer in one of the Military Services.

(1) Individuals selecting employment in the civil service shall incur a service obligation of 1 year of service to the DoD upon graduation for each year or partial year of scholarship they receive, in addition to an internship, if applicable. Pursuant to the authority granted in 10 U.S.C. 2200a(g) and the Under Secretary of Defense for Personnel and Readiness Memorandum, ''Implementation Authority to Employ Individuals Completing Department of Defense Scholarship or Fellow Programs,'' April 5, 2010. DoD Components may appoint DoD IASP graduates to IT positions as members of the excepted service. Upon satisfactory completion of 2 years of substantially continuous service, DoD Components may then convert these individuals to career or career-conditional appointments without competition.

(2) Individuals enlisting or accepting a commission to serve on active duty in one of the Military Services shall incur a service obligation of a minimum of 4 years on active duty in that Service upon graduation. The Military Services may establish a service obligation longer than 4 years, depending on the occupational specialty and type of enlistment or commissioning program selected.

(g) Individuals in the recruitment program who fail to complete the degree program satisfactorily or to fulfill the service commitment upon graduation shall be required to reimburse the United States pursuant to 10 U.S.C. 2200a(e) for payments made to them

through the DoD IASP unless a waiver, in whole or in part, is granted by the DoD IASP Executive Administrator.

Dated: February 29, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6163 Filed 3–13–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0071]

RIN 1625–AA08

Special Local Regulation for Marine Event; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the enforcement periods of special local regulations for recurring marine events in the Fifth Coast Guard District. These regulations apply to three recurring marine events that conduct a rowing regatta and power boat races. Special local regulations are necessary to provide for the safety of life on navigable waters during these events. This action is intended to restrict vessel traffic in a portion of the Severn River at Annapolis, MD, the Nanticoke River at Sharptown, MD, and Prospect Bay at Kent Island, MD during the events.

DATES: This rule is effective from March 24, 2012 through July 15, 2012. Comments and related material must reach the Coast Guard on or before April 13, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0071 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call or email Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0071), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0071'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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 rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0071'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

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

''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying the effective date by first publishing an NPRM would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event areas. The potential dangers posed by persons and vessels operating in close proximity to relatively small rowing vessels and high-powered racing vessels in restricted waterways make special local regulations necessary. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts and local notice to mariners. In addition, publishing an NPRM is unnecessary because these events are annual events which mariners should be aware of taking place, as they are noticed in the **Federal Register**. If mariners had concerns about these events taking place, they are on notice throughout the year of the events and can object to or comment about the events at any time. When the NPRM, including the table to § 100.501 listing all of the annual events, was made available for comment, there were no objections to these events.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The potential dangers posed by persons and vessels operating in close proximity to relatively small rowing vessels and high-powered racing vessels in a restricted waterways make special local regulations necessary. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. In addition, publishing an NPRM is unnecessary because these events are annual events which mariners should be aware of taking place, as they are noticed in the **Federal Register**. If mariners had concerns about these events taking place, they are on notice throughout the year of the events and can object to or comment about the events at any time. When the NPRM, including the table to § 100.501 listing all of the annual events, was made available for comment, there were no objections to these events.

Basis and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. The activities that typically comprise marine events include: sailing regattas, power boat races, swim races and holiday parades. The regulation listing annual marine events within the Fifth Coast Guard District and their regulated dates is 33 CFR 100.501. A table to § 100.501 identifies marine events by Captain of the Port zone. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

Because event planners notified the Coast Guard of date changes to three marine events previously published in the special local regulations for recurring marine events within the Fifth Coast Guard District at 33 CFR 100.501, Table to § 100.501, this regulation temporarily changes the enforcement periods for these three marine events in 2012 only.

The first event is the annual ''USNA Crew Races,'' sponsored by the U.S. Naval Academy, on the waters of the Severn River at Annapolis, MD. The regulation at 33 CFR 100.501 is effective annually for the USNA Crew Races marine events. The events consist of collegiate rowing competitions on the waters of the Severn River in Annapolis, Maryland. Participants operate on 2,000-meter marked courses with sponsor-provided motor launches. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.501 is enforced for the duration of the event. Currently, under the provisions of 33 CFR 100.501, from 6 a.m. to 9:30 a.m. on March 24, 2012, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

The second event is the annual ''Bo Bowman Memorial—Sharptown Regatta,'' sponsored by the Virginia/Carolina Racing Association, on the waters of the Nanticoke River at Sharptown, MD. The regulation at 33 CFR 100.501 is effective annually for the Bo Bowman Memorial—Sharptown Regatta marine event. The event consists of two days of power boat racing on the waters of the Nanticoke River, at Sharptown, Maryland. High performance power boats will race on a designated course before a large fleet of spectator crafts. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.501 is enforced for the duration of the event. Currently, under the provisions of 33 CFR 100.501, from 9 a.m. to 6 p.m. on July 14, 2012 and from 9 a.m. to 6 p.m. on July 15, 2012, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

The third event is the annual ''Thunder on the Narrows,'' sponsored by the Kent Narrows Racing Association, on the waters of Prospect Bay at Kent Island, MD. The regulation at 33 CFR 100.501 is effective annually for the Thunder on the Narrows marine event. The event consists of two days of power boat racing on the waters of Prospect Bay, at Kent Island, Maryland. High performance power boats will race on a designated course before a large fleet of spectator crafts. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.501 is enforced for the duration of the event. Currently, under the provisions of 33 CFR 100.501, from 9:30 a.m. to 6:30 p.m. on June 9, 2012 and from 9:30 a.m. to 6:30 p.m. on June 10, 2012, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

Discussion of Rule

The Coast Guard is temporarily changing the enforcement periods of special local regulations for recurring marine events within the Fifth Coast Guard District published at 33 CFR 100.501. This temporary interim rule only applies to the marine events below.

Severn River, Annapolis, MD

The Table to § 100.501, event No. (b.)2 establishes the enforcement date for the USNA Crew Races. This regulation proposes to temporarily change the enforcement date from ''March—last Friday, Saturday and Sunday; April and May—every Friday, Saturday and Sunday'' to ''March 24, 2012, April 14, 2012 and April 21, 2012.'' The U.S. Naval Academy, which is the sponsor for this event, intends to hold this event annually; however, they have changed the date of the event for 2012 so that it is outside the scope of the existing enforcement period. Due to the need for vessel control while participating rowing vessels are racing on the Severn River, vessel traffic would be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Nanticoke River, Chestertown, MD

The Table to § 100.501, event No. (b.)10 establishes the enforcement date for the Bo Bowman Memorial—Sharptown Regatta. This regulation proposes to temporarily change the enforcement date from ''June—last Saturday and Sunday'' to ''July 14 and 15, 2012.'' The Virginia/Carolina Racing Association, which is the sponsor for this event, intends to hold this event annually; however, they have changed the date of the event for 2012 so that it is outside the scope of the existing enforcement period. Due to the need for vessel control while high performance power boats are racing on the Nanticoke River, vessel traffic would be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Prospect Bay, Kent Island, MD

The Table to § 100.501, event No. (b.)11 establishes the enforcement date for the Thunder on the Narrows. This regulation proposes to temporarily change the enforcement date from ''June—3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday'' to ''June 9 and 10, 2012.'' The Kent Narrows Racing Association, which is the sponsor for this event, intends to hold this event annually; however, they have changed the date of the event for 2012 so that it is outside the scope of the existing enforcement period. Due to the need for vessel control while high performance power boats are racing on Prospect Bay, vessel traffic would be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and local notices to mariners, so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases, vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate, transit, or anchor in the areas where the marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h.), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. In Table to § 100.501:

■ a. Suspend lines No. (b.)2, No. (b.)10, and No. (b.)11.

■ b. Add lines (b.)20, (b.)21, and (b.)22 to read as follows:

§ 100.501 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

Number	Date	Event	Sponsor	Location
*	*	*	*	* * *
(b.) Coast Guard Sector Baltimore—COTP Zone				
*	*	*	*	* * *
20	March 24, 2012, April 14, 2012 and April 21, 2012.	USNA Crew Races ..	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD, at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

Number	Date	Event	Sponsor	Location
21	July 14 and 15, 2012	Bo Bowman Memorial—Sharptown Regatta.	Virginia/Carolina Racing Assn.	All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 075°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 075°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 075°43′14″ W.
22	June 9 and 10, 2012	Thunder on the Narrows.	Kent Narrows Racing Association.	All waters of Prospect Bay enclosed by the following points: Latitude 38°57′52.0″ N, longitude 076°14′48.0″ W, to latitude 38°58′02.0″ N, longitude 076°15′05.0″ W, to latitude 38°57′38.0″ N, longitude 076°15′29.0″ W, to latitude 38°57′28.0″ N, longitude 076°15′23.0″ W, to latitude 38°57′52.0″ N, longitude 076°14′48.0″ W.
*	*	*	*	* * *

Dated: February 23, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–5967 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0030]

RIN 1625–AA08

Special Local Regulation; Moss Point Rockin' the Riverfront Festival; O'Leary Lake; Moss Point, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of O'Leary Lake, Moss Point, MS, on April 28–29, 2012. This action is necessary for the safeguarding of participants and spectators, including crews, vessels, and persons on navigable waters during the Moss Point Rockin' the Riverfront Festival high speed boat races. Entry into, transiting in or anchoring in this area is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective from 11 a.m. on April 28, 2012, until 4 p.m. on April 29, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0030 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0030 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) or providing a comment period with respect to this rule. The Coast Guard received an application for a Marine Event Permit on December 23, 2011 from the Moss Point Main Street Association to conduct a high speed boat race. After reviewing the details of the event and the permit application, the Coast Guard determined that a special local regulation is needed. Delaying or foregoing this safety measure to provide a comment period would be contrary to the public interest. The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the Moss Point Rockin' the Riverfront Festival high speed boat races. The Coast Guard believes that the public's desire to have the race at the scheduled time is greater than the imposition on navigation which this regulation will impose, and that the public interest favors enacting this regulation without publishing an NPRM.

Basis and Purpose

The Moss Point Main Street Association applied for a Marine Event Permit to conduct a high speed boat race on O'Leary Lake, Moss Point, MS on April 28–29, 2012. This event will draw in a large number of pleasure craft and the high speed boats pose a significant safety hazard to both vessels and mariners operating in or near the area. The COTP Mobile is establishing a temporary special local regulation for a portion of O'Leary Lake, Moss Point, MS, to safeguard persons and vessels during the high speed boat races.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this special local regulation is deemed necessary for the safeguard of life and property within the COTP Mobile zone.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for a portion of O'Leary Lake, Moss Point, MS, enclosed by a bounded area starting at a point on the shore at approximately 30°25′11.0″ N, 088°32′24.4″ W, then east to 30°25′12.9″ N, 088°32′18.0″ W, then south to 30°24′50.9″ N, 088°32′09.6″ W, then west following the shore line back to the starting point at 30°25′11.0″ N, 088°32′24.4″ W. This temporary rule will safeguard life and property in this area. Entry into, transiting in or anchoring in this zone is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the COTP Mobile or a designated representative. They may be contacted on VHF–FM Channel 16 or through Coast Guard Sector Mobile at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the special local regulation. This rule is effective from 11 a.m. until 4 p.m. on April 28–29, 2012.

Regulatory Analyses

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

Regulatory Planning and Review

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

The special local regulation listed in this rule will only restrict vessel traffic from entering, transiting, or anchoring within a small portion of O'Leary Lake, Moss Point, MS. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the regulated area; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through broadcast notice to mariners. These notifications will allow the public to plan operations around the regulated area.

Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in the section titled ''Regulatory Information'' and therefore is not required to publish a regulatory flexibility analysis.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in affected portions of O'Leary Lake during the high speed boat races. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the regulated area.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0030 to read as follows:

§ 100.35T08–0030 Special Local Regulation; O'Leary Lake; Moss Point, MS.

(a) *Regulated Area.* The following area is a regulated area: a portion of O'Leary Lake, Moss Point, MS, enclosed by a bounded area starting at a point on the shore at approximately 30°25′11.0″ N, 088°32′24.4″ W, then east to 30°25′12.9″ N, 088°32′18.0″ W, then south to 30°24′50.9″ N, 088°32′09.6″ W, then west following the shore line back to the starting point at 30°25′11.0″ N, 088°32′24.4″ W.

(b) *Enforcement dates.* This rule will be enforced from 11 a.m. until 4 p.m. on April 28–29, 2012.

(c) *Special Local Regulations.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All Persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Mobile to patrol the regulated area.

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

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

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

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

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

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

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: February 8, 2012.

D.J. Rose,

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

[FR Doc. 2012–5968 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0083]

RIN 1625–AA08

Special Local Regulations; Red Bull Candola, New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the New River between the Esplanade Park and slightly east of the South Andrews Avenue Bascule Bridge in Fort Lauderdale, Florida for the Red Bull Candola rowing event. The event is

scheduled to take place on April 14, 2012. The temporary special local regulation is necessary for the safety of the event participants, participant vessels, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless specifically authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 10 a.m. until 2 p.m. on April 14, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0083 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0083 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, email *Jennifer.S.Makowski@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the Red Bull Candola until February 3, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to Candola participants, participant vessels, spectators, and the general public.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Red Bull Candola.

Discussion of Rule

On April 14, 2012 Red Bull North America is conducting the Red Bull Candola on the New River in Fort Lauderdale, Florida. The regulated area will encompass certain navigable waters of the New River between Esplanade Park and slightly east of the South Andrews Avenue Bascule Bridge in Fort Lauderdale, Florida. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless specifically authorized by the Captain of the Port Miami or a designated representative. The special local regulation will be in effect from 10 a.m. until 2 p.m. on April 14, 2012. Persons and vessels are prohibited from entering, transiting through, anchoring, or remaining within the race area unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the race area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the race areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Regulatory Planning and Review, and 12866, 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 rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for a total of 4 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the waters of the New River in Fort Lauderdale, Florida that are encompassed within the special local regulations from 10 a.m. until 2 p.m. on April 14, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact

on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a regatta. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0083 to read as follows:

§ 100.35T07–0083 Special Local Regulations; Red Bull Candola, New River, Fort Lauderdale, FL.

(a) *Regulated areas.* The following regulated area is being established as a special local regulation. All waters of the New River between the Esplanade Park and slightly east of the South Andrews Avenue Bascule Bridge encompassed between the following points: Point 1 in position 26°07′09″ N, 80°08′52″ W; and Point 2 in position 26°07′04″ N, 80°08′34″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local

officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(c) *Enforcement date.* This rule will be enforced from 10 a.m. until 2 p.m. on April 14, 2012.

Dated: February 21, 2012.

C.P. Scraba,

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

[FR Doc. 2012–6311 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0591]

RIN 1625–AA09

Drawbridge Operation Regulation; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operation of the CSX Railroad Vertical Lift Bridge across the Anacostia River, mile 3.4, at Washington, DC. The change will alter the eight hour advance notice requirement for a bridge opening to a 48 hour advance notice requirement for a bridge opening. The operating regulation change gives more notice for trains and vessels to adjust their schedules accordingly to ensure safe and efficient transits across and under the bridge.

DATES: This rule is effective April 13, 2012.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0591 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0591 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lindsey Middleton, Coast Guard; telephone 757–398–6629, email *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 23, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Anacostia River, Washington, DC in the **Federal Register** (76 FR 163). We did not receive public comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The CSX Railroad Company has requested a change in the operation regulation for the CSX Railroad Vertical Lift Bridge, across the Anacostia River, mile 3.4, at Washington, DC. The new 48 hour advance notice requirement replaces the current eight hour advance notice requirement for a bridge opening. This rail-line is used for regular passenger service and train transits across this bridge on an average of 21 times a day. As a result, it is necessary that ample time be given to maintain an accurate schedule for trains and vessels for safe and efficient travel across and under the bridge.

The current operating schedule for the bridge is set out in 33 CFR 117.253(b)(iv). The regulation was established in August 2004 and allows the bridge to be operated from a remote location, the Benning Yard office. The draw of the bridge shall open on signal under the following circumstances; at all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessel in an emergency involving danger to life or property; from May 15 through September 30, between 9 a.m. and 12 p.m., and between 1 p.m. and 6 p.m.; and from May 15 through September 30, between 6 p.m. and 7 p.m. if notice is given before 6 p.m. on the day for which the opening is requested. At all other times, the bridge will open on signal if at least eight hours of notice is given.

The vertical clearance of the bridge is 5 feet at Mean High Water (MHW) in the closed position and 29 feet MHW in the open position. There are on average, 21 train transits across this bridge everyday and there have been two bridge openings in the past two years for vessels taller than five feet.

Concurrent with the publication of the NPRM, a test deviation [USCG–2011–0591] was issued to allow the CSX Railroad Bridge to test the proposed schedule and to obtain data and public comments. The test deviation allowed the bridge to open if at least 48 hours of notice is given, replacing the eight hour notice requirement. The test deviation continues to run until February 21, 2012.

The Coast Guard has reviewed bridge tender logs from before the test deviation and during the first 120 days of the entire 180 day test deviation. Before the deviation, the bridge had two bridge openings in the last two years for vessels over five feet tall. During the first 120 days of the 180 day test deviation there were no requests for a bridge opening.

The Coast Guard also reviewed the train logs before and during the first 120 day period of the entire 180 day test deviation. In both cases there was on average 21 train transits across this bridge daily.

Discussion of Comments and Changes

No comments were received on the proposed rule or the test deviation and no changes were made to the proposed rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The rule change is expected to have only a minimal impact on maritime traffic transiting under the bridge. The bridge will maintain its current operating regulation except that where there is currently an eight hour advance notice requirement for a bridge opening there will be a 48 hour advance notice requirement. Mariners can plan their trips in accordance with the scheduled bridge opening advance notice requirement to minimize delay.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit under the bridge between October 1 and May 14 at all times and those needing to transit between the hours of 7 p.m. and 9 a.m. and from 12 p.m. to 1 p.m. between May 15 and September 30.

This action will not have a significant impact on a substantial number of small entities for the following reasons: The rule adds minimal restrictions to the movement of waterway navigation by requiring vessels that are not essential public vessels, vessels with dangerous emergencies, or vessels transiting under the bridge at specified excluded times to give 48 hours of notice when requesting a bridge opening. Vessels that can safely transit under the bridge in the closed position may do so at any time.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.253, revise paragraph (b)(1)(iv) to read as follows:

§ 117.253 Anacostia River.

* * * * *

(b) * * *

(1) * * *

(iv) At all other times, if at least 48 hours of notice is given to the controller at the Benning Yard Office.

* * * * *

Dated: February 29, 2012.

William D. Lee,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–5969 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1174]

RIN 1625–AA00

Safety Zones; Sellwood Bridge Project, Willamette River; Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two safety zones to remain in effect throughout the duration of the construction and renewal of the Sellwood Bridge on the Willamette River, in Portland, OR. This action is necessary to ensure the safety of vessels transiting in close proximity to cranes, barges, and temporary structures associated with this construction project. During the effective period, all vessels will be required to remain outside the prescribed safe distance from the construction area while transiting in the vicinity of the Sellwood Bridge project; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times.

DATES: This rule is effective in the CFR from March 14, 2012 through 11 a.m., July 1, 2012. This rule is effective with actual notice for purposes of enforcement from 4 p.m., March 1, 2012, through 11 a.m. July 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1174 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1174 in the ''Keyword'' box, and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email ENS Ian McPhillips, Waterways Management Division, Coast Guard MSU Portland; telephone 503–240–9319, email *Ian.P.McPhillips@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be contrary to public interest. The Sellwood Bridge is an 86 year old bridge that is structurally inadequate and functionally obsolete. Although public outreach for the Sellwood Bridge renewal project began in June 2006, specific construction dates were not predetermined due to funding constraints. As a result of the delay in determining a specific date to commence work and in order to avoid the imposition of financial penalties on the state and local governments funding construction due to delays, the safety zones are immediately necessary. Should construction commence without a safety zone in place, the safety of recreational and commercial vessels transiting the area may be threatened by their close proximity to cranes, barges, and temporary structures associated with this construction project. Thus, any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the bridge construction. Additionally, in order to allow public comment on safety zones in this area, the Coast Guard will issue a notice of proposed rulemaking for a temporary rule that establishes safety zones in the same locations from the expiration of this rule through January 1, 2015.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Sellwood Bridge project will replace the existing 86 year old bridge that is structurally inadequate and functionally obsolete. The project will renew the bridge with a new deck arch structure compliant with current loading and seismic requirements, upgrade the interchange at Oregon Route 43, and provide substantially improved bicycle and pedestrian facilities. The project includes the construction of two temporary structures and two new bridge piers which will each require a cofferdam. The temporary structures will be constructed to facilitate the moving of the older bridge. To ensure the safety of construction crews on the barges, temporary structures, and cranes, two safety zones on each side of the river are being established to require vessels in the vicinity of the construction area to remain outside of the two designated safety zones. Additionally, this will ensure that the vessels operating in the vicinity of the designated areas will not be in any dangerous areas near the temporary structures or cranes.

Construction work is anticipated to continue through January 1, 2015. During the effective period of this rule a notice of proposed rulemaking will be issued for a temporary rule that establishes safety zones in the same locations from the expiration of this rule through January 1, 2015.

Discussion of Rule

The two safety zones created by this rule cover all waters of the Willamette River; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times. The first safety zone on the West river bank is encompassed within the following four lines: Line one starting at 45–27′53.5″ N/122–40′03.5″ W then heading 375 feet offshore to 45–27′53.5″ N/122–39′58.5″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′58.5″ W then heading 375 feet back to the shore at 45–27′49.5″ N/122–40′04.5″ W then following the shoreline to end at 45–27′53.5″ N/122–40′03.5″ W. The second safety zone on the East river bank is encompassed within the following four lines: Line one starting at 45–27′53.5″ N/122–39′50.5″ W then heading 420 feet offshore to 45–27′53.5″ N/122–39′55.0″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′55.0″ W then heading 420 feet back to the shore at 45–27′49.5″ N/122–39′47.0″ W then following the shoreline to end at 45–27′49.5″ N/122–39′47.0″ W. Geographically, this rule will cover all waters of the Willamette River 100 feet upriver and downriver of the existing Sellwood Bridge, inward 375 feet from the Western side shoreline, and inward 420 feet from the Eastern side shoreline. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times. These safety zones will ensure the safety of all vessels and crew that are working and transiting in the construction areas.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and 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 rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866. The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because vessels may still transit in the vicinity of the safety zones.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zones. The safety zones will not have a significant economic impact on a substantial number of small entities because the area can still be used to transit through this section of the river, which will maintain a minimum width of 138 feet. Other maritime users, such as dragon boats, kayaks, and canoes, will be able to transit around the safety zones or through the open section.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–207 to read as follows:

§ 165.T13–207 Safety Zones; Sellwood Bridge project, Willamette River; Portland, OR

(a) *Location.* The safety zone on the western river bank encompasses all waters of the Willamette River within the following four lines: Line one starting at 45–27′53.5″ N/122–40′03.5″ W then heading 375 feet offshore to 45–27′53.5″ N/122–39′58.5″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′58.5″ W then heading 375 feet back to the shore at 45–27′49.5″ N/122–40′04.5″ W then following the shoreline to end at 45–27′53.5″ N/122–40′40′03.5″ W. The safety zone on the eastern river bank is encompassed within the following four lines: Line one starting at 45–27′53.5″ N/122–39′50.5″ W then heading 420 feet offshore to 45–27′53.5″ N/122–39′55.0″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′55.0″ W then heading 420 feet back to the shore at 45–27′49.5″ N/122–39′47.0″ W then following the shoreline to end at 45–27′49.5″ N/122–39′47.0″ W. Geographically, this rule will cover all waters of the Willamette River 100 feet upriver and downriver of the existing Sellwood Bridge, inward 375 feet from the Western side shoreline, and inward 420 feet from the Eastern side shoreline. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zones created in this section or bring, cause to be brought, or allow to remain in the safety zones created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other Federal, state, or local agencies with the enforcement of the safety zones.

(c) *Enforcement period.* The safety zones created by this section will be in effect from 4 p.m. March 1, 2012, through 11 a.m. July 1, 2012.

Dated: March 1, 2012.

B.C. Jones,

Captain, U. S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–6137 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 104

Discrimination on the Basis of Disability in Federally Assisted Programs and Activities

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Department of Education (Department or Education) provides notice of its interpretation of Section 504 of the Rehabilitation Act of 1973 and the Department's implementing regulations, which prohibit discrimination on the basis of disability in federally assisted programs and activities (Education's Section 504 regulations). Among other things, Education's Section 504 regulations address the accessibility and usability of a recipient's facilities by persons with disabilities. This document explains that for new construction and alterations commenced on or after September 15, 2010, we will permit recipients of Federal financial assistance from the Department to use an additional alternative accessibility standard in lieu of the Uniform Federal Accessibility Standards (UFAS) for the purpose of complying with Section 504. Specifically, we will permit the use of the U. S. Department of Justice's 2010 ADA Standards for Accessible Design as defined in the Americans with Disabilities Act (ADA) Title II regulation (referred to in this notice as the 2010 Title II ADA Standards) except that Exception (1) to Section 206.2.3 does not apply. Use of the 2010 Title II ADA Standards will not be required as a means of compliance with Section 504,

however, until the Department revises its Section 504 regulations to formally adopt the 2010 Title II ADA Standards in lieu of UFAS.

DATES: *Effective date:* March 14, 2012.

FOR FURTHER INFORMATION CONTACT: Arthur Goldman, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–1100. Telephone: (800) 421–3481, or by email at: *OCR@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Background

Section 504

Education implements the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504),[1] which prohibits discrimination on the basis of disability [2] in federally assisted programs or activities, through regulations in 34 CFR part 104. Education's Section 504 regulations apply to recipients to which the Department extends Federal financial assistance. Among other things, Education's Section 504 regulations prohibit denial of the benefits of, exclusion from participation in, or other discrimination against qualified individuals with disabilities in programs or activities because a recipient's facilities are inaccessible to or unusable by persons with disabilities.[3]

Education's Section 504 regulations require that if construction of a recipient's facility commenced after the effective date of the regulations (June 3, 1977) [4] the facility must be designed and constructed so that it is readily accessible to and usable by persons with disabilities.[5] These regulations also require that facility alterations commenced after June 3, 1977, that affect or may affect the facility's usability must be accomplished so that, to the maximum extent feasible, the altered portion of the facility is readily accessible and usable by persons with disabilities.[6]

For facilities subject to the new construction and alterations requirements, 34 CFR 104.23(c) has always incorporated by reference an accessibility design standard, such that construction or alterations in conformance with that standard would be deemed compliance with Education's Section 504 regulations.[7] Under the current regulations, at 34 CFR 104.23(c), new construction or alterations made in conformance with the Uniform Federal Accessibility Standards (UFAS) are deemed to be in compliance with Education's Section 504 regulations, although a recipient may depart from UFAS when other methods provide equivalent or greater access to and usability of the facility.[8]

The adoption of UFAS as an accessibility design standard in Education's Section 504 regulations occurred in 1991 as part of a joint rulemaking with other Federal agencies, led by the Department of Justice (DOJ) pursuant to its coordinating authority for Section 504 under Executive Order 12250. We and the other participating agencies adopted UFAS (effective January 18, 1991) to diminish the possibility that some recipients of Federal financial assistance would face conflicting enforcement standards either between Section 504 and the Architectural Barriers Act of 1968,[9] or among the Section 504 regulations of different Federal agencies.[10] In addition, after DOJ adopted the 1991 ADA Accessibility Standards for compliance with Title II of the ADA, Education permitted entities subject to our Section 504 regulation and the ADA to use the 1991 Standards, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) does not apply.[11]

Title II Regulations

Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public educational institutions that are subject to Education's Section 504 regulations because they receive Federal financial assistance from us are also subject to the Title II regulations because they are public entities (e.g., school districts, State educational agencies, public institutions of vocational education, and public colleges and universities). Pursuant to a delegation by the Attorney General of the United States, Education shares in the enforcement of Title II by virtue of being the designated agency to investigate complaints and seek voluntary compliance under Title II for certain types of public educational entities.[12] Thus, for those entities, Education enforces both Section 504

[1] 29 U.S.C. 794.

[2] In this notice, we use the term ''disability,'' the term that is currently used by Congress in legislation, in place of the term ''handicap,'' which was used in the 1973 statute and our 1977 regulations. There is no substantive difference.

[3] 34 CFR 104.21.

[4] The former Department of Health, Education, and Welfare issued section 504 regulations, including this provision, with an effective date of June 3, 1977. *See* 45 CFR part 84 (1978). Upon the establishment of the Department of Education, 20 U.S.C. 3401 *et seq.,* we adopted those regulations without substantive change.

[5] 34 CFR 104.23(a) provides: *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by * * * persons [with disabilities], if the construction was commenced after the effective date of this part.

[6] 34 CFR 104.23(b) provides: *Alteration.* Each facility, or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by * * * persons [with disabilities].

[7] 34 CFR 104.23(c). This section, in its entirety, provides: *Conformance with Uniform Federal Accessibility Standards.*

(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For the purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical [disabilities].

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[8] 34 CFR 104.23(c)(1).

[9] The Architectural Barriers Act of 1968 (ABA), 42 U.S.C. 4151–4157, directed four agencies, the General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service, to establish accessibility standards for the design, construction, and alteration of certain Federal and federally funded buildings. The four agencies adopted UFAS as the ABA standard in 1984.

[10] 55 FR 52136–37 (1990).

[11] See ''Major Differences Between the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Uniform Federal Accessibility Standards,'' Office for Civil Rights (OCR), U.S. Department of Education, September 1993, at 4. This technical assistance handout was distributed as an attachment to a September 17, 1993, memorandum from Norma V. Cantu, Assistant Secretary for Civil Rights, to OCR Senior Staff, with instructions that it was designed to accompany technical-assistance presentations on the issue of accessibility and that OCR staff should disseminate copies to interested persons.

[12] Education is the designated agency for public elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries. 28 CFR 35.190(b)(2).

and Title II, as well as the implementing regulations of both statutes.[13]

Definitions of Standards Referenced in This Notice

In this notice, we explain our interpretation of 34 CFR 104.23 as it relates to new construction and alterations commenced on or after September 15, 2010. As described more fully later in this notice, our purpose is to inform all interested parties that for new construction and alterations commenced after that date, we are interpreting Education's current Section 504 regulations to permit use of accessibility standards that are consistent with DOJ's Title II regulations until Education's Section 504 regulations are revised.[14] DOJ first issued the Title II regulations in 1991,[15] and published revisions to the regulations on September 15, 2010. These revised regulations included modifications to the Title II ADA nondiscrimination requirements and they adopt revised ADA accessibility standards (the 2010 Title II ADA Standards). Before discussing Education's decision to deem the 2010 Title II ADA Standards as an acceptable alternative to UFAS, we first introduce and define the various accessibility standards referenced in the Title II regulations or Education's Section 504 regulations that are used for designing, constructing, or altering a facility:

UFAS means the Uniform Federal Accessibility Standards. Education's Section 504 regulations reference sections 3 through 8 of UFAS.[16]

1991 Standards means the requirements in the ADA Standards for Accessible Design originally published as Appendix A to 28 CFR part 36 on July 26, 1991, and republished as Appendix D to 28 CFR part 36 on September 15, 2010.[17]

2010 Standards as defined in the Title II regulation, means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in 28 CFR 35.151.[18] In this notice, these standards are referred to as the ''2010 Title II ADA Standards.''

2004 ADAAG means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).[19]

Accessibility Standards in Title II Regulations Issued by DOJ

DOJ's Title II regulations prohibit exclusion from participation in or the denial of the benefits of services, programs, or activities, or other discrimination because a public entity's facilities are inaccessible to or unusable by individuals with disabilities. The Title II regulations provide that design, construction, and alterations of facilities commenced after January 26, 1992, must be done in such a manner that the facility or part of the facility being built or altered is readily accessible to and usable by individuals with disabilities.[20]

The Title II regulations issued in 1991 (which have been revised in relevant part, as discussed later in this section) incorporated by reference two sets of standards for new construction and alterations: UFAS and the 1991 Standards [21] without the ''elevator exemption.'' [22] The 1991 Title II regulations also permitted departures from the particular requirements of either standard by the use of other methods when it was clearly evident that equivalent access to the facility or part of the facility is thereby provided.[23]

On September 15, 2010, DOJ published revisions to the Title II regulations.[24] The revised regulations became effective March 15, 2011. Among other things, they provide that new construction and alterations that commence on or after March 15, 2012, must comply with the 2010 Title II ADA Standards.[25]

The revised Title II regulations permit covered entities to use the 2010 Title II ADA Standards as an alternative to the 1991 Standards without the elevator exemption or to UFAS for new construction and alterations that commenced on or after September 15, 2010, but before March 15, 2012.[26] This approach provides flexibility for covered entities that comply with building codes that have many of the same requirements as the 2010 Title II ADA Standards.

As emphasized by the revised Title II regulatory language as well as the interpretive guidance published with it, covered entities engaged in physical construction or alterations during this period may select only one standard from among the three options. They may not rely on some of the requirements contained in one standard and some of the requirements contained in the other standards.[27]

Education's Enforcement of DOJ's Title II Regulations

Public entities that receive Federal financial assistance are subject to both Title II and Section 504, and, as described previously, Education shares enforcement responsibilities with DOJ for Title II because it is the designated agency for investigation of complaints and voluntary compliance under Title II. For new construction and alterations commenced on or after March 15, 2012, the 2010 Title II ADA Standards will be

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[13] DOJ enforces Title III of the ADA and has advised Education that private educational institutions that are subject to Education's Section 504 regulations are in almost all cases also subject to Title III.

[14] 34 CFR 104.23(c). 42 U.S.C. 12131 *et seq.;* 28 CFR part 35. The Title II regulations and supplementary information were published in the **Federal Register** on September 15, 2010 (75 FR 56164–56236). DOJ's ADA Web site contains links to HTML and PDF versions at *www.ada.gov/regs2010/ADAregs2010.htm.*

[15] 28 CFR part 35 (1992). DOJ also issued regulations in 1991 under Title III of the ADA, 42 U.S.C. 12181 et seq., 28 CFR part 36 (1992), that prohibit discrimination on the basis of disability by, among other entities, private educational institutions. As previously noted, DOJ enforces Title III of the ADA.

[16] 34 CFR 104.23(c).

[17] 28 CFR 35.104. These standards were based on the ADA Accessibility Guidelines (ADAAG) published by the Access Board (Architectural and Transportation Barriers Compliance Board) in 1991 (1991 ADAAG). DOJ's ADA Web site contains links to HTML and PDF versions of the *1991 Standards at www.ada.gov/stdspdf.htm.*

[18] 28 CFR 35.104. DOJ provides an online compilation of the revised ADA regulations that includes the 2010 Standards, guidance about the 2010 Standards, and the Title II and Title III regulations and the interpretive guidance accompanying the regulations, at *www.ada.gov/2010ADAstandards_index.htm.* There are links to HTML, PDF screen, and PDF print versions of the 2010 Standards and the regulations. (The online version also includes the 2010 Title III ADA Standards for the purposes of the Title III regulations, i.e., 28 CFR part 36, subpart D, and 2004 ADAAG.)

[19] 28 CFR 35.104.

[20] 28 CFR 35.151(a) (new construction); 28 CFR 35.151(b) (alterations).

[21] See definition of *1991 Standards* in the *Definitions of Standards Referenced in this Notice* section of this notice.

[22] The 1991 Title II regulations provided that design, construction, or alterations of facilities in conformance with UFAS or the 1991 Standards shall be deemed compliant with the relevant requirements, except that if the public entity chose the 1991 Standards, the elevator exemption set forth at section 4.1.3(5) and section 4.1.6(1)(k) of those standards did not apply. All references in this notice to the ''elevator exemption'' in connection with the 1991 Standards refer to the exemption from these specific sections of the 1991 Standards. The elevator exemption, applicable to certain private buildings under the 1991 Standards pursuant to the 1991 Title III ADA regulations, provided that, with some exceptions, elevators were not required in facilities that have less than three stories or have less than 3,000 square feet per story. Consequently, although the 1991 Standards contained an elevator exemption, the Title II regulations prohibited public entities that chose to use the 1991 Standards for new construction or alterations from applying the elevator exemption. 28 CFR 35.151(c).

[23] 28 CFR 35.151(c).

[24] That same day, DOJ also published revisions to the Title III regulations (75 FR 56236).

[25] See definition of the *2010 Standards* (2010 Title II ADA Standards) in the *Definitions of Standards Referenced in this Notice* section in this notice.

[26] 28 CFR 35.151(c)(2).

[27] 75 FR 56164, 56213 (Sep. 15, 2010).

used by Education in its enforcement of the Title II regulations.[28]

Education's Intent To Revise its Section 504 Regulations To Adopt the 2010 Title II ADA Standards

In the preamble to the final Title II regulation, DOJ stated that Federal agencies that extend Federal financial assistance should revise their Section 504 regulations to adopt the 2010 Standards as Section 504 standards for new construction and alterations.[29] Following issuance of the final rule, DOJ reiterated its intent to work with Federal agencies ''to revise their Section 504 regulations in the near future to adopt the 2010 Standards as the appropriate accessibility standard for their recipients.'' [30] The 2010 Standards were adopted through formal rulemaking and were subject to substantial scrutiny and deliberation, including consideration of costs and benefits; we intend to harmonize the corresponding requirements of Education's Section 504 regulations with the Title II requirements. For these reasons, in coordination with DOJ, we are planning to initiate rulemaking to address the relevant standards of Education's Section 504 regulations for new construction and alterations commencing on or after March 15, 2012, by proposing an amendment to adopt the 2010 Title II ADA Standards, in lieu of UFAS, except that Exception (1) to Section 206.2.3 would not apply.[31]

[28] 28 CFR 35.151(c)(3). In other words, for the purposes of Title II compliance, a public entity must comply with the 2010 Title II ADA Standards as of March 15, 2012, even if UFAS remains an option under the Section 504 regulations for some period after this date. In addition, DOJ, which enforces Title III of the ADA, has advised Education that as of March 15, 2012, entities subject to Title III must use the 2010 Title III ADA Standards for the purposes of Title III ADA compliance.

[29] 75 FR 56164, 56213 (Sep. 15, 2010) (Because ''construction in accordance with UFAS would no longer satisfy ADA requirements[,] * * * the Department [of Justice] would coordinate a government wide effort to revise Federal agencies' section 504 regulations to adopt the [2010 Title II ADA Standards] as the Standard for new construction and alterations.'').

[30] Memorandum dated March 29, 2011, from Thomas E. Perez, Assistant Attorney General, Division of Civil Rights, U.S. DOJ, to Federal Agency Civil Rights Directors and General Counsels, titled ''Permitting Entities Covered by the Federally Assisted Provisions of Section 504 of the Rehabilitation Act to Use the 2010 ADA Standards for Accessible Design as an Alternative Accessibility Standard for New Construction and Alterations'' (March 29, 2011 DOJ memorandum.) This memorandum is available on DOJ's ADA Web site at *http://www.ada.gov/504_memo_standards.htm*.

[31] Section 206.2.3 of the 2010 Title II ADA Standards requires that an accessible route connect each story and mezzanine in multi-story facilities, which means that an elevator is required unless there is an applicable exception. Exception (1) to Section 206.2.3 exempts from this requirement certain private facilities that are less than three stories or that have less than 3000 square feet per story. Because Education's Section 504 regulations for new construction and alterations impose the same obligation on recipients whether they are public or private entities, the Department is announcing that it will not permit recipients that are private entities to avail themselves of Exception (1).

Applicable Standards Under the Department of Education's Section 504 Regulation

Because the only standard specifically incorporated by reference in Education's Section 504 regulations at this time is UFAS, we have received questions both about whether, for new construction and alterations commenced on or after September 15, 2010, but before March 15, 2012, we will interpret Education's Section 504 regulations to deem conformance with the 2010 Title II ADA Standards or the 1991 Standards without the elevator exemption as compliance with these requirements, and about which standards will be permissible on or after March 15, 2012. DOJ, exercising its Section 504 coordinating authority, has advised all affected Federal agencies that, until the agencies revise their Section 504 regulations, they may issue guidance to recipients that permits, but does not require, recipients to use the 2010 Title II ADA Standards as an acceptable alternative to UFAS for the purposes of compliance with Section 504.[32]

Standards Applicable Prior to March 15, 2012

We announce, through this notice, that we will permit, but not require, recipients to use the 2010 Standards as adopted in the Title II regulations, except that Exception (1) in Section 206.2.3 does not apply, as an acceptable alternative accessibility standard for new construction and alterations commencing on or after September 15, 2010, but before March 15, 2012. In addition, based on our longstanding policy, we will also continue to interpret 34 CFR 104.23(c), which addresses UFAS and departures from UFAS, to permit, but not require, recipients to use the 1991 Standards without the elevator exemption as an acceptable alternative accessibility standard for new construction and alterations that commence before March 15, 2012. This is also consistent with the corresponding provision in the Title II regulations, 28 CFR 35.151(c), which provides:

> If physical construction or alterations commence on or after September 15, 2010 and before March 15, 2012, then new construction and alterations subject to this section may comply with one of the following: The 2010 Standards, UFAS, or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.[33]

Thus, for the period spanning September 15, 2010, to March 14, 2012, we are deeming compliance with any of the following three accessibility standards as compliance with 34 CFR 104.23: (1) The 1991 Standards without the elevator exemption, (2) the 2010 Title II ADA Standards except that Exception (1) to Section 206.2.3 does not apply, or (3) UFAS. We note, however, that a recipient may select only one standard from among these options for purposes of complying with 34 CFR 104.23.

Because under Education's Section 504 regulations we apply the same accessibility standards for new construction and alterations to private and public recipients, this notice applies to recipients of Federal financial assistance from the Department regardless of whether they are public or private entities. That is, under the interpretation announced in this notice, both private and public recipients may make the same choice of a standard for the purposes of compliance with Education's Section 504 regulations. Education wishes to emphasize that private entities that are covered both by our Section 504 regulation and by Title III of the ADA and that choose the 2010 Standards may not rely on the elevator exception found at Exception (1) to section 206.2.3 of the 2010 Standards.

Standards Applicable Under Section 504 as of March 15, 2012

In addition, effective March 15, 2012, because the 1991 Standards will no longer be an applicable standard under the ADA for any new construction and alterations, we are announcing that for Section 504, recipients will have the choice of the 2010 Title II ADA Standards (except that Exception (1) to Section 206.2.3 does not apply) or UFAS until Education has revised its Section 504 regulation to adopt the 2010 Title II ADA Standards. Please refer to the following table of dates and accessibility standards for a quick

[32] March 29, 2011 DOJ memorandum.

[33] 28 CFR 35.151(c)(2).

reference to standards for complying with 34 CFR 104.23.

TABLE OF APPLICABLE STANDARDS FOR COMPLYING WITH 34 CFR 104.23

Date construction or alteration commenced	Applicable standards for complying with 34 CFR 104.23
Between 6/3/77 and 1/17/91	ANSI A117.1–1961 (R1971).[34]
Between 1/18/91 and 1/25/92	UFAS.
Between 1/26/92 and 9/14/10	UFAS or 1991 Standards without the elevator exception.
Between 9/15/10 and 3/14/12	UFAS, 1991 Standards without the elevator exception, or 2010 Title II ADA Standards except that Exception (1) to Section 206.2.3 does not apply.
On or after 3/15/2012 (until the regulations are revised)	UFAS or 2010 Title II ADA Standards except that Exception (1) to Section 206.2.3 does not apply.

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You may also access documents of the Department published in the **Federal Register** by using the article-search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

This notice is also available on OCR's Web site at: *http://www.ed.gov/ocr.*

Authority: 29 U.S.C. 794.

Dated: March 8, 2012.

Arne Duncan,

Secretary of Education.

[FR Doc. 2012–6122 Filed 3–13–12; 8:45 am]

BILLING CODE 4000–01–P

[34] This is the ''American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped,'' published by the American National Standards Institute, Inc.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0353; FRL–9644–3]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the state implementation plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) with respect to sections 110(a)(2)(C) and (J), of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a state implementation plan (SIP) for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as ''infrastructure submission''). Tennessee's infrastructure submission, provided to EPA on December 14, 2007, and clarified in a subsequent May 28, 2009, submission, addressed the required infrastructure elements for the 1997 8-hour ozone NAAQS, however the subject of this notice is limited to infrastructure elements 110(a)(2)(C) and (J). All other applicable Tennessee infrastructure elements will be addressed in a separate rulemaking.

DATES: *Effective Date:* This rule will be effective April 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2011–0353. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, 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. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. Tennessee provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 14, 2007, and clarified it in a subsequent submission submitted on May 28, 2009. On March 27, 2008, Tennessee was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for elements 110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS by March 1, 2008. *See* 73 FR 16205. Specifically, the Tennessee infrastructure submission did not address the part C Prevention of Significant Deterioration (PSD) permit program requirements promulgated in the 1997 8-Hour Ozone NAAQS Implementation Rule New Source Review (NSR) Update—Phase 2 final rule (hereafter referred to as the Ozone Implementation NSR Update) recognizing nitrogen oxide (NOx) as an ozone precursor, among other elements. *See* 70 FR 71612 (November 29, 2005). On May 28, 2009, TDEC submitted a SIP revision to EPA for federal approval which included revisions to Chapter 1200–03–09 of the Tennessee NSR program that addressed changes promulgated in the Ozone Implementation NSR Update. On February 7, 2012, EPA finalized approval of Tennessee's May 28, 2009, SIP revision. *See* 77 FR 6016. The May 28, 2009, submission was one of two required SIP revisions that were necessary in order for Tennessee to meet the requirements of infrastructure elements 110(a)(2)(C) and (J). In addition revisions related to the Ozone Implementation NSR Update, Tennessee was also required to submit revisions related to the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereafter referred to as the ''PSD GHG Tailoring Rule'').

On January 11, 2012, TDEC submitted its final PSD GHG Tailoring Rule revision to EPA. This revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Tennessee's PSD permitting requirements for their GHG emissions, and thereby addresses the thresholds for GHG permitting applicability in Tennessee. On January 27, 2012, the final rulemaking approving Tennessee's January 11, 2012, SIP revision was signed by the Acting EPA Region 4 Administrator. This rulemaking is scheduled to be published in the **Federal Register** on or before February 28, 2012. On January 23, 2012, EPA proposed to approve Tennessee's December 14, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS for elements 110(a)(2)(C) and (J), which is the subject of today's rulemaking. *See* 77 FR 3213. A summary of the background for today's final action is provided below. See EPA's January 23, 2012, proposed rulemaking at 77 FR 3213 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve Tennessee's December 14, 2007, and

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Tennessee's SIP addresses 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address the interstate transport. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's final rulemaking.

clarified on May 28, 2009, infrastructure submission as demonstrating that the State meets the applicable requirements of elements 110(a)(2)(C) and (J) of the CAA 110(a)(1) and (2) SIP requirements for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Tennessee, through TDEC, certified that the TDEC SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Tennessee for infrastructure elements 110(a)(2)(C) and (J). Additionally, EPA received no adverse comments on its January 23, 2012, proposed approval of Tennessee's December 14, 2007, infrastructure submission.

EPA has determined that Tennessee's infrastructure submission, provided to EPA on December 14, 2007, and clarified in a subsequent submission submitted on May 28, 2009, which addressed infrastructure elements 110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS, is consistent with section 110 of the CAA.

III. Final Action

EPA is taking final action to approve Tennessee's December 14, 2007, submission as clarified on May 28, 2009, for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA. TDEC has addressed the elements (C) and (J) of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 CAA. 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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, 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 May 14, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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 RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry ''110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards—Elements 110(a)(1) and (2)(C) and (J)'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* * *	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards—Elements 110(a)(1) and (2)(C) and (J).	Tennessee	12/14/2007	3/14/2012 [Insert citation of publication].	

[FR Doc. 2012–5764 Filed 3–13–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[EPA–HQ–OAR–2009–0128; FRL–9637–3]

RIN 2060–AP57

Transportation Conformity Rule Restructuring Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the transportation conformity rule to finalize provisions that were proposed on August 13, 2010. These amendments restructure several sections of the transportation conformity rule so that they apply to any new or revised National Ambient Air Quality Standards. EPA is also finalizing several clarifications to improve implementation of the rule. EPA is not taking a final action at this time on the proposal that areas analyze a near-term analysis year when using the budget test.

The Clean Air Act requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (conform to) the purpose of the state air quality implementation plan. EPA consulted with the U.S. Department of Transportation and they concur in the development of this final rule.

DATES: This final rule is effective on April 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0128. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Patty Klavon, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, email address: *klavon.patty@epa.gov,* telephone number: (734) 214–4476, fax number: (734) 214–4052; or Laura Berry, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, email address: *berry.laura@epa.gov,* telephone number: (734) 214–4858, fax number: (734) 214–4052.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Background on the Transportation Conformity Rule
III. Restructure of Section 93.109—Tests of Conformity for Transportation Plans, TIPs, and Projects—and Changes to Related Sections
IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies
V. Restructure of the Baseline Year Test for Existing NAAQS and Baseline Year Test for Future NAAQS
VI. How do these amendments affect conformity SIPs?
VII. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Chapter 53. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How do I get copies of this document?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2009–0128. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *www.epa.gov/otaq/stateresources/transconf/index.htm.* An electronic version of the official public docket is also available through *www.regulations.gov.* You may use *www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then enter the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

II. Background on the Transportation Conformity Rule

A. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with (conform to) the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment or achievement of the relevant National Ambient Air Quality Standards (NAAQS) and interim emission reductions or milestones. Transportation conformity (hereafter, ''conformity'') applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (''maintenance areas'') for transportation-related criteria pollutants: Carbon monoxide (CO), ozone, nitrogen dioxide (NO_2) and particulate matter ($PM_{2.5}$ and PM_{10}).[1]

EPA's conformity rule (40 CFR Parts 51.390 and 93 Subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. DOT is EPA's federal partner in implementing the conformity regulation. EPA consulted with the U.S. Department of Transportation (DOT), and they concur on this final rule.

B. Why are we issuing this final rule?

EPA is amending the conformity rule so that its requirements will clearly apply to areas designated for any future new or revised NAAQS. To achieve this, today's final rule restructures two sections of the conformity rule, 40 CFR 93.109 and 93.119, and makes changes to certain definitions in 40 CFR 93.101. These amendments are intended to minimize the need to make administrative updates to the conformity rule merely to reference a specific new or revised NAAQS. EPA has already undertaken two conformity rulemakings primarily for the purpose of addressing a new or revised NAAQS. See the March 24, 2010 Transportation Conformity Rule $PM_{2.5}$ and PM_{10} Amendments (''PM Amendments'') final rule and the July 1, 2004 final rule (75 FR 14260, and 69 FR 40004, respectively). Due to other CAA requirements, EPA will continue to establish new or revised NAAQS in the future. EPA believes that today's conformity rule revisions provide more certainty to implementers without compromising air quality benefits from the current program. These changes are described in Sections III. and V. of today's final rule.

EPA is also clarifying in today's final rule the additional conformity test option available to current ozone ''clean data'' areas and is extending that option to any nonattainment areas for which EPA has developed a clean data regulation or policy.[2] This provision should eliminate the need to update the conformity rule in the future in order to extend this conformity option to other NAAQS. See Section IV. of today's final rule for further details.

EPA is also finalizing a change to the wording of conformity rule section 93.118(b) that does not change its requirements. Section 93.118(b) of the conformity rule continues to require consistency[3] for any years where the SIP establishes a budget and for any years that are analyzed to meet the requirements in 40 CFR 93.118(d). This change simplifies this provision and eliminates repetitiveness within the regulation, but does not change the requirements for demonstrating consistency. EPA did not receive comments on this section, and we are finalizing it as proposed.

Section VI. covers how today's final rule affects conformity SIPs. A conformity SIP includes a state's specific criteria and procedures for certain aspects of the conformity process.[4]

In the August 13, 2010 **Federal Register** notice, EPA had proposed that a near-term year would have to be analyzed when using the budget test when an area's attainment date has passed or has not yet been established (75 FR 49435). EPA is not taking final action on this proposal at this time.

Finally, EPA received several comments requesting that we issue a rulemaking, rather than guidance, to address conformity requirements in areas designated for a distinct secondary NAAQS. Transportation conformity applies to any NAAQS for transportation-related criteria pollutants, including secondary

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

[2] Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that we are finalizing a minor change to the definition of clean data found in conformity rule section 93.101; see Section IV. of today's notice.

[3] That is, transportation plan and TIP emissions must be less than or equal to the budget(s) in the applicable SIP.

[4] For more information about conformity SIPs, see EPA's ''Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)'', (EPA–420–B–09–001, January 2009).

NAAQS.[5] CAA section 176(c) does not distinguish between primary and secondary NAAQS. EPA would issue future transportation conformity guidance as needed to implement new or revised NAAQS, including a distinct secondary NAAQS if one is promulgated in the future.

III. Restructure of Section 93.109—Tests of Conformity for Transportation Plans, TIPs, and Projects—and Changes to Related Sections

A. Overview

Conformity determinations for transportation plans, TIPs, and projects not from a conforming transportation plan and TIP must include a regional emissions analysis that fulfills CAA requirements. The conformity rule provides for several different regional conformity tests that satisfy statutory requirements in different situations. Once a SIP with a budget is submitted for a NAAQS and EPA finds the budget adequate for conformity purposes or approves the SIP, conformity must be demonstrated using the budget test for that pollutant or precursor, as described in 40 CFR 93.118.

EPA has amended the conformity rule on two prior occasions to address a new or revised NAAQS. In the July 1, 2004 final rule (69 FR 40004), EPA amended 40 CFR 93.109 by adding new paragraphs to describe the regional conformity tests for the 1997 ozone areas that do not have 1-hour ozone budgets, 1997 ozone areas that have 1-hour ozone budgets, and 1997 $PM_{2.5}$ areas. Also, in the March 24, 2010 PM. Amendments rulemaking (75 FR 14260), EPA amended 40 CFR 93.109 again by adding two new paragraphs to describe the regional conformity tests for 2006 $PM_{2.5}$ areas without 1997 $PM_{2.5}$ budgets, and 2006 $PM_{2.5}$ areas that have 1997 $PM_{2.5}$ budgets.

Given that CAA section 109(d)(1) requires EPA to revisit the NAAQS for criteria pollutants at least every five years, and that EPA is in the process of considering revisions to other NAAQS per this requirement, EPA anticipates other NAAQS revisions will be made in the future that will be subject to conformity requirements. Today's action restructures 40 CFR 93.109 to eliminate repetition and reduce the need to update the rule each time a NAAQS is promulgated. The same hierarchy of conformity tests as described below in B. of this section generally applies to all areas where conformity is required, and for the reasons described below, EPA believes it would apply to future nonattainment and maintenance areas for transportation-related pollutants or NAAQS.

B. Description of the Final Rule

In today's action, EPA is restructuring 40 CFR 93.109 so that it contains two paragraphs:

- Regional conformity tests, which are covered by section 93.109(c); and,
- Project-level conformity tests, which are covered by section 93.109(d).

New paragraph (c). Today's final rule revises 40 CFR 93.109(c) so that requirements for using the budget test and/or interim emissions tests apply for any NAAQS in the following way:

- First, a nonattainment or maintenance area for a specific NAAQS must use the budget test, if the area has adequate or approved SIP budgets for that specific NAAQS (section 93.109(c)(1)). For example, once a 2006 $PM_{2.5}$ nonattainment area has adequate or approved SIP budgets for the 2006 $PM_{2.5}$ NAAQS, it must use those budgets in the budget test as the regional test of conformity for the 2006 $PM_{2.5}$ NAAQS;
- Second, if an area does not have such budgets but has adequate or approved budgets from a SIP that addresses a different NAAQS of the same criteria pollutant, these budgets must be used in the budget test. Where such budgets do not cover the entire area, the interim emissions test(s) may also have to be used (section 93.109(c)(2)). For example, before a 2006 $PM_{2.5}$ area has adequate or approved budgets for the 2006 $PM_{2.5}$ NAAQS, it must use the budget test, using budgets from an adequate or approved SIP for the 1997 $PM_{2.5}$ NAAQS, if it has them. If these budgets do not cover the entire 2006 $PM_{2.5}$ area, one of the interim emissions tests may also have to be used;
- Third, if an area has no adequate or approved SIP budgets for that criteria pollutant at all, it must use the interim emissions test(s) (section 93.109(c)(3)). For example, if a 2006 $PM_{2.5}$ area has no adequate or approved budgets for any $PM_{2.5}$ NAAQS, it must use one of the interim emissions tests, as described in 40 CFR 93.119.

These conformity test requirements are unchanged from the previous regulation; today's rulemaking restates them in terms that apply to any NAAQS.

In addition, in conformity rule section 93.109(c)(5), EPA is expanding the clean data conformity option to all clean data areas for which EPA has a clean data regulation or policy.[6] See Section IV. below for further information.

New paragraph (d). With regard to project-level requirements, today's final rule places the existing rule's requirements for hot-spot analyses of projects in CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas together in one paragraph (section 93.109(d)(1), (2), and (3)). These requirements are unchanged from the previous regulation; today's rulemaking simply groups them together under one paragraph.[7]

Related amendments. Today's final rule removes the definitions for ''1-hour ozone NAAQS'', ''8-hour ozone NAAQS'', ''24-hour PM_{10} NAAQS'', ''1997 $PM_{2.5}$ NAAQS'', ''2006 $PM_{2.5}$ NAAQS'', and ''Annual PM_{10} NAAQS'' from 40 CFR 93.101. These definitions are no longer necessary because the updated regulatory text for sections 93.109 and 93.119[8] applies to any and all NAAQS of those pollutants for which conformity applies. In addition, today's final rule updates references to 40 CFR 93.109 found elsewhere in the regulation. Finally, today's final rule corrects a reference to the consultation requirements found in 93.109(g)(2)(iii) which applies to isolated rural areas.

C. Rationale and Response to Comments

EPA is restructuring 40 CFR 93.109 because a recent court decision has already established the legal parameters for regional conformity tests. In *Environmental Defense* v. *EPA,* 467 F.3d 1329 (DC Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that where a motor vehicle emissions budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until the SIP is revised to include budgets for the new (or revised) NAAQS. EPA incorporated the court's decision for ozone conformity tests in its January 24, 2008 final rule (73 FR 4434). While the *Environmental Defense* case concerned ozone, EPA believes the court's holding is relevant for other pollutants for which

[5] See the preamble to the August 13, 2010 proposal for further background (75 FR 49441).

[6] Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that this action finalizes a minor change to the definition of clean data which is found in section 93.101 of the conformity rule; see Section IV. of today's rulemaking.

[7] Project-level conformity determinations are typically developed during the National Environmental Policy Act (NEPA) process, although conformity requirements are separate from NEPA-related requirements. Today's action to restructure 40 CFR 93.109 does not affect how NEPA-related requirements are implemented in the field.

[8] See Section V. of today's rulemaking for revisions to 40 CFR 93.119.

conformity must be demonstrated. Consequently, EPA believes the hierarchy of regional conformity tests described above, which is already found in the existing rule for 1997 ozone and 2006 $PM_{2.5}$ areas, would apply for any NAAQS of a pollutant for which the conformity rule applies.

EPA's restructuring of 40 CFR 93.109 and elimination of certain definitions in 40 CFR 93.101, along with the standardization of the baseline year in 40 CFR 93.119 (see Section V. of today's final rule for details), should make the rule sufficiently flexible to address any future NAAQS changes, including the promulgation of a new or revised NAAQS or revocation of a NAAQS, without additional rulemakings.

The restructured section 93.109 does not change the criteria and procedures for determining conformity of transportation plans, TIPs, and projects and is consistent with the regional conformity test requirements described in the PM Amendments final rule (75 FR 14266–14274). The rationale for the required regional tests has been described in previous rulemakings.[9] The rationale for the requirements for project-level conformity tests in CO, $PM_{2.5}$, and PM_{10} areas has also been described in previous rulemakings.[10]

Today's restructuring of 40 CFR 93.109 reduces the likelihood that EPA would have to amend the conformity rule when new or revised NAAQS are promulgated, which has several benefits. First, implementers will know the requirements for regional conformity tests for any potential area designated nonattainment for a new or revised NAAQS, even before such area's official designation, and will not need to wait for any additional conformity rulemaking from EPA to know what type of regional conformity test will apply. Second, reducing the need to amend the conformity regulation each time a NAAQS change is made will save government resources and taxpayer dollars, and will reduce stakeholder efforts needed to keep track of regulatory changes.

All commenters who addressed this proposal supported EPA's approach for restructuring 40 CFR 93.109. Several commenters agreed with EPA that these changes will help streamline the conformity regulation and reduce the need to revise the conformity rule when new or revised NAAQS are promulgated. One commenter opined that the restructuring of 40 CFR 93.109 provides a clear and concise organization of the conformity requirements and agreed with EPA's rationale that it will be beneficial for implementing organizations to know the conformity requirements in advance of any new or revised NAAQS.

A few commenters requested that EPA clarify whether areas that have an adequate or approved NO_X SIP budget for a specific NAAQS (e.g., the 1997 ozone NAAQS) would have to use that NO_X budget to demonstrate conformity for another pollutant, such as $PM_{2.5}$.

A NO_X budget in an ozone SIP would apply for conformity for an ozone NAAQS only, and could not be used as a budget for any other pollutant. CAA section 176(c)(1)(A) establishes that nonattainment and maintenance areas must demonstrate conformity to a SIP's ''purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards.'' The purpose of a SIP is tied to the pollutant it addresses. The 2006 court case cited above in this section supports this point. In that ruling, the court held that where a budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until a SIP is revised to include budgets for the new or revised NAAQS. The court did not refer to adequate or approved NO_X or VOC budgets from a SIP that addressed a pollutant other than ozone, and did not indicate that such budgets would need to be used. In accordance with this court decision, if, for example, a 1997 ozone area has an approved 1997 ozone attainment demonstration with a NO_X budget, this NO_X budget must be used to demonstrate conformity for the 1997 ozone NAAQS and could also be used to demonstrate conformity for any future ozone NAAQS before the area has a SIP for that ozone NAAQS. However, the NO_X budget could not be used to demonstrate conformity for a PM or NO_2 NAAQS because doing so would not be consistent with CAA section 176(c) requirements that conformity be demonstrated to the relevant SIP.

Finally, while pollutants may have precursors in common, control strategies may differ by pollutant and the seasons for which the budget is established may differ by pollutant as well. For example, precursor SIP budgets for the ozone NAAQS address a typical summer day, because ozone is a summertime air quality problem. However, $PM_{2.5}$ violations in the same geographic area may have occurred during winter months. An ozone precursor SIP budget established for a typical summer day has no relevance in addressing a wintertime $PM_{2.5}$ problem.

EPA believes that section 93.109(c)(2) in today's final rule provides sufficient clarity for these situations because it specifies that where an area does not have an adequate or approved SIP budget for a NAAQS, it would use an approved or adequate SIP budget(s) for another NAAQS of the same pollutant as the test of conformity. No additional changes are necessary.

IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies

A. Overview

Prior to today's final rule, the conformity rule provided an additional regional conformity test option for certain moderate and above ozone nonattainment areas that meet the criteria of EPA's existing clean data regulation and policy. Today's rule clarifies this option and extends it to any nonattainment areas that are covered by EPA's clean data regulations or clean data policies. See Section IV of the August 13, 2010 proposal for further background on EPA's clean data regulations and policies (75 FR 49439).

B. Description of the Final Rule

Today, EPA is clarifying that any nonattainment area that EPA determines has air quality monitoring data that meet the requirements of 40 CFR parts 50 and 58 and that show attainment of a NAAQS—a ''clean data'' area[11]—can choose to satisfy the regional conformity test requirements by using on-road emissions from the most recent year of clean data as the budget(s) for that NAAQS rather than using the interim emissions test(s) per 40 CFR 93.119. The area may do this if the following are true:

- The state or local air quality agency requests that budgets be established by the EPA determination of attainment (Clean Data) rulemaking for that NAAQS, and EPA approves the request; and,
- The area has not submitted a maintenance plan for that NAAQS and EPA has determined (through the Clean Data rulemaking) that the area is not subject to the CAA reasonable further progress and attainment demonstration requirements for the relevant NAAQS.

[9] See EPA's March 24, 2010 final rule (75 FR 14266–14273). See also EPA's July 1, 2004 final rule (69 FR 40019–40031).

[10] For further details on project-level conformity test requirements, please refer to the March 10, 2006 final rule (71 FR 12469–12506). See also EPA's January 24, 2008 final rule (73 FR 4432–4434), EPA's July 1, 2004 final rule (69 FR 40036–40038; 40056–40058), the August 15, 1997 final rule (62 FR 43798), and the November 24, 1993 final rule (58 FR 62199–62201; 62207–62208; 62212–62213).

[11] See conformity rule section 93.101 for a definition of ''clean data.''

Otherwise, clean data areas for a NAAQS must satisfy the regional conformity test requirements using either the budget test if they have adequate or approved SIP budgets (per 40 CFR 93.109 and 93.118), or the interim emissions test(s) per 40 CFR 93.119 if they do not have adequate or approved SIP budgets.

In today's rule, EPA is not making changes to its existing clean data regulations or policies or to the conformity option for clean data areas. EPA is merely clarifying this conformity option and extending it to any nonattainment areas that are covered by EPA's clean data regulations or clean data policies.

The regulatory text for this flexibility is found in section 93.109(c)(5) of the conformity rule. This text clarifies that before this flexibility may be used: (1) the state or local air quality agency must make the request that the emissions in the most recent year for which EPA determines the area is attaining (i.e., the most recent year that the area has clean data) be used as budgets, and (2) EPA would have to approve that request through notice-and-comment rulemaking.

Today's rule also updates the definition of ''clean data'' in 40 CFR 93.101 to describe this term more accurately. The updated definition references the appropriate requirements at 40 CFR part 50, as well as part 58.

C. Rationale and Response to Comments

EPA believes that it is reasonable to extend the same conformity option available to clean data ozone areas to all clean data areas for which EPA has a clean data regulation or policy. Furthermore, this provision should work with any clean data policy or regulation that EPA develops; thus, it would eliminate the need to update the conformity rule in the future in order to extend this conformity option to any NAAQS for which EPA develops a clean data policy or regulation. See EPA's previous discussion and rationale for the clean data conformity option in July 1, 2004 final rule (69 FR 40019–40021). See also the preamble to the 1996 conformity proposal and 1997 final rule (July 9, 1996, 61 FR 36116, and August 15, 1997, 62 FR 43784–43785, respectively).

Several commenters requested that EPA clarify whether the use of the most recent year of clean data as the budget becomes binding once EPA approves it for use in completing regional conformity analyses. These commenters also wanted assurance that the state or local air quality agency would need to use the interagency and public consultation process before such budgets are submitted to EPA for approval. As EPA explained in its proposed rule (August 13, 2010, 75 FR 49439), once the state or local air quality agency makes the request that the emissions in the most recent year for which the area is attaining be used as the budget, and EPA approves that request through a rulemaking, this level of emissions becomes the approved budget for conformity purposes in the clean data area for the relevant NAAQS.[12] The area may not revert back to using the interim emissions test(s) to demonstrate conformity once a budget has been established through a rulemaking, regardless of whether such budget is approved in a Clean Data rulemaking for a NAAQS or is approved as part of a control strategy SIP. Note that should EPA subsequently determine that the area has violated the relevant NAAQS and withdraw the determination of attainment through appropriate rulemaking,[13] EPA will also withdraw its approval for the clean data budget.

Once a clean data area submits a maintenance plan, and its budget(s) are found adequate or approved, the maintenance plan budget(s) must be used for conformity based on the regulation at 40 CFR 93.118(b).

The conformity rule at 93.105(a)(1) requires interagency consultation in SIP development. The final rule is consistent with prior conformity rulemakings that require any clean data budgets to be subject to the existing interagency consultation process and public comment. EPA established in its August 15, 1997 final rule (62 FR 43784–43785) that, regardless of whether a budget is created through the SIP process or through a Clean Data rulemaking, the interagency consultation process must be used and the public must be provided an opportunity to comment. See the August 15, 1997 final rule for further details.

For details on EPA's clean data regulations and policies, see the November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646), 40 CFR 51.918, and the April 25, 2007 Clean Air Fine Particle Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20603–20605, 40 CFR 1004(c)). See also various determinations of attainment for PM_{10} nonattainment areas using EPA's Clean Data policy (October 30, 2006 final rule (71 FR 63642), February 8, 2006 final rule (71 FR 6352), March 14, 2006 final rule (71 FR 13021), March 23, 2010 proposed rule (75 FR 13710)).

V. Restructure of the Baseline Year Test for Existing NAAQS and Baseline Year Test for Future NAAQS

A. Overview

As stated above, conformity is demonstrated with one or both of the interim emissions tests if an adequate or approved SIP budget is not available. The interim emissions tests include different forms of the ''build/no-build'' test and ''baseline year'' test. In general, the baseline year test compares emissions from the planned transportation system to emissions that occurred in the relevant baseline year. The build/no-build test compares emissions from the planned (or ''build'') transportation system with the existing (or ''no-build'') transportation system in the analysis year.

B. Description of Final Rule

Today's action revises 40 CFR 93.119 to apply more generally to any NAAQS for a given pollutant. First, the section has been reorganized to place the baseline years for existing NAAQS in one paragraph (revised paragraph (e)). Today's action also revises 40 CFR 93.119 to define the baseline year for any NAAQS promulgated after 1997 by reference to another requirement. Rather than naming a specific year, the conformity rule defines the baseline year for conformity purposes as the most recent year for which EPA's Air Emissions Reporting Requirements (AERR) (40 CFR Part 51.30(b)) requires submission of on-road mobile source emissions inventories, as of the effective date of EPA's nonattainment designations for any NAAQS promulgated after 1997. AERR requires on-road mobile source emission inventories to be submitted for every third year, for example, 2002, 2005, 2008, 2011, 2014, etc.[14]

Today's rule is consistent with the baseline year definition finalized for the 2006 $PM_{2.5}$ NAAQS in the PM Amendments final rule. In the PM Amendments final rule, this definition applied to only areas designated for any $PM_{2.5}$ NAAQS other than the 1997 $PM_{2.5}$ NAAQS. Today's action amends the

[12] If EPA subsequently finds a different SIP budget adequate or approves a SIP containing a budget, then that budget would be used for conformity purposes, as applicable, under 40 CFR 93.118.

[13] See the November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646), 40 CFR 51.918, and the April 25, 2007 Clean Air Fine Particle Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20603–20605), 40 CFR 1004(c).

[14] These are known as Three-Year Cycle Inventories. See 40 CFR Part 51.30(b) and the EPA's December 17, 2008 final rule (73 FR 76539) for more details.

conformity rule to establish the same baseline year definition for new or revised NAAQS of any pollutant promulgated after 1997, not just the $PM_{2.5}$ NAAQS. See the March 24, 2010 p.m. Amendments final rule (75 FR 14265–14266) for further details.

This definition will automatically establish a relevant baseline year for conformity purposes for any areas designated nonattainment for all future NAAQS. For all future NAAQS, EPA will identify the baseline year that results from today's rule in guidance and will maintain a list of baseline years on EPA's Web site.[15] Once the baseline year is established according to this provision, it will not change (i.e., the baseline year would not be a rolling baseline year for a given NAAQS). Today's final rule does not change any baseline years already established for conformity purposes prior to today's action.

The existing interagency consultation process (40 CFR 93.105(c)(1)(i)) must be used to determine the latest assumptions and models for generating baseline year motor vehicle emissions to complete any baseline year test. The baseline year emissions level that is used in conformity must be based on the latest planning assumptions available, the latest emissions model, and appropriate methods for estimating travel and speeds as required by 40 CFR 93.110, 93.111, 93.122 of the current conformity rule.

As described in earlier rulemakings, the baseline year interim emissions test can be completed with a submitted or draft baseline year motor vehicle emissions SIP inventory, if the SIP reflects the latest information and models.[16] An MPO or state DOT, in consultation with state and local air agencies, could also develop baseline year emissions as part of the conformity analysis. EPA believes that a submitted or draft SIP baseline inventory may be the most appropriate source for completing the baseline year tests for an area's first conformity determination under a new or revised NAAQS. This is due to the fact that SIP inventories are likely to be under development at the same time as these conformity determinations, and such inventories must be based on the latest available data at the time they are developed (CAA section 172(c)(3)).

[15] See *www.epa.gov/otaq/stateresources/transconf/baseline.htm.*

[16] See the March 24, 2010 final rule (75 FR 14265) and the July 1, 2004 final rule (69 FR 40015).

C. Rationale and Response to Comments

EPA believes that today's final rule results in an environmentally protective and legal baseline year for conformity for any NAAQS promulgated after 1997 and best accomplishes several important goals.

First, as described in the August 13, 2010 proposed rule (75 FR 49440), EPA believes it is important to coordinate the conformity baseline year with the year used for SIP planning and an emissions inventory year. This was EPA's rationale for using 2002 as the baseline year for interim emissions tests in nonattainment areas for the 1997 ozone and $PM_{2.5}$ NAAQS (69 FR 40014–40015). It was also EPA's rationale for finalizing the same baseline year definition in today's final rule for 2006 $PM_{2.5}$ nonattainment areas in the March 24, 2010 final rule: this definition resulted in a conformity baseline year of 2008 for the 2006 $PM_{2.5}$ NAAQS (75 FR 14265–14266). Therefore, today's conformity baseline year is consistent with how EPA has implemented the conformity baseline year for new or revised NAAQS in the past.

Second, today's baseline year definition also ensures that the baseline year for any future NAAQS is always fairly recent, which is appropriate for meeting CAA conformity requirements and is environmentally protective. Because the AERR requires submission of inventories every three years, the baseline year for any NAAQS promulgated after 1997 will always be either the same year as the year in which designations are effective, or one or two years prior to the effective date of the designations. For example, in the case of the 2006 $PM_{2.5}$ NAAQS, nonattainment designations became effective on December 14, 2009, and the baseline year for conformity purposes is 2008 for areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS, the year before the effective date of the designations (See the PM Amendments final rule for details (75 FR 14265–14266)).

EPA also believes that coordinating the baseline year for interim emissions tests with other data collection and inventory requirements would allow state and local governments to use their resources more efficiently. Given that the CAA requires EPA to review the NAAQS for possible revision once every five years, today's baseline year provision standardizes the process for selecting an appropriate baseline year for any NAAQS promulgated in the future.

Finally, today's rule for the baseline year definition provides implementers with knowledge of the baseline year for any future new or revised NAAQS upon the effective date of nonattainment designations for that NAAQS, without having to wait for EPA to amend the conformity rule. As a result, MPOs and other implementers should understand conformity requirements for future NAAQS revisions more quickly, which should enable them to fully utilize the 12-month conformity grace period to complete conformity determinations for new nonattainment areas.

Several commenters voiced support for coordinating the conformity baseline year with an emissions inventory year, in part because EPA could avoid additional rulemakings to implement future baseline year changes. Several commenters also agreed that this change would be beneficial since implementing organizations would know the conformity requirements in advance of any new or revised NAAQS.

Some commenters expressed concern that emissions inventories are not always submitted on time and recommended that the conformity rule require that the baseline year for the baseline year interim emissions test be the most recent emissions inventory year that has been completed and submitted to EPA. One commenter recommended that the baseline year be at least three years older than the date the first conformity determination is required and that if the most recent completed emissions inventory is less than three years old, the previous emissions inventory should be used. However, these suggestions could lead to different baseline years in areas designated for the same NAAQS, which may not meet statutory requirements, and would be confusing to track as well as inequitable. EPA's final rule establishes the same baseline year for every area designated for a particular NAAQS regardless of whether an individual area submitted its inventory on time. If an area has not submitted a final AERR inventory for the relevant conformity baseline year, there are other options for generating on-road mobile source emissions in the baseline year, discussed above under B. of this section.

Another commenter opined that if a later year than currently required is used as a baseline year for the baseline year interim emissions test, and emissions are on a downward trend, the proposed change would make the baseline year interim emissions test more stringent than what was proposed. The commenter suggested that this concern may be mitigated by keeping the baseline year for all future NAAQS at or near the year 2002 that was

established for the 1997 ozone and $PM_{2.5}$ NAAQS.

Today's final rule is intended to ensure the same level of stringency for all NAAQS regardless of when the NAAQS was promulgated. The conformity baseline year of 2002 that EPA established for the 1997 ozone and $PM_{2.5}$ NAAQS is several years prior to the effective date of the 1997 ozone and $PM_{2.5}$ ozone nonattainment designations. Area designations for the 1997 ozone NAAQS became effective on June 15, 2004 and area designations for the 1997 $PM_{2.5}$ NAAQS became effective on April 5, 2005 (See the April 30, 2004 (69 FR 23858) and the January 5, 2005 (70 FR 944) final rules, respectively). Further, if there is a downward trend in on-road mobile source emissions, it makes sense to reflect that downward trend in the interim emissions test. Today's final rule accomplishes that by ensuring that the baseline year is always fairly recent.

Finally, EPA would like to clarify a couple of points related to this comment. First, the commenter referred to the baseline year of 2002 in the ''current conformity rule.'' That baseline year of 2002 was established in 2004 for the 1997 ozone and $PM_{2.5}$ NAAQS and it remains the baseline year only for these NAAQS. Second, the baseline year definition in today's rule is the same definition EPA established as the baseline year for areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS in the March 24, 2010 p.m. Amendments rule. Thus, today's definition had already been part of the current conformity rule prior to today's action.

VI. How do these amendments affect conformity SIPs?

Today's action does not affect existing conformity SIPs that were prepared in accordance with current CAA requirements since the final rule does not affect the provisions that are required to be in a conformity SIP. CAA section 176(c)(4)(E) requires a conformity SIP to include the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)).

However, the conformity rule also requires states to submit a new or revised conformity SIP to EPA within 12 months of the **Federal Register** publication date of any final conformity amendments if a state's conformity SIP includes the provisions of such final amendments (40 CFR 51.390(c)). Therefore, such a conformity SIP revision is required to be submitted by March 14, 2013 in states with approved conformity SIP's containing provisions addressed by today's action. EPA encourages these states to revise their conformity SIP to include only the three required sections so that future changes to the conformity rule do not require further revisions to conformity SIPs. EPA will continue to work with states to approve such revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing and direct final rulemaking.

Finally, any state that has not previously been required to submit a conformity SIP to EPA must submit a conformity SIP within 12 months of an area's nonattainment designation (40 CFR 51.390(c)).

For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, ''Guidance for Developing Transportation Conformity State Implementation Plans'' available on EPA's Web site at *www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf.*

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the proposed revisions in today's action are already covered by EPA information collection request (ICR) entitled, ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects.'' The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing conformity regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act. Therefore, this final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely

impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this action merely establishes and revises procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The CAA requires conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective April 13, 2012.

List of Subjects in 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: March 8, 2012.

Lisa P. Jackson,

Administrator.

For the reasons discussed in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 93.101 is amended by removing paragraphs (1) through (6) of the definition for ''National ambient air quality standards (NAAQS)'' and by revising the definition for ''Clean data'' to read as follows:

§ 93.101 Definitions.

* * * * *

Clean data means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR Parts 50 and 58 and to indicate attainment of a NAAQS.

* * * * *

§ 93.105 [Amended]

■ 3. Section 93.105(c)(1)(vi) is amended by removing the citation ''§ 93.109(n)(2)(iii)'' and adding in its place the citation ''§ 93.109(g)(2)(iii)''.

■ 4. Section 93.109 is amended as follows:

■ a. By revising paragraphs (b) introductory text, (c), and (d);

■ b. By removing paragraphs (e) through (k), and redesignating paragraphs (l), (m), and (n) as paragraphs (e), (f), and (g);

■ c. In newly redesignated paragraph (g)(2) introductory text, by removing the

citation ''paragraphs (c) through (m)'' and adding in its place ''paragraph (c)'';

■ d. In newly redesignated paragraph (g)(2)(iii), by removing the citation ''paragraph (n)(2)(ii)'' and adding in its place ''paragraph (g)(2)(ii)'';

■ e. In newly redesignated paragraph (g)(2)(iii), by removing the citation ''paragraph (n)(2)(ii)(C)'' and adding in its place ''paragraph (g)(2)(ii)(C)'';

■ f. In newly redesignated paragraph (g)(2)(iii), by removing the citation ''§ 93.105(c)(1)(vii)'' and adding in its place ''§ 93.105(c)(1)(vi)''.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraph (c) of this section explains when the budget and interim emissions tests are required for each pollutant and NAAQS. Paragraph (d) of this section explains when a hot-spot test is required. Paragraph (e) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (f) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

* * * * *

(c) *Regional conformity test requirements for all nonattainment and maintenance areas.* This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with § 93.102(d) and until the effective date of revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In all nonattainment and maintenance areas for a NAAQS, the budget test must be satisfied as required by § 93.118 for conformity determinations for such NAAQS made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for such NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) Prior to paragraph (c)(1) of this section applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(i) If the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(ii) If the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by § 93.118 for either:

(A) The nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(iii) If the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either (A) or (B) must be met:

(A)(*1*) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and

(*2*) the interim emissions tests as required by § 93.119 for one of the following areas: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(B) The budget test as required by § 93.118 for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS.

(iv) If the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(A) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by § 93.119 must be satisfied for a NAAQS if neither paragraph (c)(1) nor paragraph (c)(2) of this section applies for such NAAQS.

(4) An ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that does not include a motor vehicle emissions budget for NO_X. The implementation plan for an ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in the SIP's baseline year.

(5) Notwithstanding paragraphs (c)(1), (c)(2), and (c)(3) of this section, nonattainment areas with clean data for a NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements

for that NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 as described in paragraphs (c)(2) and (c)(3) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the NAAQS for which the area is designated nonattainment (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions in the most recent year of attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM_{10} NAAQS only, the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if the submitted implementation plan revision for a PM_{10} nonattainment area is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(d) *Hot-spot conformity test requirements for CO, $PM_{2.5}$, and PM_{10} nonattainment and maintenance areas.* This provision applies in accordance with § 93.102(d) for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, project-level conformity determinations in CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas must include a demonstration that the hot-spot tests for the applicable NAAQS are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot-spot test required by § 93.116(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by § 93.116(b).

(2) FHWA/FTA projects in PM_{10} nonattainment or maintenance areas must satisfy the appropriate hot-spot test as required by § 93.116(a).

(3) FHWA/FTA projects in $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

* * * * *

§ 93.116 [Amended]

■ 5. Section 93.116(b) is amended by removing the citation ''§ 93.109(f)(1)'' and adding in its place the citation ''§ 93.109(d)(1)''.

■ 6. Section 93.118 is amended:

■ a. In paragraph (a), by removing the citation ''§ 93.109(c) through (n)'' and adding in its place the citation ''§ 93.109(c) through (g)''; and

■ b. By revising paragraph (b) introductory text.

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes a motor vehicle emissions budget(s), and for each year for which a regional emissions analysis is performed to fulfill the requirements in paragraph (d) of this section, as follows:

* * * * *

■ 7. Section 93.119 is amended as follows:

■ a. In paragraph (a), by removing the citation ''§ 93.109(c) through (n)'' and adding in its place the citation ''§ 93.109(c) through (g)'';

■ b. In paragraph (b) introductory text, by removing ''1-hour ozone and 8-hour'';

■ c. By revising paragraphs (b)(1)(ii) and (b)(2)(ii);

■ d. By revising paragraphs (c)(1)(ii) and (c)(2)(ii);

■ e. By revising the heading of paragraph (d);

■ f. In paragraph (d) introductory text, by removing ''PM_{10} and NO_2'' and adding in its place ''$PM_{2.5}$, PM_{10}, and NO_2'';

■ g. By revising paragraph (d)(2);

■ h. By revising paragraph (e); and

■ i. In paragraph (g)(2), by removing ''(b)(2)(i), (c)(2)(i), (d)(1), and (e)(1)'' and adding in its place ''(b)(2)(i), (c)(2)(i), and (d)(1)''.

§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

* * * * *

(b) * * *

(1) * * *

(ii) The emissions predicted in the ''Action'' scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.

(2) * * *

(ii) The emissions predicted in the ''Action'' scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(c) * * *

(1) * * *

(ii) The emissions predicted in the ''Action'' scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.

(2) * * *

(ii) The emissions predicted in the ''Action'' scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(d) *$PM_{2.5}$, PM_{10}, and NO_2 areas.** * *

(2) The emissions predicted in the ''Action'' scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(e) *Baseline year for various NAAQS.* The baseline year is defined as follows:

(1) 1990, in areas designated nonattainment for the 1990 CO NAAQS or the 1990 NO_2 NAAQS.

(2) 1990, in areas designated nonattainment for the 1990 PM_{10} NAAQS, unless the conformity implementation plan revision required by § 51.390 of this chapter defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(3) 2002, in areas designated nonattainment for the 1997 ozone NAAQS or 1997 $PM_{2.5}$ NAAQS.

(4) The most recent year for which EPA's Air Emission Reporting Rule (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories as of the effective date of designations, in areas designated nonattainment for a NAAQS that is promulgated after 1997.

* * * * *

§ 93.121 [Amended]

■ 8. Section 93.121 is amended:

■ a. In paragraph (b) introductory text, by removing the citation ''§ 93.109(n)'' and adding in its place the citation ''§ 93.109(g)''.

b. In paragraph (c) introductory text, by removing the citation ''§ 93.109(l) or (m)'' and adding in its place the citation ''§ 93.109(e) or (f)''.

[FR Doc. 2012–6207 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6036–F2]

RIN 0938–AQ57

Medicare Program; Revisions to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Supplier Safeguards

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule removes the definition of ''direct solicitation'' and allows DMEPOS suppliers, including DMEPOS competitive bidding program contract suppliers, to contract with licensed agents to provide DMEPOS supplies, unless prohibited by State law. It also removes the requirement for compliance with local zoning laws and modifies certain State licensure requirement exceptions.

DATES: *Effective Date:* These regulations are effective on April 13, 2012.

FOR FURTHER INFORMATION CONTACT: Katie Mucklow Lehman, (410) 786–0537; Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Overview

1. Providers and Suppliers

Medicare services are furnished by providers and suppliers. The term ''provider'' is defined at 42 CFR 400.202 as a hospital, a critical access hospital (CAH), a skilled nursing facility (SNF), a comprehensive outpatient rehabilitation facility (CORF), a home health agency (HHA), or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services.

Provider is also defined in sections 1861(u) and 1866(e) of the Social Security Act (the Act).

For purposes of the DMEPOS supplier standards, the term ''DMEPOS supplier'' is defined in 42 CFR 424.57(a) as an entity or individual, including a physician or Part A provider that sells or rents Part B covered DMEPOS items to Medicare beneficiaries and which meets the DMEPOS supplier standards. A supplier that furnishes DMEPOS is one category of supplier. Other supplier categories include, for example, physicians, nurse practitioners, and physical therapists. If a supplier, such as a physician or physical therapist, also furnishes DMEPOS to a patient, the supplier is also considered to be a DMEPOS supplier.

2. DMEPOS

The term ''durable medical equipment'' is defined in section 1861(n) of the Act. It is also included in the definition of ''medical and other health services'' in section 1861(s)(6) of the Act. Furthermore, the term is defined in 42 CFR 414.202 as equipment furnished by a supplier or an HHA that—

- Can withstand repeated use;
- Effective with respect to items classified as DME after January 1, 2012, has an expected life of at least 3 years;
- Is primarily and customarily used to serve a medical purpose;
- Generally is not useful to an individual in the absence of an illness or injury; and
- Is appropriate for use in the home.

Examples of durable medical equipment include blood glucose monitors, hospital beds, oxygen tents, and wheelchairs. Prosthetic devices are included in the definition of ''medical and other health services'' in section 1861(s)(8) of the Act. Prosthetic devices are defined as devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens. Other examples of prosthetic devices include cardiac pacemakers, cochlear implants, electrical continence aids, electrical nerve stimulators, and tracheostomy speaking valves.

Section 1861(s)(9) of the Act provides for the coverage of leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacement if required because of a change in the patient's physical condition. As indicated by section 1834(h)(4)(C) of the Act, these items are often referred to as ''orthotics and prosthetics.'' Under section 1834(h)(4)(B) of the Act, the term ''prosthetic devices'' does not include parenteral and enteral nutrition nutrients, supplies and equipment, and implantable items payable under section 1833(t) of the Act.

Section 1861(s)(5) of the Act includes ''surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations'' as one of the ''medical and other health services'' that are covered by Medicare. Other items that may be furnished by suppliers include, but are not limited to:

- Prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, as noted in section 1861(s)(2)(J) of the Act.
- Extra-depth shoes with inserts or custom-molded shoes with inserts for an individual with diabetes, as described in section1861(s)(12) of the Act.
- Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies included in section 1861(s)(2)(F) of the Act.
- Oral drugs prescribed for use as an anticancer chemotherapeutic agent, as specified in section 1861(s)(2)(Q) of the Act.
- Self-administered erythropoietin, as described in section 1861(s)(2)(O) of the Act.

B. Statutory Authority

Various sections of the Act and the regulations require providers and suppliers to furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before payment can be made. The following is an overview of the sections that grant this authority:

- Sections 1102 and 1871 of the Act provide general authority for the Secretary of the Department of Health and Human Services (the Secretary) to prescribe regulations for the efficient administration of the Medicare program.
- Section 1834(j)(1)(A) of the Act states that no payment may be made for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number. In order to obtain a supplier billing number, a supplier must comply with certain supplier standards as identified by the Secretary.

We are authorized to collect information on the Medicare enrollment application (that is, the CMS–855 (Office of Management and Budget (OMB) approval number 0938–0685)) to ensure that correct payments are made to providers and suppliers under the Medicare program, as established by Title XVIII of the Act.

II. Provisions of the Proposed Rule and Responses to Public Comments

In the April 4, 2011 **Federal Register** (76 FR 18472), we issued a proposed rule that removed the definition of and modified the requirements regarding ''direct solicitation;'' allowed DMEPOS suppliers, including DMEPOS competitive bidding program contract suppliers, to contract with licensed agents to provide DMEPOS supplies unless prohibited by State law; removed the requirement for compliance with local zoning laws; and modified certain State licensing requirement exceptions. We received 14 timely pieces of correspondence on the April 4, 2011 proposed rule. In this section of the final rule, we will present our proposals and summarize and respond to the public comments that we received.

A. Direct Solicitation

In the August 27, 2010 **Federal Register** (75 FR 52629), we published a final rule that addressed several matters related to the DMEPOS supplier standards in 42 CFR 424.57(c). One involved the prohibition in § 424.57(c)(11) against the direct solicitation of Medicare beneficiaries by DMEPOS suppliers. Previously, the definition of direct solicitation was generally limited to telephonic contact. The August 27, 2010 final rule expanded the scope of this provision to include in-person contacts, email, and instant messaging. Since publication of the August 27, 2010 final rule, we discovered that implementation of the expanded portions of this provision as written was unfeasible. The definition of ''direct solicitation'' was criticized as being overly broad as it covered some types of marketing activity outside the bounds of what we intended to prohibit under our regulations.

Therefore, in the April 4, 2011 proposed rule, we proposed to remove the definition of ''direct solicitation'' from § 424.57(a), revise § 424.57(c)(11) to remove all references to ''direct solicitation,'' and clarify that the prohibition was limited to telephonic contact.

The proposed revision to § 424.57(c)(11) thus read as follows:

• Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

++ The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

++ The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

++ If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

We received the following comments on this proposal:

Comment: A commenter expressed support for CMS's proposal to remove email, instant messaging, and in-person contacts from the definition of ''direct solicitation.'' However, the commenter requested a further revision to § 424.57(c)(11) that would allow suppliers to contact Medicare beneficiaries upon receipt of a written or verbal prescription or prescriber order as long as the beneficiary has been made aware (for example, through the prescribing physician) that he or she will be contacted by a supplier. The commenter believed that requiring written consent from the beneficiary would severely limit his or her access to care by delaying the provision of needed services and items. It would also impose a large administrative burden on physicians and physician offices, as they would have to obtain the beneficiary's written permission to be contacted by the DMEPOS supplier.

The commenter added that the policy stated in CMS's February 2010 frequently asked question (FAQ) #3 regarding what constitutes ''unsolicited contact'' with a beneficiary is appropriate. CMS's response to that question was:

> ''If a physician contacts a supplier on behalf of a beneficiary with the beneficiary's knowledge, and then a supplier contacts the beneficiary to confirm or gather information needed to provide that particular covered item (including delivery and billing information), then that contact would not *be considered* ''unsolicited.'' Please note that the beneficiary need only be aware that *a* supplier will be contacting him/her regarding the prescribed covered item, recognizing that the appropriate supplier may not have been identified at the time of consultation.''

Response: We appreciate the commenter's support. We note that we did not specifically solicit comments on our proposed change to § 424.57(c)(11). As such, we are not in a position to incorporate the commenter's requested revision of § 424.57(c)(11) into this final rule. However, we have addressed these concerns in our Frequently Asked Questions (FAQ) section (available at *http://www.cms.gov/MedicareProviderSupEnroll/* by clicking on ''DME Supplier Telemarketing Frequently Asked Questions'' under the ''Downloads'' section) and may update that information in the future.

Comment: A commenter supported CMS's proposed revisions regarding § 424.57(c)(11), believing that the current standard prohibiting ''direct solicitation'' of beneficiaries is too broad, thus making it difficult for compliant suppliers to operate their businesses and respond to the care expectations of beneficiaries. The commenter posed several scenarios, asking whether any of them violated the DMEPOS supplier standards.

Response: We appreciate the commenter's support. For the scenarios that the commenter posed, we will be conducting significant outreach to the DMEPOS supplier and beneficiary communities before and after the implementation of this final rule. This will include the issuance of updated frequently asked questions (FAQs). We will address the general tenets of the commenter's scenarios in our FAQ updates.

Comment: One commenter stated that the proposal to remove the definition of ''direct solicitation'' from § 424.57(c)(11) will continue to unnecessarily restrain DMEPOS suppliers. In order to reduce annoying or abusive marketing practices while also granting suppliers more freedom to legitimately contact beneficiaries, the commenter recommended that § 424.57(c)(11) be revised to allow beneficiaries to give verbal permission for a supplier to contact them, and/or allow DMEPOS suppliers to contact beneficiaries when they have received a written order or prescription for a Medicare-covered item to be furnished from the patient's physician prior to contact with the beneficiary.

Response: We disagree with the commenter's first recommendation as it pertains to § 424.57(c)(11)(i) regarding verbal consent. Due to the potential for abuse, we believe it is important that there be a documented record of the beneficiary's approval of the contact. Concerning this recommendation and as previously explained, we are not in a position to adopt this suggestion for this final rule. However, we may consider addressing the issue through future rulemaking.

Comment: A commenter noted that the April 4, 2011 proposed rule stated: ''In the interim, we intend to instruct Medicare contractors to continue applying the restrictions on telephone solicitation that were in effect before publication of the August 27, 2010 final rule, instead of implementing the final rule's requirements regarding direct

solicitation.'' The commenter requested that CMS explain its legal authority to instruct Medicare contractors not to enforce the regulatory modification to the ''direct solicitation'' requirement made in the August 27, 2010 final rule. The commenter stated that Federal regulations have the effect of law and that CMS instructions cannot trump them.

Response: We understand the commenter's concerns. However, due to the concerns that we ourselves had regarding the implementation of the August 27, 2010 final rule, we decided not to enforce it while working on the April 4, 2011 proposed rule. Indeed, we believed that the direct solicitation restrictions in the August 27, 2010 rule created an exigent situation, such that enforcement of the rule as written would have been problematic. Nor would it have benefitted the DMEPOS supplier community, Medicare beneficiaries, or CMS for the August 27, 2010 rule to have been enforced while waiting for the restrictions in question to be removed via a subsequent regulation.

Comment: A commenter recommended that CMS retain the ''direct solicitation'' provisions established in the August 27, 2010 final rule, and modify the definition of ''direct solicitation'' found in § 424.57(a) by deleting the phrase, ''which includes, but is not limited to.'' The commenter believes by deleting this phrase it would make the ''direct solicitation'' definition less ambiguous.

Response: For reasons previously stated, we believe that the definition of ''direct solicitation'' should be deleted from the regulations.

Comment: A commenter requested that CMS explain, using actual examples: (1) Why it believed a problem existed in unwanted and unsolicited communications between DMEPOS suppliers and beneficiaries; (2) whether those problems have abated or increased; and (3) why it is not taking the necessary steps to reduce or eliminate unwanted and unsolicited communications between DMEPOS suppliers and beneficiaries.

Response: We disagree with the commenter's assertion that we have not taken steps to resolve these problems. We have not conducted formal studies in a way that would enable us to quantify whether those issues have abated or increased. Although we are modifying the supplier standard on direct solicitation at § 424.57(c)(11), we will continue to actively monitor the issue of unwanted and unsolicited communications between DMEPOS suppliers and beneficiaries. We will also be working with law enforcement agencies to determine if further agency intervention is required. In the event we believe that we need to take action to limit these types of communications, we will engage in further rulemaking to address this concern.

Comment: A commenter recommended that CMS add a subparagraph (iv) to § 424.57(c)(11) that will allow suppliers, after receipt of a prescription or prescriber order, to contact individuals to coordinate the delivery of a covered item. The commenter stated that it can be extremely difficult, and sometimes impossible, for suppliers to coordinate timely delivery of an item without first contacting the beneficiary. The commenter also noted that the proposed language in § 424.57(c)(11)(ii) is ambiguous because it states that the supplier may contact the beneficiary to arrange delivery only after the item has already been furnished. In short, the commenter contends that the supplier must contact the beneficiary in order to furnish the item; waiting for written permission from the beneficiary before contacting him or her is neither practical nor efficient. Another commenter agreed that contact with the beneficiary is necessary so that the item can be furnished. Another commenter contended that contacting beneficiaries about the delivery of a prescribed item is, in actuality, ''care coordination,'' not telemarketing, and is not an ''unsolicited communication.''

Response: As previously explained, we are not able to adopt the commenter's recommendation. However, we may consider addressing the issue through future rulemaking.

Comment: A commenter stated that the August 27, 2010 final rule contained a CMS response to a public comment in that rule that stated:

> However, if a physician contacts the supplier on behalf of the beneficiary's [sic] with the beneficiary's knowledge, and then a supplier contacts the beneficiary to confirm or gather information needed to provide that particular covered item (including the delivery and billing information), then that contact would not be considered a direct solicitation for the purpose of this standard. This is the case even if the physician has not specified the precise DMEPOS supplier that will be contacting the beneficiary regarding the item referred by that physician.

The commenter stated that the April 4, 2011 proposed rule removing the prohibition against ''direct solicitation'' did not address this specific issue. The commenter sought confirmation that the quoted verbiage remains CMS policy notwithstanding the removal of the ''direct solicitation'' reference.

Response: For reasons previously stated, we are finalizing the version of § 424.57(c)(11) that was in the April 4, 2011 proposed rule by removing the definition of ''direct solicitation.'' The language in this final rule reflects our policy on this particular issue. The quoted verbiage still reflects our policy with regard to this provision.

Comment: One commenter stated that direct solicitation creates an opportunity for businesses to solicit the purchase of products that recipients may not need, and that this opens the door for fraud and waste.

Response: We appreciate the commenter's concern. As previously stated, we will continue to actively monitor the issue of unwanted and unsolicited communications between DMEPOS suppliers and beneficiaries. We will also be working with law enforcement agencies to determine if further agency intervention is required. In the event we believe that we need to take action to limit these types of communications, we will engage in further rulemaking to address this concern.

After review of the public comments received, we are finalizing our proposals to remove the definition of ''direct solicitation'' from § 424.57(a), to revise § 424.57(c)(11) to remove all references to ''direct solicitation,'' and to clarify that the prohibition is limited to telephonic contact.

B. Contractual Arrangement Issues

In the August 27, 2010 final rule, we finalized an additional layer of oversight of DMEPOS suppliers via State law. Specifically, we added a new paragraph (c)(1)(ii) to § 424.57. It read—

- State licensure and regulatory requirements. If a State requires licensure to furnish certain items or services, a DMEPOS supplier—

++ Must be licensed to provide the item or service;

++ Must employ the licensed professional on a full-time or part-time basis, except for DMEPOS suppliers who are—

—Awarded competitive bid contracts using subcontractors to meet this standard; or

—Allowed by the State to contract licensed services as described in paragraph (c)(1)(ii)(C) of this section;

—Must not contract with an individual or other entity to provide the licensed services, unless allowed by the State where the licensed services are being performed.

After the implementation of § 424.57(c)(1)(ii), the absence of specific State laws regarding certain areas of DMEPOS supplier oversight caused

confusion among suppliers regarding who they could contract with. This was especially true regarding paragraphs (ii)(B)(2) and (ii)(C), which use the term ''allowed by the State.'' Therefore in the April 4, 2011 proposed rule, we stated that we would revise § 424.57(c)(1)(ii) to read—

• *State licensure and regulatory requirements.* If a State requires licensure to furnish certain items or services, a DMEPOS supplier—

++ Must be licensed to provide the item or service; and

++ May contract with a licensed individual or other entity to provide the licensed services unless expressly prohibited by State law.

We believed that this change would clarify our expectations with regard to State licensure and contracts. We received the following comment on this proposal:

Comment: A commenter expressed support for our proposed revision to § 424.57(c)(1)(ii), stating that it is straightforward compared to the current standard. The commenter also posed several factual scenarios and asked whether said situations would constitute violations of the DMEPOS supplier standards.

Response: We appreciate the commenter's support concerning this provision. As previously mentioned, we will be conducting outreach to the DMEPOS supplier community before and after the implementation of this final rule. This will include the issuance of updated FAQs. We will address the general tenets of the commenter's scenarios during this process. We also remind suppliers that they must always comply with any applicable Federal and State laws, including, without limitation, those related to fraud and abuse.

After review of the public comments received, we are finalizing our proposed revision to § 424.57(c)(1)(ii) without modification.

C. Local Zoning Requirements

In the August 27, 2010 final rule, we stated in the new § 424.57(c)(1)(iii) that the DMEPOS supplier must operate its business and furnish Medicare covered supplies in compliance with local zoning requirements. We believe that this would help ensure that DMEPOS suppliers were providing goods and services to Medicare beneficiaries in a physical location, rather than out of a residence; indeed, the latter practice is often prohibited by municipal code zoning requirements. However, the wide variances in State and municipal laws and the potential difficulty our contractors could have in verifying compliance with municipal codes, led us to propose the elimination of § 424.57(c)(1)(iii) in the April 4, 2011 proposed rule. In hindsight, we believe that the task of ensuring that DMEPOS suppliers comply with local zoning requirements is best left to the States. The State's verification of the supplier's compliance will generally be reflected in the supplier's business license status, which the National Supplier Clearinghouse (NSC) validates. Thus, ensuring the supplier's adherence to all State and local laws is, in part, accomplished through the verification of the supplier's licensure status. We received the following comments on this proposal:

Comment: A commenter requested that CMS explain the following:

• Whether the NSC verified that suppliers met local zoning requirements before the publication of the January 25, 2008 proposed rule entitled ''Medicare Program; Establishing Additional Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Supplier Enrollment Standards.''

• Whether the NSC verified that DMEPOS suppliers met local zoning requirements between January 2008 and the publication of the August 27, 2010 final rule.

• How this proposed change (that is, no longer verifying local zoning requirements) will impact CMS's efforts to reduce fraud, waste and abuse in the Medicare program.

• Whether it believes that more unscrupulous DMEPOS suppliers will try and obtain Medicare billing privileges in residential neighborhoods as a result of limiting the NSC from denying or revoking Medicare billing privileges based on local zoning requirements.

Response: The NSC did not routinely verify, either before or after the publication of the January 25, 2008 proposed rule, whether DMEPOS suppliers met local zoning requirements. Therefore, we believe that our proposed change will not impact our ability to combat fraud, waste, and abuse, as it simply codifies existing practices. As explained previously, the State's verification of the supplier's compliance with local laws will often be reflected in the supplier's State business license status, which the NSC verifies. We note that DMEPOS suppliers would still be required to comply with all applicable Federal and State laws to comply with the supplier standards. Furthermore, suppliers are still required to comply with all applicable local zoning requirements. However, we believe that allowing local municipalities to enforce their zoning requirements is most appropriate, as they are most familiar with their respective requirements and have jurisdiction over these matters.

Comment: One commenter stated that in the April 4, 2011 proposed rule, CMS stated: ''In the August 27, 2010 final rule, we finalized regulations at § 424.57(c)(1)(iii) that required DMEPOS suppliers to comply with all local zoning requirements.'' This statement, the commenter contended, made it appear that CMS established the requirement that DMEPOS suppliers adhere to local zoning requirements in August 2010. The commenter disagreed with this statement, noting that the March 2009 version of the CMS–855S showed that CMS required DMEPOS suppliers to submit ''local (city/county) business licenses'' in March 2009, if not before. The commenter recommended that CMS withdraw its proposal to remove the provision found at § 424.57(c)(1)(iii) until it provides more facts and data to the public about why this change should be made. Another commenter opposed the proposal to remove § 424.57(c)(1)(iii), believing that it would increase Medicare's exposure to fraud, waste, and abuse.

Response: The previously quoted statement in the August 27, 2010 final rule was not meant to imply that § 424.57(c)(1)(iii) was a new requirement. It was merely a restatement of the fact that we had finalized § 424.57(c)(1)(iii) in the August 27, 2010 rule. However, we decline to accept the suggestion to withdraw our proposal to remove § 424.57(c)(1)(iii) for the reasons outlined in the April 4, 2011 proposed rule and in the summary of this provision outlined earlier in this final rule.

After review of the public comments received, we are finalizing the proposed changes to § 424.57(c)(1) without modification.

D. State Licensure Requirement Exception

Per § 424.57(c)(7), a DMEPOS supplier must maintain a physical facility on an appropriate site. The August 27, 2010 final rule added several paragraphs to § 424.57(c)(7), of which paragraph (c)(7)(i)(A) stated that an appropriate site must, among other things, meet the following size requirement:

> Except for State-licensed orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice, (the DMEPOS supplier) maintains a practice location that is at least 200 square feet. (Parentheses added.)

In the April 4, 2011 rule, we proposed to modify § 424.57(c)(7)(i)(A) to allow

orthotic and prosthetic professionals to qualify for the minimum square footage exception if the State does not offer licensure. We believed that due to variations in State licensing procedures, comparable practitioners should not be excluded from this exception. Of course, if a State does offer licensure for orthotic and prosthetic professionals, the supplier must obtain licensure in order to qualify for the minimum square footage exception. We received the following comments on this proposal:

Comment: For the square footage requirements, a commenter stated that DMEPOS suppliers furnishing orthotic and prosthetic items and services should have a facility large enough to perform all activities associated with orthotic and prosthetic activities, including a laboratory. The commenter expressed concern about orthotic and prosthetic offices that are very small, have little overhead, and spend time serving patients at nursing homes and other provider facilities. The commenter stated that this makes it difficult for larger facilities to compete.

Response: As we stated in the August 27, 2010 final rule (75 FR 52636), we received the following comment to the January 25, 2008 proposed rule, which proposed a minimum square footage requirement in § 424.57(c)(7):

> One commenter believes the minimum square footage requirement causes potential issues for orthotic and prosthetic suppliers, since the lab area is separate from the patient area and is often located off-site. The patient interaction area is most important, but since this area can be as small as 80 square feet, the size requirement should not be imposed as to orthotic and prosthetic suppliers.

We agreed with this comment and, as a result, established an exception to the proposed requirement for certain orthotic and prosthetic suppliers. While we understand the April 4, 2011, proposed rule commenter's concerns, we continue to believe that this exception is necessary.

After review of the public comments received, we are finalizing the proposed changes to § 424.57(c)(7)(i)(A) without modification.

E. Open Hours Exception

Section 424.57(c)(30)(i), in the August 27, 2010 final rule, states that suppliers must be open to the public a minimum of 30 hours per week. Section (c)(30)(ii)(B) of this section prescribes an exception to this requirement for ''licensed non-physician practitioners whose services are defined in sections 1861(p) and 1861(g) of the Act (and) furnishes items to his or her own patients as part of his or her professional service.'' (Parentheses added.) Sections 1861(p) and (g) of the Act define certain outpatient physical therapy services and certain outpatient occupational therapy services, respectively. In the April 4, 2011 proposed rule to clarify which non-physician practitioners fall under § 424.57(c)(30)(ii)(B), we proposed to remove the phrase ''licensed non-physician practitioners'' from § 424.57(c)(30)(ii)(B) and simply refer to physical and occupational therapists.

We did not receive any comments on this provision. Therefore, we are finalizing proposed changes to § 424.57(c)(30)(ii)(B) without modification.

F. Out of Scope Comments

We received several other comments that were outside of the scope of the proposed rule. Therefore, we are not addressing these comments in this final rule.

III. Provisions of Final Rule

This final rule finalizes the provisions of the proposed rule without modification.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this rule will not have a significant economic impact on a substantial number of small entities. The provisions contained in this final rule are primarily procedural and do not require DMEPOS suppliers to incur additional operating costs. They merely clarify several provisions in the DMEPOS supplier standards covered in § 424.57. We anticipate a minimal economic impact, if any, on small entities.

As of March 2008, there were 113,154 individual DMEPOS suppliers. However, due to the affiliation of some DMEPOS suppliers with chains, there were only approximately 65,984 unique billing numbers. We believe that approximately 20 percent of the DMEPOS suppliers are located in rural areas.

Comment: A commenter suggested that we use current data (for example, June 2011) rather than data from 2008 to update the number of DMEPOS suppliers found in the Regulatory Impact Analysis (RIA) and the percentage of DMEPOS suppliers that are located in rural areas.

Response: The percentage of DMEPOS suppliers located in rural areas remains largely unchanged from 2008. As of June 2011, there were approximately 102,000 individual DMEPOS suppliers enrolled in Medicare. We believe that approximately 20 percent of Medicare-enrolled DMEPOS suppliers are located in rural areas.

Comment: A commenter recommended that CMS more fully explain how this proposed change will impact Medicare beneficiaries.

Response: We believe that Medicare beneficiaries will be well-served by the provisions of this final rule, as the protections afforded by § 424.57(c)(11) will remain largely intact.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of

a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million, updated annually for inflation. In 2011, that threshold is approximately $136 million. This rule does not mandate expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $136 million; therefore, no analysis is required.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professionals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—To Whom Payment Is Ordinarily Made

§ 424.57 [Amended]

■ 2. Section 424.57 is amended by—

■ A. Removing the definition of ''Direct solicitation'' in paragraph (a).

■ B. Revising paragraph (c)(1)(ii).

■ C. Removing paragraph (c)(1)(iii).

■ D. Revising paragraphs (c)(7)(i)(A) and (c)(11).

■ E. In paragraph (c)(30)(ii)(B), removing the phrase ''Licensed non-physician practitioners'' and adding the phrase ''A physical or occupational therapist'' in its place.

The additions and revisions read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

(c) * * *

(1) * * *

(ii) *State licensure and regulatory requirements.* If a State requires licensure to furnish certain items or services, a DMEPOS supplier—

(A) Must be licensed to provide the item or service; and

(B) May contract with a licensed individual or other entity to provide the licensed services unless expressly prohibited by State law.

* * * * *

(7) * * *

(i) * * *

(A)(*1*) Except for orthotic and prosthetic personnel described in paragraph (c)(7)(i)(A)(*2*) of this section, maintains a practice location that is at least 200 square feet beginning—

(*i*) September 27, 2010 for a prospective DMEPOS supplier;

(*ii*) The first day after termination of an expiring lease for an existing DMEPOS supplier with a lease that expires on or after September 27, 2010 and before September 27, 2013; or

(*iii*) September 27, 2013, for an existing DMEPOS supplier with a lease that expires on or after September 27, 2013.

(*2*) Orthotic and prosthetic personnel providing custom fabricated orthotics or prosthetics in private practice do not have to meet the practice location requirements in paragraph (c)(7)(i)(A)(*1*) of this section if the orthotic and prosthetic personnel are—

(*i*) State-licensed; or

(*ii*) Practicing in a State that does not offer State licensure for orthotic and prosthetic personnel.

* * * * *

(11) Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

(i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

(ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

(iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 11, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: February 21, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–5913 Filed 3–9–12; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2012–02]

RIN 0648–XB038

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands; Correction

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

ACTION: Temporary rule; correction.

SUMMARY: NMFS is correcting a temporary rule that published on February 29, 2012, reallocating the projected unused amounts of pollock directed fishing allowances from the Aleut Corporation and the Community Development Quota from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. There are errors in the table for the pollock allocation in the Aleutian Island subarea and the Bogoslof District.

DATES: Effective March 14, 2012 through 2400 hrs, A.l.t., December 31, 2012, and is applicable beginning February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published a reallocation of the projected unused amount of pollock directed fishing allowances from the Aleut Corporation and from the Community Development Quota from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries, in the **Federal Register** on Wednesday, February 29, 2012 (77 FR 12214). In Table 3, titled Final 2012 and 2013 Allocations of Pollock TACS to the Directed Pollock Fisheries and to the CDQ Directed Fishing Allowances, there is an error on page 12215 in row 16 of the third column. The 2012 A season directed fishing allowance for the Aleut Corporation is incorrectly specified as ''15,500'' metric tons (mt), instead of the correct number of ''5,000'' mt. This correction is necessary because the incorrectly specified number exceeds the Aleut Corporation's annual 2012 directed fishing allowance of 5,000 mt of pollock.

There is also an error on page 12215, row 17, in columns two and six. The 2012 and 2013 Bogoslof District incidental catch allowances (ICAs) were incorrectly specified as ''150'' mt instead of the correct ''500'' mt. These corrections are necessary to provide sufficient ICAs.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This correction notice makes only minor changes and does not change operating practices in the fisheries. Corrections should be made as soon as possible to avoid confusion for participants in the fisheries.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Correction

In rule FR Doc. 2012–4836 published on February 29, 2012, (72 FR 12214) make the following corrections:

1. On page 12215, in Table 3, row 16 (the row beginning ''Aleut Corporation), column 3, the entry ''15,500'' is corrected to read ''5,000''.

2. Also, in row 17 (the row beginning ''Bogoslof District ICA''), in columns two and six, the entry ''150'' is corrected to read ''500''.

The following table is corrected and reprinted in its entirety:

TABLE 3—FINAL 2012 AND 2013 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2012 Allocations	2012 A season [1]		2012 B season [1]	2013 Allocations	2013 A season [1]		2013 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,212,400	n/a	n/a	n/a	1,201,900	n/a	n/a	n/a
CDQ DFA	121,900	48,760	34,132	73,140	120,190	48,076	33,653	72,114
ICA [1]	32,400	n/a	n/a	n/a	32,451	n/a	n/a	n/a
AFA Inshore	529,050	211,620	148,134	317,430	524,629	209,852	146,896	314,778
AFA Catcher/Processors [3]	423,240	169,296	118,507	253,944	419,703	167,881	117,517	251,822
Catch by C/Ps	387,265	154,906	n/a	232,359	384,029	153,611	n/a	230,417
Catch by CVs [3]	35,975	14,390	n/a	21,585	35,675	14,270	n/a	21,405
Unlisted C/P Limit [4]	2,116	846	n/a	1,270	2,099	839	n/a	1,259
AFA Motherships	105,810	42,324	29,627	63,486	104,926	41,970	29,379	62,956
Excessive Harvesting Limit [5]	185,168	n/a	n/a	n/a	183,620	n/a	n/a	n/a
Excessive Processing Limit [6]	317,430	n/a	n/a	n/a	314,778	n/a	n/a	n/a
Total Bering Sea DFA	1,058,100	423,240	296,268	634,860	1,049,259	419,703	293,792	629,555
Aleutian Islands subarea [1]	6,600	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	5,000	5,000	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	500	n/a	n/a	n/a	500	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and *(ii),* the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

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

Dated: March 9, 2012.

Steven Thur,

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

[FR Doc. 2012–6198 Filed 3–13–12; 8:45 am]

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Proposed Rules

Federal Register
Vol. 77, No. 50
Wednesday, March 14, 2012

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5 CFR Part 7501

[Docket No. FR–5542–P–01]

RIN 2501–AD55

Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (HUD), with the concurrence of the Office of Government Ethics (OGE), seeks comments on the proposed amendments to HUD's Supplemental Standards of Ethical Conduct, which are regulations for HUD officers and employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. To ensure a comprehensive and effective ethics program at HUD, and to address ethical issues unique to HUD, the proposed rule reflects statutory changes that were enacted subsequent to the promulgation of HUD's Supplemental Standards of Conduct regulation in 1996; significantly, the transfer of general regulatory authority over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from HUD to the Federal Housing Finance Agency (FHFA). In addition, the proposed rule revises definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarifies existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs.

DATES: *Comment Due Date:* May 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All comments must be in writing and be addressed to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th St. SW., Room 10276, Washington, DC 20410–0500. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Robert H. Golden, Assistant General Counsel, Ethics Law Division, telephone number 202–402–6334, or Peter J. Constantine, Associate General Counsel for Ethics and Personnel Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number 202–402–2377. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive-branch standards of conduct. On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), as codified at 5 CFR part 2635. (See 57 FR 35006, as corrected at 57 FR 48557 and 57 FR 52583.) The Standards, effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. Pursuant to this authority, HUD, with OGE's concurrence, published on July 9, 1996, a final rule to establish its supplementary standards of ethical conduct for HUD employees (61 FR 36246). HUD, with OGE's concurrence, now proposes to amend its supplemental standards in order to successfully implement HUD's ethics program in light of recent statutory changes to HUD's programs and operations. One of the most significant statutory changes to HUD programs and operations was made by the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008). HERA transfers regulatory authority over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively referred to as the Government Sponsored Enterprises, or GSEs) from

HUD to the Federal Housing Finance Agency (FHFA). Based on this transfer of regulatory authority, HUD has decided to remove provisions of its Supplemental Standards of Conduct that prohibit all HUD employees from owning certain financial interests issued by the GSEs. In addition, HUD has decided to remove § 7501.106 of its Supplemental Standards of Conduct that apply to employees whose duties involve the regulation or oversight of the GSEs. Section 7501.106 prohibits covered employees from, among other things, owning financial interests in certain mortgage institutions and from performing any work, either compensated or uncompensated, for or on behalf of a mortgage institution. The removal of § 7501.106 is based on HUD's determination that this section is no longer necessary to ensuring the impartiality and integrity in the administration of HUD's programs.

In addition, this proposed rule revises definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarifies existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs. This rule also proposes to add a new § 7501.106 that clarifies the authority of the HUD OIG in the agency's ethics program and establishes it as a separate component as provided by 5 CFR 2635.203(a).

II. Amendments Proposed by This Rule

The following is a section-by-section overview of the amendments proposed by this rule.

Section 7501.101 Purpose

This section remains unchanged.

Section 7501.102 Definitions

Proposed § 7501.102 updates and clarifies key terms already in the current regulation. In addition, it adds new terms to reflect current HUD policy and removes terms that are no longer used in the regulation. Specifically, the proposed definitions of ''Agency designee'' and ''Designated Agency Ethics Official (DAEO)'' are revised to reflect updated office names and titles within the current HUD organization. Definitions of ''Bureau,'' ''Bureau Ethics Counselor,'' and ''Deputy Bureau Ethics Counselor,'' are proposed to clarify the Office of Inspector General's responsibilities in HUD's ethics program. Additionally, the reference to the Inspector General (IG) is removed from the definition of ''agency designee'' in favor of adding definitions for ''Bureau,'' ''Bureau Ethics Counselor,'' and ''Deputy Bureau Ethics Counselor.'' ''Bureau'' would be defined to mean the Office of the Inspector General (OIG). ''Bureau Ethics Counselor'' and ''Deputy Bureau Ethics Counselor'' would be defined to mean, respectively, the General Counsel for OIG and the OIG employees to whom the OIG General Counsel delegates responsibility to make determinations, issue explanatory guidance, or establish procedures necessary to implement this part, subpart I of 5 CFR part 2634, and 5 CFR part 2635 for Bureau employees. HUD is proposing these amendments to make the structure of its ethics program more consistent with the structure used by other federal agencies and to more clearly describe the role and responsibilities of the IG in HUD's ethics program.

The proposed definition of ''employment'' is also clarified to provide that employment includes uncompensated activity, such as volunteer work for others while off-duty.

The terms ''assistance'' and ''security'' are proposed to be removed from § 7501.102, because these terms are no longer used in HUD's supplemental regulations.

Section 7501.103 Waivers

Proposed § 7501.103 clarifies the procedure for requesting a waiver, and makes other minor changes to make the section clearer. Proposed § 7501.103 adds the requirement that a waiver request be submitted in writing to an agency designee and should include the employee's office and division; a description of the employee's official duties; the nature and extent of the waiver; a detailed statement of facts to support the request; and the basis for the request, such as hardship. This amendment codifies HUD practice that a waiver request must be in writing, and provides direction to employees on what should be included in a waiver request for a thorough analysis to be conducted. The amendment further confirms HUD practice that hardship and other exigent circumstances are legitimate reasons for a waiver request, and such a request will be considered in light of HUD's need to ensure public confidence in the impartiality and objectivity with which HUD programs are administered. This section also proposes to delegate authority to the Bureau Ethics Counselor to waive provisions of this part.

The proposed section also makes minor textual changes in order to make the regulation easier to understand. These textual changes are not intended to change the meaning of the section.

Section 7501.104 Prohibited Financial Interests

Proposed § 7501.104 is amended to remove the reference to covered employees under § 7501.106(b)(1). This change reflects the proposed removal of § 7501.106 as discussed in more detail below in this preamble. The proposed regulation continues to apply to all HUD employees, except special government employees, and to the employee's spouse and minor children, because HUD has determined that ownership of the financial interests listed in this section by these individuals constitutes a significant risk of an apparent conflict of interest. Additionally, this section is revised to reflect the changes to HUD regulatory authority as the result of HERA, which transferred all general regulatory authority over Fannie Mae and Freddie Mac from HUD to the FHFA.

Existing § 7501.104(a)(1) is proposed to be removed. The prohibition in this section was promulgated in 1968 after Congress provided HUD with general regulatory authority over Fannie Mae through the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*). Under this 1968 statute, HUD was directed to establish housing goals for Fannie Mae, specifically a goal for low- and moderate-income housing and a goal for housing located in central cities. Beginning in 1968, HUD's Standards of Conduct prohibited employees from owning securities issued by Fannie Mae or securities collateralized by Fannie Mae securities. (See 24 CFR 0.735.205(a)(3) (1968).) Section 7501.104(a)(1) is no longer necessary since HERA transferred the general regulatory functions over Fannie Mae to FHFA.

Existing § 7501.104(a)(2) is also proposed to be removed. In 1989, Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) and granted HUD essentially the same authority over Freddie Mac as it had over Fannie Mae. In response to this additional authority, HUD's standards of conduct were updated to include a prohibition against owning securities issued by Freddie Mac or securities collateralized by Freddie Mac securities. HUD has determined that the prohibition is no longer necessary because of HERA.

The remaining provisions are redesignated accordingly.

Proposed § 7501.104(a)(1) adopts language from the current § 7501.104(a)(3).

Proposed § 7501.104(a)(2) is based on current § 7501.104(a)(4), but is revised to add clarity. Specifically, the revised

section replaces the phrase ''in a multifamily project or single family dwelling, cooperative unit, or condominium unit'' with the term ''project'' in order to cover all HUD subsidized or insured projects that exist or may come to exist in the future. Employee ownership of homes with mortgages insured under programs of the Federal Housing Administration (FHA) and the purchase by employees of HUD-owned homes, which was an exception within the prohibition of § 7501.104(a)(4), is now addressed in exceptions under proposed § 7501.104(b). All remaining HUD projects, including multifamily projects, assisted living facilities, nursing homes, and hospitals, are now included in the revised prohibition in § 7501.104(a)(2). Finally, proposed § 7501.104(a)(2) now uses the term ''financial interest'' to replace ''stock or other financial interest'' and references OGE regulations at 5 CFR 2635.403(c) for a complete definition of the term ''financial interest,'' including examples.

Proposed § 7501.104(a)(3) revises the language in current § 7501.104(a)(5). A new exception is proposed that allows all new HUD employees who already have a tenant receiving Section 8 subsidies to retain that tenant until the tenant terminates his or her lease. Proposed § 7501.104(a)(3)(i)(E) adds a new exception permitting HUD employees to receive a Section 8 subsidy for the rental of properties located in areas of Presidentially declared emergency or natural disaster with prior written approval from an agency designee. HUD's experience demonstrates that in rare instances (*e.g.,* Hurricane Katrina in 2005 or the 2008 flooding in Cedar Rapids, Iowa), there may be an extreme shortage of affordable housing in an area due to a natural disaster or other emergency. This exception would permit HUD employees with rentable properties in these areas to accept new tenants receiving Section 8 subsidies. These supplemental ethics regulations are intended to uphold the integrity of HUD's administration of the Section 8 program and are not intended to further restrict the availability of Section 8 housing, especially in times of acute housing shortages.

The exceptions provided by proposed § 7501.104(a)(3) continue as long as the tenant continues to reside in the property and as long as the rent charged the tenant is not increased above the annual rate adjustments permitted by the Section 8 program. This first condition codifies HUD's intent not to require an employee to terminate the rental arrangement early or require a Section 8 tenant to move based solely on these regulations. The second condition preserves the current language of the exceptions.

Current § 7501.104(a)(6) is proposed to be removed. The current prohibition against ''direct creditor interests'' is undefined and unclear.

Proposed § 7501.104(b), which provides exceptions to this section on prohibited financial interests, is revised to add the phrase ''directly or indirectly receiving, acquiring or owning'' to ensure consistency with § 7501.104(a). Additionally, this section proposes to expand the exceptions by eliminating from current § 7501.104(b)(1) the prohibition on owning investment funds that concentrate in residential mortgages or mortgage-backed securities. This prohibition is no longer needed to maintain the integrity of HUD in light of the fact that HUD no longer has regulatory authority over Fannie Mae and Freddie Mac.

Proposed § 7501.104(b)(1) also provides an exception to the interests prohibited under proposed § 7501.104(a)(2). Section 7501.104(b)(1) allows the employee, or the employee's spouse or minor child, to have a financial interest in a publicly available or publicly traded investment fund that may include interests that are prohibited under § 7501.104(a)(2), as long as the employee, or the employee's spouse or minor child, neither exercises control nor has the ability to exercise control over the fund or the financial interests held in the fund. This exception allows the employee, or the employee's spouse or minor child, to have an interest in an investment fund that may hold interests in HUD subsidized projects. HUD's experience has been that it is extremely difficult to determine which investment funds have interests in HUD-subsidized projects, since that information is not readily available. Therefore, HUD has decided that this type of interest does not present an appearance problem and is therefore permissible.

Current § 7501.104(b)(2) is proposed to be removed. Read literally, this exception had no possible application to a limited partnership holding. Also, limited partnerships create no less of an appearance issue than other legal entities that could be used as an investment vehicle and do not warrant the specific exception.

Proposed § 7501.104(b)(2) provides that a HUD employee may obtain mortgage insurance provided by FHA under section 203 of the National Housing Act (12 U.S.C. 1709) to assist in his or her purchase of a single-family home that serves as the employee's principal residence and of one other single-family residence. Proposed § 7501.104(b)(2) provides notice to HUD employees that they must adhere to the procedures established by the Assistant Secretary for Housing–FHA Commissioner in order to obtain FHA insurance. This exception was previously found in § 7501.104(b)(3).

Proposed § 7501.104(b)(3) covers HUD employees' purchases of HUD-owned homes. This provision is currently an exception within the prohibition of § 7501.104(a)(4); however, since the provision is permissive, HUD has moved the exception to proposed § 7501.104(b), where the other exceptions to the prohibitions to § 7501.104(a) are located. Current § 7501.104(a)(4) notifies employees that the purchase of HUD-held properties must be consistent with an Office of Housing handbook that is now outdated. To avoid the codification of references to HUD handbooks that may become obsolete, and thus create a discrepancy with the supplemental standards, proposed § 7501.104(b)(3) does not reference a specific Office of Housing handbook, but simply provides notice to HUD employees that they must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to purchase a HUD-held property.

Proposed § 7501.104(b)(4) has been added to ensure that the employment compensation and benefits package for an employee's spouse is not covered as a prohibited financial interest if the employee's spouse is employed by an entity that may have interests in HUD projects that are prohibited under proposed § 7501.104(a)(2). For example, an employee's spouse is not restricted from earning a salary and other benefits as compensation for employment with a real estate development company that does multifamily business with HUD.

Proposed § 7501.104(b)(5) contains a revised provision that permits employees, or their spouses or minor children, to hold Government National Mortgage Association (GNMA) securities. The ownership of GNMA securities is currently addressed in § 7501.104(b)(1). Under this provision, an employee or the spouse or minor child of an employee may not own an interest in an investment fund that has an objective or practice of investing in residential mortgages or securities backed by residential mortgages except those of GNMA. Since HUD is proposing to revise § 7501.104(b)(1), the provision addressing ownership of GNMA securities is established as a separate exception.

Section 7501.105 Outside Activities

Proposed § 7501.105 governs the outside activities of HUD employees. This proposed section has been revised to account for changes in HUD's regulatory authority and to provide clarity on restricted real estate activities. The proposed rule is designed to balance several important ethical principles against an employee's right to engage in outside activities.

HUD has determined that maintaining the policy against employment in businesses related to real estate or manufactured housing is necessary to protect against questions regarding the impartiality and objectivity of employees in the administration of HUD programs. Allowing such activity would hinder HUD in meeting its missions if members of the public question whether HUD employees are using their public positions or HUD connections to advance their outside real estate-related employment. While HUD has determined that this concern remains valid, HUD has also concluded that implementing this rule in its current form has led to inconsistent application and confusion. Therefore, HUD is proposing a number of amendments to clarify the intent of the prohibition.

Proposed § 7501.105(a)(1) is amended by removing the phrase ''involving active participation'' with a real estate-related business. By removing this term, HUD does not intend to change the application of the prohibition contained in § 7501.105(a)(1) of the current rule; rather, HUD intends to make the prohibition less confusing and more transparent. The term ''involving active participation'' with a real estate-related business encompasses two prohibitions. First, it prohibits employment with a real estate-related business and, second, it prohibits ownership of a real estate-related business. The term led to some confusion in the application of these prohibitions by conflating the concepts of employment in a business related to real estate and the ownership activities of operating or managing investment properties. To rectify any confusion, HUD has separated the prohibition against the ownership activities of operating and managing a real estate-related business involving investment properties from the employment prohibition, by adding § 7501.105(a)(2), which prohibits the operation or management of investment properties to the extent that doing so rises to the level of a real estate business. To make the prohibition more transparent, HUD has decided to codify longstanding policy by listing several factors that it uses to consider whether the employee's actions of operating or managing investment properties rises to the level of a real estate business and falls within the prohibition. HUD first announced these factors in the 1995 preamble to the proposed version of the current rule. By listing these factors in the rule, HUD has not changed the scope of the current prohibition; rather, it has made the prohibition more transparent by including in the rule the factors that are used to determine a violation of the prohibition. Therefore, HUD employees may continue to own or manage investment properties, so long as that ownership or management does not rise to the level of operation or management of a real estate-related business. In a further effort to make the rule more transparent, HUD has decided to codify existing policy by stating in § 7501.105(a)(2) that HUD will consider these situations on an individual basis.

Proposed § 7501.105(a)(3) is amended to prohibit outside employment with a registered lobbying organization that is registered to lobby HUD. The current regulation cites a repealed statute. The proposed change would incorporate the definition of a lobbyist under the Lobbying Disclosure Act (2 U.S.C. 1601, *et seq.*), although applying only to entities that lobby HUD. This change will allow easier compliance by employees and review by ethics staff because of the ease of checking the lobbying database of the U.S. House of Representatives and the U.S. Senate to determine if a potential employer is prohibited.

Proposed § 7501.105(a)(4) is amended to remove the specific restriction on employees having outside positions with Fannie Mae and Freddie Mac. As previously discussed, HUD no longer has general regulatory authority over Fannie Mae and Freddie Mac. Further, under proposed § 7501.105(a)(1), employees would be prohibited from employment with a business related to real estate. This prohibition would cover employment with Fannie Mae and Freddie Mac. Therefore, a specific prohibition is not necessary.

Proposed § 7501.105(b)(1)(ii) is amended to clarify that the outside employment prohibitions do not prohibit employees from serving as a member of an employee's homeowners' association. HUD previously permitted serving on the board of a cooperative and condominium association, and HUD has determined that serving on the board of a homeowners' association does not create additional ethics concerns.

HUD has added § 7501.105(b)(2), which codifies HUD's longstanding policy that employees with a real estate agent's license may continue to hold such license. An employee may only use his or her license in relation to purchasing or selling a single-family property for use as the employee's primary residence, or for the primary residence of an immediate family of the employee. Employees seeking to use their real estate license for this purpose, however, must obtain the prior written approval of an agency ethics official. HUD has revised § 7501.105(c) to add the requirement for prior written approval from an agency ethics official for employees seeking to use their real estate license for this purpose.

Proposed § 7501.105(c)(1) would require an employee to receive written approval prior to accepting a position of authority with a prohibited source. This section had previously extended only to organizations that directly or indirectly received HUD assistance. This section has been expanded to include all prohibited sources, because HUD has determined that taking a position of authority with any prohibited source, not just those which receive HUD funding, could create the appearance of a conflict of interest and should therefore be examined by an agency ethics official. Further, the section will now be easier for employees to understand, because prohibited source is a term with which they are familiar. As discussed, HUD proposes to add the requirement at § 7501.105(c)(1)(iv) for prior written approval from an agency ethics official for employees seeking to use their real estate license in relation to purchasing or selling a single-family property for use as the employee's primary residence or as the primary residence of an immediate family member of the employee.

Proposed § 7501.105 would eliminate the reference to voluntary services. That section cited only other regulations, and HUD has determined that it is no longer needed to ensure public confidence in the impartiality and objectivity with which HUD programs are administered.

Proposed § 7501.105(d) incorporates HUD's policy regarding liaison representatives, which was previously provided as a Note. This change will avoid any confusion over the concept and its authority.

Section 7501.106 Bureau Instructions and Designation of Separate Agency Components

HUD proposes to remove this section as currently codified. As previously discussed in this preamble, HUD no longer has general regulatory authority over Fannie Mae and Freddie Mac. In its place, HUD is proposing to add a new § 7501.106 that clarifies the authority of

the Office of the Inspector General in the agency's ethics program and establishes it as a separate component as provided for by 5 CFR 2635.203(a).

In 1992, Congress enacted the Federal Housing Enterprise Financial Safety and Soundness Act (FHEFSSA) (12 U.S.C. 4501 *et seq.*), which revamped the statutory requirements and regulatory structure of the GSEs by separating the GSEs' financial regulation from its mission regulation. FHEFSSA also established the Office of Federal Housing Enterprise Oversight as an independent regulatory office within HUD to ensure the GSEs' financial safety and soundness, while the Secretary of HUD retained responsibility for the mission regulation and all other general regulatory powers. FHEFSSA also required HUD to prohibit the GSEs from discriminating in their mortgage purchases. The fair housing authority was twofold: first, to take remedial action against lenders found to have engaged in discriminatory lending practices and second, to periodically review and comment on the GSEs' underwriting and appraisal guidelines to ensure consistency with the Fair Housing Act (42 U.S.C. 3601 *et seq.*). In 2008, HERA transferred all regulatory oversight of the GSEs from HUD to FHFA, except for this fair housing component.

HUD's only remaining direct regulation of the GSEs is the periodic review of their underwriting and appraisal guidelines by the Office of Systemic Investigation of HUD's Office of Fair Housing and Equal Opportunity and by the Fair Housing Enforcement Division of HUD's Office of General Counsel. For employees involved in these compliance reviews, 18 U.S.C. 208, which prohibits employees from participating in matters that may affect their financial interests, would prohibit them from participating in official matters such as these reviews if the employee also owns a financial interest that could be affected by the review. Therefore, these employees would be required to recuse themselves from the official matter or divest their financial interest without the need for an additional HUD-specific regulation. The criminal statute is sufficient to insure against conflicts in those HUD employees when the periodic review is underway.

HUD has determined that the prohibitions in the current § 7501.106 are unnecessary given HUD's very limited role regarding the GSEs. The current § 7501.106 prohibits certain employees that were involved with GSEs from owning securities in certain mortgage institutions that originate, insure, or service mortgages owned or guaranteed by the GSEs. However, HUD employees no longer regulate the GSEs in a way that could affect the stock value of these mortgage institutions.

Additionally, there are other regulations that cover an appearance issue that might arise for those employees working on fair housing compliance review of the GSEs. Specifically, OGE regulations at 5 CFR 2635.502 would apply and would limit the activity that employees who are involved in the periodic review of the GSEs can engage in with respect to a financial interest in a mortgage institution that currently originates, insures, or services mortgages owned or guaranteed by the GSEs.

Accordingly removing these prohibitions would not compromise the integrity of HUD's functions.

The new proposed § 7501.106(a) delegates to the Bureau Ethics Counselor the authority to designate Deputy Bureau Ethics Counselors to make determinations, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR 2634, and 5 CFR part 2635 for his or her bureau. The proposed rule also includes the concurrence of the Designated Agency Ethics Official on the delegation. This designation is consistent with 5 CFR 2635.105(c), more clearly describes the role and responsibility of the OIG in the agency's ethics program, and maintains the independence of the IG as provided for by the Inspector General Act, as amended.

Additionally, consistent with 5 CFR 2635.203(a), new proposed § 7501.106(b) designates the OIG as a separate agency component. HUD is designating the OIG as a separate agency component to make the structure of its ethics program more consistent with the structure used by other federal agencies. HUD's changes are intended to more clearly describe the role and responsibility of the OIG in the agency's ethics program, and maintain the independence and authority of the IG. The designation as a separate agency component authorizes Bureau Ethics Counselors within the OIG to render legal ethics advice regarding the regulations contained in subpart B of 5 CFR part 2635, governing gifts from outside sources; and 5 CFR 2635.807, governing teaching, speaking, or writing.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed amendatory rulemaking, to be received by **DATES** section of this proposed rule. The comments will be carefully considered and appropriate changes will be made before a final rule is adopted and published in the **Federal Register**.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. Because this rule relates solely to the internal operations of HUD, this rule was determined to be not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because this rule pertains only to HUD employees.

Information Collection Requirements

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply to this regulation because it does not contain information collection requirements subject to the approval of OMB.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation

that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. Since it is only directed toward HUD employees, this rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA

List of Subjects in 5 CFR Part 7501

Conflicts of interests.

Accordingly, for the reasons described in the preamble, HUD, with the concurrence of OGE, proposes to amend 5 CFR part 7501, as follows:

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

7501.101 Purpose.
7501.102 Definitions.
7501.103 Waivers.
7501.104 Prohibited financial interests.
7501.105 Outside activities.
7501.106 Bureau instructions and designation of separate agency component.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Ethics and Personnel Law, the Assistant General Counsel for the Ethics Law Division, and the HUD Regional Counsels.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Bureau means the Office of the Inspector General.

Bureau Ethics Counselor means the General Counsel for the Bureau.

Deputy Bureau Ethics Counselor means the Bureau employee or employees who the Bureau Ethics Counselor has delegated responsibility to act under § 7501.106 for the Bureau.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel for Operations in the absence of the General Counsel.

Employment means any compensated or uncompensated (including volunteer work for others while off-duty) form of non-Federal activity or business relationship, including self-employment, that involves the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

§ 7501.103 Waivers.

The Designated Agency Ethics Official, or the Bureau Ethics Counselor for a Bureau employee may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 and is not otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the Department's impartial and objective administration of its programs. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement. A waiver will be considered only in response to a written waiver request submitted to an agency ethics official. The waiver request should include:

(1) The requesting employee's Branch, Unit, and a detailed description of his or her official duties;

(2) The nature and extent of the proposed waiver;

(3) A detailed statement of the facts supporting the request; and

(4) The basis for the request, such as undue hardship or other exigent circumstances.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees. Except as provided in paragraph (b) of this section, the employee, or the employee's spouse or minor child, shall not directly or indirectly receive, acquire, or own:

(1) Federal Housing Administration (FHA) debentures or certificates of claim.

(2) A financial interest in a project, including any single family dwelling or unit, which is subsidized by the Department, or which is subject to a note or mortgage or other security interest insured by the Department. The definition of ''financial interest'' is found at 5 CFR 2635.403(c).

(3)(i) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), to or on behalf of a tenant of property owned by the employee or the employee's spouse or minor child. However, such subsidy is permitted when:

(A) The employee, or the employee's spouse or minor child acquires, without specific intent as through inheritance, a property in which a tenant receiving such a subsidy already resides;

(B) The tenant receiving such a subsidy lived in the rental property before the employee worked for the Department;

(C) The tenant receiving such a subsidy is a parent, child, grandchild, or sibling of the employee;

(D) The employee's, or the employee's spouse or minor child's, rental property has an incumbent tenant who has not previously received such a subsidy and becomes the beneficiary thereof; or

(E) The location of the rental property is in a Presidentially declared emergency or natural disaster area and the employee receives prior written approval from an agency designee.

(ii) The exception provided by paragraph (a)(3)(i) of this section continues only as long as:

(A) The tenant continues to reside in the property; and

(B) There is no increase in that tenant's rent upon the commencement

of subsidy payments other than normal annual adjustments under the Section 8 program.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits the employee, or the employee's spouse or minor child from directly or indirectly receiving, acquiring, or owning:

(1) A financial interest in a publicly available or publicly traded investment fund that includes financial interests prohibited by paragraph (a)(2) of this section, so long as the employee neither exercises control nor has the ability to exercise control over the fund or the financial interests held in the fund;

(2) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to obtain FHA insurance;

(3) Department-owned single family property. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to purchase a HUD-held property;

(4) Employment compensation and benefit packages provided by the employer of an employee's spouse that include financial interests prohibited by paragraph (a)(2) of this section; or

(5) Government National Mortgage Association (GNMA) securities.

(c) *Reporting and divestiture.* An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the date of the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside activities.

(a) *Prohibited outside activities.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment with a business related to real estate or manufactured housing including, but not limited to, real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, title search services, construction, construction financing, land planning, or real estate development;

(2) The operation or management of investment properties to the extent that it rises to the level of a real estate-related business. HUD will determine whether an employee is operating or managing investment properties to an extent that it rises to the level of a real estate business based on the totality of the circumstances, and will consider whether the employee maintains an office; advertises or otherwise solicits clients or business; hires staff or employees; uses business stationary or other similar materials; files the business as a corporation, limited liability company, partnership, or other type of business association with a state government; establishes a formal or informal association with an existing business; hires a management company; and the nature and number of its investment properties;

(3) Employment with a person or entity who registered as a lobbyist or lobbyist organization pursuant to 2 U.S.C 1603(a) and engages in lobbying activity concerning the Department;

(4) Employment as an officer or director with a Department-approved mortgagee, a lending institution, or an organization that services securities for the Department; or

(5) Employment with the Federal Home Loan Bank System or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to:

(1) Serving as an officer or a member of the Board of Directors of:

(i) A Federal Credit Union;

(ii) A cooperative, condominium association, or homeowners association for a housing project that is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(iii) An entity designated in writing by the Designated Agency Ethics Official.

(2) Holding a real estate agent's license; however, use of the license is limited as provided by paragraph (c) of this section.

(c) *Prior approval requirement.* (1) Employees, except special Government employees, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with a prohibited source, as defined at 5 CFR 2635.203(d);

(ii) With a state or local government;

(iii) In the same professional field as that of the employee's official position; or

(iv) As a real estate agent in relation to purchasing or selling a single family property for use as the employee's primary residence, or the primary residence of the employee's immediate family member.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) *Liaison representative.* An employee designated to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be designated to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.

§ 7501.106 Bureau instructions and designation of separate agency component.

(a) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official, the Bureau Ethics Counselor is authorized, consistent with 5 CFR 2635.105(c), to designate Deputy Bureau Ethics Counselors, to make a determination, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR part 2634, and 5 CFR part 2635 for the Bureau.

(b) *Designation of separate agency component.* Pursuant to 5 CFR 2635.203(a), the Office of the Inspector General is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635, governing gifts from outside sources; and 5 CFR 2635.807, governing teaching, speaking, or writing.

Dated: February 15, 2012.

Don W. Fox,

Principal Deputy Director, Office of Government Ethics.

[FR Doc. 2012–6177 Filed 3–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109369–10]

RIN 1545–BJ33

Passive Activity Losses and Credits Limited; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed rulemaking regarding the definition of an ''interest in a limited partnership as a limited partner'' for purposes of determining whether a taxpayer materially participates in an activity under section 469 of the Internal Revenue Code. These proposed regulations affect individuals who are partners in partnerships.

DATES: The public hearing is being held on Monday, April 30, 2012, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by April 9, 2012.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to CC:PA:LPD:PR (REG–109369–10), Room 5205, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–109369–10), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal erulemaking Portal at *www.regulations.gov* (IRS–REG–109369–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michala Irons, (202) 622–3050; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–109369–10) that was published in the **Federal Register** on Monday, November 28, 2011 (76 FR 72875). The notice also announced that a hearing will be scheduled if requested by the public in writing by February 27, 2012.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline has passed, persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and four copies) by April 9, 2012.

The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–6068 Filed 3–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–135491–10]

RIN 1545–BK02

Updating of Employer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide rules requiring any person assigned an employer identification number (EIN) to provide updated information to the IRS in the manner and frequency prescribed by forms, instructions, or other appropriate guidance. These proposed regulations affect persons with EINs and will enhance the IRS's ability to maintain accurate information as to persons assigned EINs.

DATES: Written or electronic comments and request for a public hearing must be received by June 12, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–135491–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–135491–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–135491–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Gregory T. Armstrong, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo (Funmi) Taylor of the Publications and Regulation Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 14, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in proposed § 301.6109–1(d)(2)(ii)(A). This information is necessary to allow the IRS to gather correct ownership information with respect to persons that have an EIN. The respondents are persons that have an EIN.

Estimated total annual reporting burden: 403,177 hours.

Estimated average annual burden per respondent: varies from 10 to 20 minutes with an estimated average of 15 minutes.

Estimated number of respondents: 1,612,708.

Estimated frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background and Explanation of Provisions

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6109 relating to identifying numbers. In general, section 6109(a)(1) provides that persons shall include taxpayer identifying numbers on returns, statements, or other documents filed with the IRS. Additionally, section 6109(c) authorizes the Secretary to require such information as may be necessary to assign an identifying number to any person.

One of the principal types of taxpayer identifying numbers used to identify taxpayers is an employer identification number (EIN), which takes the form 00–0000000. See Treas. Reg. § 301.6109–1(a)(1); Treas. Reg. § 301.7701–12. In general, the IRS assigns an EIN for use by employers, sole proprietors, corporations, partnerships, non-profit associations, trusts, estates, government agencies, certain individuals, and other business entities for tax filing and reporting purposes.

Section 301.6109–1(d)(2)(i) provides that any person required to furnish an EIN must apply for one with the IRS on a Form SS–4, Application for Employer Identification Number. The IRS accepts applications for EINs electronically and by telephone, facsimile, or mail.

With increasing frequency, EIN applicants authorize certain individuals (sometimes referred to as ''nominees'') to act on the EIN applicants' behalf. These nominees are listed on the EIN application as principal officers, general partners, grantors, owners, and trustors. The authority of these nominees to act on behalf of the EIN applicant is often temporary and expires after the application is processed. The listing of a nominee prevents the IRS from gathering correct ownership information with respect to the EIN applicant once the nominee is no longer authorized to act on behalf of the EIN applicant. In response to concern with this practice and the need for accurate records, effective January 2010, the IRS revised line 7a on the Form SS–4 requiring disclosure of the name of the EIN applicant's ''responsible party'' and the responsible party's Social Security Number, Individual Taxpayer Identification Number, or EIN.

The Instructions for Form SS–4 provide a definition for ''responsible party.'' For entities with shares or interests traded on a public exchange, or which are registered with the Securities and Exchange Commission, the instructions currently provide that a ''responsible party'' is (a) a principal officer, if the business is a corporation, (b) a general partner, if a partnership, (c) the owner of an entity that is disregarded as separate from its owner (disregarded entities owned by a corporation enter the corporation's name and EIN), or (d) a grantor, owner, or trustor, if a trust.

For all other entities, the ''responsible party'' is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.

These proposed regulations require any person issued an EIN to provide updated information to the IRS in the manner and frequency required by forms, instructions, or other appropriate guidance, which the IRS will issue in the near future. This requirement includes updated application information regarding the name and taxpayer identifying number of the responsible party. This requirement covers those persons who previously applied for an EIN by listing a person other than the applicant's responsible party. This updated information will allow the IRS to ascertain correct ownership details for persons who have an EIN. In turn, the IRS can use that knowledge to contact the correct persons when resolving a tax matter related to a business with an EIN and to help combat schemes that abuse the tax system through the use of nominees.

Proposed Effective/Applicability Date

These regulations are proposed to apply to all persons possessing an EIN after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

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

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect entities that have an EIN and the IRS has determined that these proposed rules will have an impact on a substantial number of small entities. The IRS has determined, however, that the impact on entities affected by the proposed rule will not be significant. The current Form SS–4 already requires entities to disclose the name of the EIN applicant's ''responsible party'' and the responsible party's Social Security Number, Individual Taxpayer Identification Number, or EIN. The amount of time necessary to submit the updated information required in these proposed regulations, therefore, should be minimal for these entities.

Based on these facts, the IRS hereby certifies that the collection of information contained in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are

submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Tammie A. Geier and Gregory T. Armstrong of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6109–1 is amended by adding paragraphs (d)(2)(ii)(A) and (d)(2)(ii)(B) to read as follows:

§ 301.6109–1. Identifying numbers.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) *Requirement to update.* Persons issued employer identification numbers in accordance with the application process set forth in paragraph (d)(2)(i) of this section shall provide to the Internal Revenue Service any updated application information in the manner and frequency required by forms, instructions, or other appropriate guidance.

(B) *Effective/applicability date.* Paragraph (d)(2)(ii)(A) of this section applies to all persons possessing an employer identification number after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–6072 Filed 3–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0070]

RIN 1625–AA08

Special Local Regulations; Third Annual Space Coast Super Boat Grand Prix, Atlantic Ocean, Cocoa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations on the waters of the Atlantic Ocean east of Cocoa Beach, Florida during the Third Annual Space Coast Super Boat Grand Prix, a series of high-speed boat races. The event is scheduled to take place on Sunday, May 20, 2012. Approximately 30 high-speed race boats are anticipated to participate in the races, and approximately 200 spectator vessels are expected to attend the event. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the races. The special local regulations would consist of the following areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining.

DATES: Comments and related material must be received by the Coast Guard on or before April 3, 2012. Requests for public meetings must be received by the Coast Guard on or before March 26, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0070 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone (904) 564–7563, email *Robert.S.Butts@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0070), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact

you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number USCG–2012–0070 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0070) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before February 29, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to insure safety of life on navigable waters of the United States during the Third Annual Space Coast Super Boat Grand Prix.

Discussion of Proposed Rule

On Sunday, May 20, 2012, Super Boat International Productions, Inc. will host the Third Annual Space Coast Super Boat Grand Prix, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean east of Cocoa Beach, Florida. Approximately 30 high-speed power boats are anticipated to participate in the races. It is anticipated that at least 200 spectator vessels will be present during the event.

The proposed rule would establish special local regulations that encompass certain waters of the Atlantic Ocean east of Cocoa Beach, Florida. The special local regulations would be enforced from 9 a.m. until 5:30 p.m. on May 20, 2012. The special local regulations would consist of the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7501, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard would provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

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

The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulations would be enforced for only 8½ hours; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without authorization from the Captain of the Port Jacksonville or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard would provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the special local regulations from 9 a.m. until 5:30 p.m. on May 20, 2012. For the reasons discussed in the Regulatory

Planning and Review section above, this proposed rule would 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 proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone (904) 564–7563, email *Robert.S.Butts@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing special local regulations issued in conjunction with a marine event, as described in figure 2–1, paragraph (34)(h), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35T07–0070 to read as follows:

§ 100.35T07–0070 Special Local Regulations; Third Annual Space Coast Super Boat Grand Prix, Atlantic Ocean, Cocoa Beach, FL.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the Atlantic Ocean located east of Cocoa Beach encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 28°22′09″ N, 80°35′52″ W; thence east to Point 2 in position 28°22′08″ N, 80°35′46″ W; thence south to Point 3 in position 28°19′53″ N, 80°36′02″ W; thence west to Point 4 in position 28°19′53″ N, 80°36′08″ W; thence north back to origin.

(2) *Buffer Zone.* All waters of the Atlantic Ocean located east of Cocoa Beach, excluding the race area, and encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 28°22′16″ N, 80°36′04″ W; thence east to Point 2 in position 28°22′15″ N, 80°35′39″ W; thence south to Point 3 in position 28°19′47″ N, 80°35′55″ W; thence west to Point 4 in position 28°19′47″ N, 80°36′22″ W; thence north back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at 904–564–7501, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 9 a.m. until 5:30 p.m. on May 20, 2012.

Dated: February 13, 2012.

C.A. Blomme,

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

[FR Doc. 2012–6182 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0131]

RIN 1625–AA00

Safety Zones; Sellwood Bridge Project, Willamette River; Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of two safety zones to remain in effect throughout the duration of the construction and renewal of the Sellwood Bridge located on the Willamette River in Portland, Oregon. This action is necessary to ensure the safety of vessels transiting in close proximity to cranes, barges, and temporary structures associated with this construction project. During the effective period, all vessels will be required to remain at the prescribed safe distance from the construction area while transiting in the vicinity of the Sellwood Bridge project; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times.

The two safety zones proposed in this rule are located within the same geographical points as safety zones issued as a temporary final rule effective through 11 a.m., July 1, 2012.

DATES: Comments and related material must be received by the Coast Guard on or before May 14, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0131 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email ENS Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *Ian.P.McPhillips@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0131), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert

''USCG–2012–0131'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0131'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 13, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The Sellwood Bridge project will replace the existing 86 year old bridge that is structurally inadequate and functionally obsolete. The project will renew the bridge with a new deck arch structure compliant with current loading and seismic requirements, upgrade the interchange at Oregon Route 43, and provide substantially improved bicycle and pedestrian facilities. Construction work will continue through January 1, 2015. The project includes the construction of two temporary structures and two new bridge piers which will each require a cofferdam. The temporary structures will be constructed to facilitate the moving of the older bridge. To ensure the safety of construction crews on the barges, temporary structures, and cranes, two safety zones on each side of the river are being established to require vessels in the vicinity of the construction area to remain outside of the two designated safety zones. Additionally, this will ensure that the vessels operating in the vicinity of the designated areas will not be in any dangerous areas near the temporary structures or cranes.

Discussion of Proposed Rule

The proposed rule would create two safety zones that cover all waters of the Willamette River; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times. The first safety zone on the West river bank is encompassed within the following four lines: Line one starting at 45–27′53.5″ N/122–40′03.5″ W then heading 375 feet offshore to 45–27′53.5″ N/122–39′58.5″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′58.5″ W then heading 375 feet back to the shore at 45–27′49.5″ N/122–40′04.5″ W then following the shoreline to end at 45–27′53.5″ N/122–40′03.5″ W. The second safety zone on the East river bank is encompassed within the following four lines: Line one starting at 45–27′53.5″ N/122–39′50.5″ W then heading 420 feet offshore to 45–27′53.5″ N/122–39′55.0″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′55.0″ W then heading 420 feet back to the shore at 45–27′49.5″ N/122–39′47.0″ W then following the shoreline to end at 45–27′49.5″ N/122–39′47.0″ W. Geographically this rule will cover all waters of the Willamette River 100 feet upriver and downriver of the existing Sellwood Bridge, inward 375 feet from the Western side shoreline, and inward 420 feet from the Eastern side shoreline. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times. These safety zones will ensure the safety of the all vessels and crew that are working and transiting in the construction areas.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and 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 rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866. The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because vessels may still transit in the vicinity of the safety zones.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zones. The safety zones will not have a significant economic impact on a substantial number of small entities because the area can still be used to transit through this section of the river, which will

maintain a minimum width of 138 feet. Other maritime users, such as dragon boats, kayaks, and canoes, will be able to transit around the safety zones or through the open section.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *Ian.P.McPhillips@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T13–208 to read as follows:

§ 165.T13–208 Safety Zones; Sellwood Bridge project, Willamette River; Portland, OR

(a) *Location.* The safety zone on the western river bank encompasses all waters of the Willamette River within the following four lines: Line one starting at 45–27′53.5″ N/122–40′03.5″ W then heading 375 feet offshore to 45–27′53.5″ N/122–39′58.5″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′58.5″ W then heading 375 feet back to the shore at 45–27′49.5″ N/122–40′04.5″ W then following the shoreline to end at 45–27′53.5″ N/122–40′03.5″ W. The safety zone on the eastern river bank is encompassed within the following four lines: line one starting at 45–27′53.5″ N/122–39′50.5″ W then heading 420 feet offshore to 45–27′53.5″ N/122–39′55.0″ W then heading up river 200 feet to 45–27′49.5″ N/122–39′55.0″ W then heading 420 feet back to the shore at 45–27′49.5″ N/122–39′47.0″ W then following the shoreline to end at 45–27′49.5″ N/122–39′47.0″ W. Geographically, this rule will cover all waters of the Willamette River 100 feet upriver and downriver of the existing Sellwood Bridge, inward 375 feet from the Western side shoreline, and inward 420 feet from the Eastern side shoreline. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, subpart C, no person may enter or remain in the safety zones created in this section or bring, cause to be brought, or allow to remain in the safety zones created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other federal, state, or local agencies with the enforcement of the safety zones.

(c) *Effective Period.* The Safety zones created by this section will be in effect from 11 a.m. on July 1, 2012 through 11 p.m. on January 31, 2015.

Dated: March 1, 2012.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–6126 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0001; FRL–9335–9]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 13, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Antimicrobials Division (7510P), Biopesticides and Pollution Prevention Division (7511P), or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 1E7942.* (EPA–HQ–OPP–2011–0985). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, New Jersey, 08540, requests to establish tolerances in 40 CFR part 180 for the combined residues of the insecticide flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide] and its metabolites TFNA [4-trifluoromethylnicotinic acid], TFNA–AM [4-trifluoromethylnicotinamide] TFNG [*N*-(4-trifluoromethylnicotinoyl) glycine], in or on berry, low growing, subgroup 13–07G at 1.4 parts per million (ppm); cucumber at 1.3 ppm; and rapeseed, subgroup 20A at 1.5 ppm. Analytical methodology has been developed to determine the residues of flonicamid and its three major plant metabolites, TFNA, TFNG, and TFNA–AM in various crops. The residue analytical method for the majority of crops includes an initial extraction with acetonitrile (ACN)/deionized (DI) water, followed by a liquid-liquid partition with ethyl acetate. The residue method for wheat straw is similar, except that a C_{18} solid phase extraction (SPE) is added prior to the liquid-liquid partition. The final sample solution is quantitated using a liquid chromatography (LC) equipped with a reverse phase column and a triple quadruple mass spectrometer (MS/MS). Contact: Sidney Jackson, Registration Division (7505P), (703) 305–7610, email address: *jackon.sidney@epa.gov.*

2. *PP 1E7950.* (EPA–HQ–OPP–2011–1012). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxypyridine, in or on vegetable, bulb, group 3–07 at 0.70 ppm; vegetable, fruiting, group 8–10 at 0.20 ppm; fruit, citrus, group 10–10 at 0.30 ppm; fruit, pome, group 11–10 at 0.20 ppm; caneberry subgroup 13–07A at 1.0 ppm; bushberry subgroup 13–07B at 1.0 ppm; berry, low growing, except strawberry, subgroup 13–07H at 1.0 ppm; and herb subgroup 19A at 50 ppm. Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites)

have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical methods for analysis of cottonseed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: Andrew Ertman, Registration Division (7505P), (703) 308–9367, email address: *ertman.andrew@epa.gov.*

3. *PP 1E7959.* (EPA–HQ–OPP–2012–0009). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluazinam, in or on fruiting vegetables group, pepper/eggplant subgroup 8–10B at 0.10 ppm and cucurbit vegetables, melon subgroup 9A at 0.08 ppm. This notice includes information from a separate petition submitted by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44057. An analytical method using LC/MS/MS for the determination of fluazinam and AMGT residues on cantaloupe and pepper has been developed and validated. The method involves solvent extraction followed by liquid-liquid partitioning and concentration prior to a final purification. The method has been successfully validated by an independent laboratory using peanut nutmeat as the matrix. The limit of quantitation (LOQ) of the method is 0.01 ppm for both fluazinam and AMGT in both crops. Contact: Andrew Ertman, Registration Division (7505P), (703) 308–9367, email address: *ertman.andrew@epa.gov.*

4. *PP 1F7934.* (EPA–HQ–OPP–2010–0916). Gowan Company, LLC, P.O. Box 556, Yuma, AZ 85366, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide hexythiazox (trans-5-(4-chlorophenyll)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide), in or on wheat, forage at 3.0 ppm; wheat, hay at 30 ppm; wheat, grain at 0.02 ppm; wheat, straw at 7.0 ppm; alfalfa, forage at 7.0 ppm; alfalfa, hay at 14 ppm; timothy, forage at 35 ppm; and timothy, hay at 17 ppm. A practical analytical method, high pressure liquid chromatography (HPLC) with an ultraviolet (UV) detector, which detects and measures residues of hexythiazox and its metabolites as a common moiety, is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. Contact: Olga Odiott, Registration Division (7505P), (703) 308–9369, email address: *odiott.olga@epa.gov.*

5. *PP 1F7944.* (EPA–HQ–OPP–2011–1002). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1*H*-pyrazol-3-yl)-4-fluorophenoxyacetate and its acid metabolite, *E*-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1*H*-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent, in or on hop, dried cone at 0.01 ppm; peanut at 0.01 ppm; peanut, hay at 0.07 ppm; peanut, meal at 0.01 ppm; and peanut, refined oil at 0.01 ppm. Aqueous organic solvent extraction, column clean up, and quantitation by gas chromatography with mass spectrometry (GC/MS) is used to measure and evaluate the chemical residues. Contact: Tracy T. White, Registration Division (7505P), (703) 308–0042, email address: *white.tracy@epa.gov.*

Amended Tolerance

PP 1E7950. (EPA–HQ–OPP–2011–1012). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.510 by revocation of the existing tolerances for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxypyridine, in or on vegetable, bulb, group 3, except onion, bulb; onion, bulb; vegetable, fruiting, group 8; okra; fruit, citrus; fruit, pome; caneberry subgroup 13–A; bushberry subgroup 13–B; cranberry; loganberry; Juneberry; lingonberry; and salal, because tolerances for the revised groupings are being requested under ''New Tolerances''. Contact: Andrew Ertman, Registration Division (7505P), (703) 308–9367, email address: *ertman.andrew@epa.gov.*

New Tolerance Exemptions

1. *PP 1E7936.* (EPA–HQ–OPP–2011–0951). Ecolab, Inc., EPA Company No. 1677, 370 N. Wabasha Street, St. Paul, MN 55102, requests to establish an exemption from the requirement of tolerances for residues of the sodium xylene sulfonate (SXS) (CAS No. 1300–72–7) under 40 CFR 180.940(a) when used as a pesticide inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at 500 ppm. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: John Redden, Registration Division (7505P), (703) 305–1969, email address: *redden.john@epa.gov.*

2. *PP 1F7901.* (EPA–HQ–OPP–2011–1018). Wagner Regulatory Associates, Inc., (on behalf of Bedoukan Research, Inc., 21 Finance Drive, Danbury, CT 06810), requests to establish an exemption from the requirement of tolerances for residues of the biochemical pesticide ethyl-2*E,* 4*Z*-decadienoate (Pear Ester) for pre-harvest uses, in or on all agricultural commodities. Pear Ester is the naturally occurring compound responsible for the characteristic aroma of pears and other fruits. Researchers have estimated that mature, ripening fruit releases up to 3,712 grams of Pear Ester per acre per month. It is estimated that the potential residue amounts from application of formulated products would be virtually indistinguishable from natural background levels. For this reason, and due to its low toxicity, it is proposed to exempt Pear Ester from the requirement to establish a finite tolerance for residues on food commodities. Therefore, an analytical method for determination of residues is not needed. Contact: Gina M. Burnett, Biopesticides and Pollution Prevention Division (7511P), (703) 605–0513, email address: *burnett.gina@epa.gov.*

3. *PP 1F7914.* (EPA–HQ–OPP–2011–1033). Albemarle Corporation, 451 Florida Street, Baton Rouge, LA 70801, requests to establish an exemption from the requirement of tolerances for residues of the antimicrobial 1,3-dibromo-5,5-dimethylhydantoin, in or on all raw agricultural commodities, when such residues result from the use of 1,3-dibromo-5,5-dimethylhydantoin as an antimicrobial treatment in solutions containing a diluted end-use concentration of all bromide-producing chemicals in the solution not to exceed 900 ppm of total bromine. The petitioner believes no analytical method is needed because it is not necessary since 1,3-dibromo-5,5-dimethylhydantoin residues are exempted from the requirements of a tolerance. Contact: Tom Luminello,

Antimicrobials Division (7510P), (703) 308–8075, email address: *luminello.tom@epa.gov.*

4. *PP 1F7917.* (EPA–HQ–OPP–2011–1026). Bert Volger, Ceres International LLC., 1087 Heartsease Drive, West Chester, PA 19382 (on behalf of Consumo Em Verde S.A., Biotecnologia De Plantas, Parque Tecnológico de Cantanhede, Núcleo 04, Lote 2, 3060–197 Cantanhede, Portugal), requests to establish an exemption from the requirement of tolerances for residues of the biofungicide BLAD, a naturally occurring polypeptide from the catabolism of a seed storage protein of sweet lupines (*Lupinus albus*), in or on various crops and ornamentals. The petitioner believes no analytical method is needed because the requirements of an analytical method are not applicable to a request to establish an exemption from the requirement of a tolerance. Contact: Menyon Adams, Biopesticides and Pollution Prevention Division (7511P), (703) 347–8496, email address: *adams.menyon@epa.gov.*

5. *PP 9F7670.* (EPA–HQ–OPP–2010–0065). Technology Sciences Group, Inc., 1150 18th Street, NW., Suite 1000, Washington, DC 20036, (on behalf of AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 90660), requests to establish an exemption from the requirement of a tolerance for residues of the biochemical potato sprout inhibitor, 3-decen-2-one, as a post-harvest treatment, in or on stored potatoes. An analytical method for residues is not applicable. It is expected that, when used as proposed, 3-decen-2-one would not result in residues that are of toxicological concern. The Agency is re-issuing this notice of filing (NOF) of a pesticide petition for 3-decen-2-one (*PP 9F7670*) because the petitioner revised the pending petition. Instead of proposing an exemption from the requirement of a tolerance for residues of the potato sprout inhibitor, 3-decen-2-one, in or on all food commodities, the petitioner is now requesting the tolerance exemption for use of 3-decen-2-one as a post-harvest treatment on stored potatoes only. The original NOF published in the **Federal Register** for comment on March 10, 2010 (75 FR 11171)(FRL–8810–8), with a 30 day comment period. One comment was received in response to this NOF. The Agency will respond to this comment in the final rule but notes that the comment was not germane to the active ingredient described herein, and focused on concerns that were not specific to dietary exposure. Contact: Colin G. Walsh, Biopesticides and Pollution Prevention Division (7511P), (703) 308–0298, email address: *walsh.colin@epa.gov.*

Amended Tolerance Exemptions

1. *PP 1E7931.* (EPA–HQ–OPP–2011–0949). BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932, requests to amend an exemption from the requirement of a tolerance for residues of *N,N*-Bis-α-ethyl-ω-hydroxypoly(oxy-1,2-ethanediyl) C_8-C_{18} saturated and unsaturated alkylamines; the poly(oxy-1,2-ethanediyl) content is 2–60 moles; herein referred to as Alkyl Amines Polyalkoxylates under 40 CFR 180.920 and 180.930 to include CAS No. 1266162–49–5 when used as a pesticide inert ingredient in pesticide formulations. An analytical method is not required for enforcement purposes since the Agency has established an exemption from the requirement of a tolerance without any numerical limitation. Contact: Elizabeth Fertich, Registration Division (7505P), (703) 347–8560, email address: *fertich.elizabeth@epa.gov*.

2. *PP 1F7914.* (EPA–HQ–OPP–2011–1033). Albemarle Corporation, 451 Florida Street, Baton Rouge, LA 70801, requests to amend 40 CFR 180.940(a) by establishing an exemption from the requirement of a tolerance for the residues of the antimicrobial 1,2-dibromo-5,5-dimethylhyadantoin (CAS Reg. No. 77–48–5) in antimicrobial formulations, in or on food contact surface sanitizing solutions. May be applied to: Food contact surfaces in public eating places, dairy processing equipment, and food-processing equipment and utensils. When ready for use, end-use concentration of all bromine-producing chemicals in solution is not to exceed 500 ppm of total bromine. Analytical method is not necessary since 1,3-dibromo-5,5-dimethylhydantoin residues are exempted from the requirements of a tolerance. Contact: Tom Luminello, Antimicrobials Division (7510P), (703) 308–8075, email address: *luminello.tom@epa.gov*.

3. *PP 1F7920.* (EPA–HQ–OPP–2011–1029). D–I–1–4, Inc., a Division of 1,4 Group, Inc., P.O. Box 680, Meridian, ID 83680, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1142 for residues of the plant growth regulator 1,4-Dimethylnaphthalene (1,4-DMN) when applied post-harvest to potatoes and other sprouting root, tuber and bulb crops in accordance with good agricultural practices. An analytical method for residues is not applicable. It is expected that, when used as proposed, 1,4-Dimethylnaphthalene would not result in residues that are of toxicological concern. Contact: Colin G. Walsh, Biopesticides and Pollution Prevention Division (7511P), (703) 308–0298, email address: *walsh.colin@epa.gov*.

4. *PP 1F7940.* (EPA–HQ–OPP–2011–1028). Kaken Pharmaceutical Co., Ltd., c/o Conn & Smith, Inc., Agent, 6713 Catskill Road, Lorton, VA 22079, requests to amend an existing exemption from the requirement of tolerances in 40 CFR 180.1285 for residues of the biochemical pesticide polyoxin D zinc salt when used as a fungicide for pre-harvest and post-harvest uses in accordance with good agricultural practices, in or on all agricultural commodities. A tolerance exemption is proposed. Therefore, no tolerance enforcement method is proposed. Contact: Colin G. Walsh, Biopesticides and Pollution Prevention Division (7511P), (703) 308–0298, email address: *walsh.colin@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–6056 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0964; FRL–9332–3]

Revocation of Tolerance Exemptions for Diethyl Phthalate and Methyl Ethyl Ketone; No Data Being Developed as Required by Test Orders (Data Call-Ins) Under EPA's Endocrine Disruptor Screening Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes, under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), to revoke the existing exemptions from the requirement of a tolerance (tolerance exemptions) for residues of diethyl phthalate and methyl ethyl ketone when used as inert ingredients in pesticide products because there are insufficient data to make the determination of safety required by FFDCA. No manufacturer or importer of these chemicals has committed to conduct testing and

submit data required by test orders that EPA issued under the Endocrine Disruptor Screening Program (EDSP). EPA is, however, offering an opportunity for interested parties to comment or commit to submitting the required data.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0964, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0964. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Anthony Britten, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8179; fax number: (703) 605–0781; email address: *britten.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer; or if you manufacture or import chemical substances that are used in pesticides. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).
- Chemical manufacturers, importers and processors (NAICS code 325).
- Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253).
- Scientific research and development services (NAICS code 5417) e.g., persons who conduct testing of chemical substances for endocrine effects.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What can I do if I wish EPA to maintain a tolerance or tolerance exemption that the agency proposes to revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance exemption proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance exemption immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will either issue an order under sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and section 408(p)(5) of FFDCA if the commenter is a registrant or manufacturer, or will issue an order in the **Federal Register** under FFDCA section 408(f) if the interested party is neither a registrant nor manufacturer.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. Comments should be limited only to the inert ingredients and tolerance exemptions subject to this proposed rule. After considering comments, EPA will issue a final regulation determining whether revocation of the tolerance exemptions is appropriate and making a final finding on whether these tolerance exemptions are ''safe'' within the meaning of section 408(b)(2)(A)(ii).

In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule pursuant to section 408(g) (21 U.S.C. 346a(g)). If you anticipate that you may wish to file objections to the final rule, you must raise those issues in your comments on this proposal. EPA will treat as waived any issues raised in objections that could reasonably have been, but were not, presented in comments on this proposal. Similarly, if you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What action is the agency taking?

EPA, under section 408(e)(1) of FFDCA, is proposing to revoke tolerance exemptions for residues of diethyl phthalate and methyl ethyl ketone in or on raw agricultural commodities and processed foods when these chemicals are used as inert ingredients in pesticide products. These revocations would be effective 6 months after the final rule is published in the **Federal Register**.

EPA issued test orders to manufacturers and importers of diethyl phthalate and methyl ethyl ketone on January 21, 2010 and January 28, 2010, respectively. The test orders required recipients to generate data that would allow the Agency to screen these chemicals for their potential to interact with the estrogen, androgen or thyroid hormonal systems consistent with EPA's Endocrine Disruptor Screening Program (EDSP), developed in accordance with section 408(p) of FFDCA.

Section 408(p)(3) of FFDCA requires screening of ''all pesticide chemicals,'' including by definition inert ingredients in pesticide products, to determine their potential to disrupt the endocrine system. 21 U.S.C. 345a(p)(3). The statute also ties the availability of these or other data ''on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects'' to the safety finding that EPA must make in order to allow a tolerance or exemption to remain. 21 U.S.C. 346a(b)(2)(D).

No company which received a test order has committed to submit the required data to support the continued use of these chemicals as pesticide inert ingredients. Rather, all elected to ''opt out'' of the pesticide market rather than conduct testing, and under the ''opt-out'' provision, were required to cease, within 6 months of EPA issuing the test order, all sales and distribution of their chemical for use in pesticide formulations.

EPA's outreach to trade associations suggests that registrants of pesticide products will also decline to conduct required testing in order to continue using these chemicals as inert ingredients. EPA therefore is not issuing further test orders at this time. Rather, this proposed rule offers a final opportunity for any interested parties to commit to develop these data, which FFDCA makes necessary to support a tolerance or exemption. A companion notice in this issue of the **Federal Register** provides background on all the inert ingredient test orders issued and the responses EPA has received to date.

In sum, because no one has committed to generate these data, and because EPA has no other data on which it could rely to evaluate the endocrine disruption potential of these inert ingredients, EPA is proposing to revoke the tolerance exemption under 40 CFR 180.930 for diethyl phthalate and the tolerance exemption under 40 CFR 180.920 for methyl ethyl ketone. In the absence of any data bearing on the endocrine disruption potential of these chemicals, EPA cannot find that these chemicals continue to meet the required safety standard under FFDCA section 408(b)(2). Through this proposed rule, the Agency is inviting individuals who need these exemptions to identify themselves and the tolerance exemptions that are needed. If during the comment period for this proposal no one either submits or commits to generate data required by the test orders, EPA will revoke these tolerance exemptions. The following list identifies the data EPA required in the test orders to screen for potential effects on the thyroid, estrogen and androgen systems, and the estimated time to generate the data. If screening data were to identify endocrine activity, additional testing might be required to establish dose-levels for adverse effects.

Required Data and Estimated Number of Months to Develop

Amphibian Metamorphosis (Frog): 15.
Androgen Receptor Binding (Rat Prostate): 6.
Aromatase (Human Recombinant): 6.
Estrogen Receptor Binding: 6.
Estrogen Receptor Transcriptional Activation (Human Cell Line (HeLa-9903)): 6.
Fish Short-term Reproduction: 12.
Hershberger (Rat): 9.
Female Pubertal (Rat): 15.
Male Pubertal (Rat): 15.
Steroidogenesis (Human Cell Line—H295R): 6.
Uterotrophic (Rat): 9.

EPA has loaded a sample test order in the docket for reference. If after reading this proposed rule and the test order requirements, you intend to submit data, indicate this clearly in your comments.

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

This proposed rule is issued pursuant to section 408(e)(1)(B) of FFDCA (21 U.S.C. 346a(e)(1)(B)). A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA), Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and

therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)).

Section 408(b)(2)(A)(i) of the FFDCA requires EPA to modify or revoke a tolerance if EPA determines that the tolerance is not ''safe.'' 21 U.S.C. 346a(b)(2)(A)(ii). Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' Among those factors that EPA is directed to consider in establishing, modifying, leaving in effect, or revoking a tolerance or exemption for a pesticide chemical residue is ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects; * * *.'' 21 U.S.C. 346a(b)(2)(D)(viii).

FFDCA section 408(p)(1) requires EPA ''to develop a screening program, using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effects as [EPA] may designate.'' 21 U.S.C. 346a(p). FFDCA section 408(p)(3) expressly requires that EPA ''shall provide for the testing of all pesticide chemicals.'' FFDCA section 201 defines ''pesticide chemical'' as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and pesticide inert ingredients of such pesticide.'' 21 U.S.C. 231(q)(1). FFDCA section 408(e)(1)(B) provides that the Administrator may issue a regulation ''establishing, modifying, suspending under section (l)(3), or revoking an exemption of a pesticide chemical residue from the requirement of a tolerance.'' 21 U.S.C. 346a(e)(1)(B).

C. When would this action become effective?

EPA is proposing to revoke the tolerance exemptions for diethyl phthalate and methyl ethyl ketone effective 6 months after the date the final rule publishes in the **Federal Register**. EPA believes its proposed timeline gives registrants sufficient time to take appropriate action. Under the EDSP test orders, manufacturers and importers that ''opted out'' of testing had to cease all sales and distribution of the chemical to the pesticide market for use in formulating pesticide products within 6 months of EPA issuing the test order. EPA issued the last test orders for these chemicals on January 28, 2010, so all sales and distribution of diethyl phthalate and methyl ethyl ketone for use in formulating pesticide products were to have ceased as of July 28, 2010. EPA has also been performing outreach to trade groups to inform them about the potential loss of these chemicals as inert ingredients. This **Federal Register** document provides further notice.

Any commodities treated with pesticide products containing the inert ingredients diethyl phthalate and methyl ethyl ketone and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that:

i. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

ii. The residue does not exceed the level that was authorized, at the time of the application or use, to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. Statutory and Executive Order Reviews

EPA is proposing to revoke the exemptions from the requirement of a tolerance for diethyl phthalate and methyl ethyl ketone. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the *Unfunded Mandates Reform Act of 1995* (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this proposed rule, do not require the issuance of a proposed rule, the requirements of the *Regulatory Flexibility Act* (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November

9, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for 40 CFR part 180 continues to read as follows:

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

§ 180.920 [Amended]

2. In § 180.920, the table is amended by removing the entire entry for ''Methyl ethyl ketone.''

§ 180.930 [Amended]

3. In § 180.930, the table is amended by removing the entire entry for ''Diethylphthalate.''

[FR Doc. 2012–6210 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13, 17, and 23

[Docket No. FWS–R9–IA–2010–0083; 96300–1671–0000–R4]

RIN 1018–AW82

Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Fifteenth Meeting of the Conference of the Parties to CITES; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: On March 8, 2012, we, the Fish and Wildlife Service (FWS or Service), published a proposed rule to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by incorporating certain provisions adopted at the fourteenth and fifteenth meetings of the Conference of the Parties (CoP14 and CoP15) to CITES and clarifying and updating certain other provisions. Inadvertently, we made some errors in the **DATES** and **ADDRESSES** sections concerning the information collection aspects of the proposal. With this technical correction, we correct those errors.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, 703–358–2093.

SUPPLEMENTARY INFORMATION: On March 8, 2012 (77 FR 14200), we published a proposed rule to revise the regulations that implement CITES. Inadvertently, we made some errors in the **DATES** and **ADDRESSES** sections concerning the information collection aspects of the proposal. With this technical correction, we correct those errors.

Under **DATES**, we printed an incorrect date for the deadline for comments on the information collection aspects of the proposed rule. The correct date is April 9, 2012. Comments on the information collection aspects of this proposed rule will be considered if received by April 9, 2012.

Under **ADDRESSES**, we printed an incorrect address to which to provide us a copy of your comments on the information collection aspects of the proposed rule. Please provide those comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 N. Fairfax Drive, Arlington, VA 22203.

Dated: March 8, 2012.

Sara Prigan,

Federal Register Liaison.

[FR Doc. 2012–6104 Filed 3–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BB42

Groundfish Fisheries of the Exclusive Economic Zone Off Alaska and Pacific Halibut Fisheries; Observer Program

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

ACTION: Notification of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 86 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 76 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as the FMPs) to NMFS for review. If approved, Amendments 86 and 76 would add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants at 50 CFR 679.50. The new funding and deployment system would allow NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action is necessary to resolve data quality and cost equity concerns with the Observer Program's existing funding and deployment structure. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMPs, and other applicable law.

DATES: Comments on Amendments 86 and 76 must be received by May 14, 2012.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0210, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NMFS–2011–0210 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov without change.* All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 86 to the FMP for Groundfish of the BSAI and Amendment 76 to the FMP for Groundfish of the GOA, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Brandee Gerke, 907–586–7228.

SUPPLEMENTARY INFORMATION: The MSA requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The MSA also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 86 to the FMP for Groundfish of the BSAI and proposed Amendment 76 to the FMP for Groundfish of the GOA are available for public review and comment.

Amendments 86 and 76 were unanimously adopted by the North Pacific Fishery Management Council in October 2010. If approved by the Secretary, these amendments would add a funding and deployment system for observer coverage to the existing Observer Program and amend existing observer coverage requirements for vessels and processing plants at 50 CFR 679.50. The new funding and deployment system would allow NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. These amendments would also add groundfish vessels less than 60 ft. in length and halibut vessels to the Observer Program. Although the North Pacific halibut fisheries are not subject to the amendments, section 313 of the MSA authorizes their inclusion in the new funding and deployment system.

The proposed amendments would divide the existing Observer Program into two observer coverage categories—partial and full. Operations with less than 100 percent observer coverage requirements would be in the partial observer coverage category and operations required to have 100 percent of their operations observer would be in the full observer coverage category. Operations in the full coverage category would continue to contract directly with observer providers to meet their required observer coverage within the existing framework where they pay their actual observer costs directly to the provider. With limited exceptions for operations with minimal processing history, all vessels designated as catcher/processors and motherships would be in the full coverage category. Catcher vessels would be in the full coverage category while participating in pollock fisheries in the Bering Sea and Rockfish Program fisheries in the GOA. Shoreside processors and stationary floating processors would be in the full coverage category only while participating in Bering Sea pollock fisheries where observers conduct a full census of incidentally-caught Chinook salmon.

The partial coverage category would comprise the restructured funding and deployment system. All catcher vessels fishing for halibut with hook-and-line gear or directed fishing for groundfish would be included in the partial coverage category; except for catcher vessels directed fishing for Bering Sea pollock or participating in the Gulf of Alaska Rockfish Program. All shoreside processors and stationary floating processors would be in the partial coverage category except for processors receiving Bering Sea pollock deliveries. A small number of catcher/processors with a history of minor processing would also be included in the partial coverage category. Operations in the partial coverage category would pay an ex-vessel value-based fee to NMFS, which would be used to fund direct contracts between NMFS and an observer provider(s) to deploy observers in the partial coverage category according to a randomized design. Annually NMFS would release a Deployment Plan outlining the sample design and vessel selection probabilities for the upcoming fishing year. The objective of the randomized sample design is to collect statistically reliable estimates of total catch and catch composition in the partial coverage category fisheries.

The Observer Program has provided the best available scientific information for managing North Pacific groundfish fisheries and developing measures to minimize bycatch in furtherance of the purposes and national standards of the MSA since 1991. However, the quality and utility of observer-collected data are deficient due to the current structure of procuring and deploying observers in fisheries with less than 100 percent observer coverage requirements. Under the current program, coverage requirements vary according to vessel length or the quantity of fish processed, and vessels less than 60 ft. length overall (LOA) and vessels fishing for

halibut are exempt from coverage. A vessel equal to or greater than 60 ft. LOA, but less than 125 ft. LOA must carry an observer during at least 30 percent of its fishing days in a calendar quarter (30 percent coverage). Vessel owners and operators in the 30 percent coverage category choose when to carry observers, which statistically bias estimates of catch and bycatch.

Under the current program, owners of smaller vessels pay observer costs that are disproportionately high relative to their gross earnings. Operators of vessels with no observer coverage requirements do not contribute to the cost of observer coverage, though they benefit from management based on the observer-data collected. Amendments 86 and 76 would resolve the data quality and cost equity concerns with the existing funding and deployment structure for observers in fisheries with less than 100 percent coverage requirements.

Public comments are being solicited on proposed Amendments 86 and 76 to the FMPs through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendments 86 and 76, following NMFS's evaluation of the proposed rule under the MSA. Public comments on the proposed rule must be received by the end of the comment period on Amendments 86 and 76 to be considered in the approval/disapproval decision on Amendments 86 and 76. All comments received by the end of the comment period on Amendments 86 and 76, whether specifically directed to the FMPs or to the proposed rule, will be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received, not just postmarked or otherwise transmitted, by 1700 hours Alaska local time on the last day of the comment period.

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

Dated: March 9, 2012.

Steven Thur,

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

[FR Doc. 2012–6197 Filed 3–13–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 50
Wednesday, March 14, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Presidential Memorandum of February 21, 2012; Driving Innovation and Creating Jobs in Rural America Through Biobased and Sustainable Product Procurement

On February 21, 2012, President Barack Obama issued a memorandum to the Heads of Executive Departments and Agencies directing that they effectively execute Federal procurement requirements for biobased products, including those requirements identified in Executive Order 13514 and prescribed in the 2002 Farm Bill, as amended by the 2008 Farm Bill. The text of this memorandum reads:

The BioPreferred program—established by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill), and strengthened by the Food, Conservation and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill)—is intended to increase Federal procurement of biobased products to promote rural economic development, create new jobs, and provide new markets for farm commodities. Biobased and sustainable products help to increase our energy security and independence.

The Federal Government, with leadership from the Department of Agriculture (USDA), has made significant strides in implementing the BioPreferred program. It is one of the key elements in my efforts to promote sustainable acquisition throughout the Government under Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance). Further efforts will drive innovation and economic growth and create jobs at marginal cost to the American public.

The goal of this memorandum is to ensure that executive departments and agencies (agencies) effectively execute Federal procurement requirements for biobased products, including those requirements identified in Executive Order 13514 and prescribed in the 2002 Farm Bill, as amended by the 2008 Farm Bill. It is vital that these efforts are in accord and carefully coordinated with other Federal procurement requirements.

Therefore, I direct that agencies take the following steps to significantly increase Federal procurement of biobased and other sustainable products.

Section 1. Actions Related to Executive Order 13514

(a) Agencies shall include and report on biobased acquisition as part of the sustainable acquisition goals and milestones in the Strategic Sustainability Performance Plan required by section 8 of Executive Order 13514.

(b) As required by section 2(h) of Executive Order 13514, agencies shall ensure that 95 percent of applicable new contract actions for products and services advance sustainable acquisition, including biobased acquisition, where such products and services meet agency performance requirements. In doing so, agencies shall:

(i) Include acquisition of biobased products in their Affirmative Procurement Programs and Preferable Purchasing Programs, as applicable (as originally required by Executive Order 13101 of September 14, 1998 (Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition) and reinforced by Executive Order 13423 of January 24, 2007 (Strengthening Federal Environmental, Energy, and Transportation Management) and Executive Order 13514);

(ii) include biobased products as part of their procurement review and monitoring program required by section 9002(a) of the 2008 Farm Bill, incorporating data collection and reporting requirements as part of their program evaluation; and

(iii) provide appropriate training on procurement of biobased products for all acquisition personnel including requirements and procurement staff.

(c) The Office of Management and Budget (OMB) shall emphasize biobased purchasing in the fiscal year 2012 and 2013 Sustainability/Energy scorecard, which is the periodic evaluation of agency performance on sustainable acquisition pursuant to section 4 of Executive Order 13514.

Section 2. Biobased Product Designations

The USDA has already designated 64 categories of biobased products for preferred Federal procurement. Although these categories represent an estimated 9,000 individual products, less than half of the known biobased products are currently included in the preference program. Increasing the number of products subject to the Federal procurement preference will increase procurement of biobased products. Therefore, I direct the Secretary of Agriculture to:

(a) Increase both the number of categories of biobased products designated and individual products eligible for preferred purchasing by 50 percent within 1 year of the date of this memorandum; and

(b) establish a Web-based process whereby biobased product manufacturers can request USDA to establish a new product category for designation. The USDA shall determine the merit of the request and, if the product category is deemed eligible, propose designation within 180 days of the request.

Section 3. Changes in Procurement Mechanisms

Several actions can be taken to facilitate improvement in and compliance with the requirements to purchase biobased products. To achieve these changes, I direct:

(a) The Senior Sustainability Officers and Chief Acquisition Officers of all agencies to randomly sample procurement actions (such as solicitations and awards) to verify that biobased considerations are included as appropriate. Agencies shall include results of these sampling efforts in the Sustainability/Energy scorecard reported to OMB;

(b) the Secretary of Agriculture to work with relevant officials in agencies that have electronic product procurement catalogs to identify and implement solutions to increase the visibility of biobased and other sustainable products;

(c) the Senior Sustainability Officers of all agencies that have established agency-specific product specifications, in coordination with any other appropriate officials, to review and

revise all specifications under their control to assure that, wherever possible and appropriate, such specifications require the use of sustainable products, including USDA-designated biobased products, and that any language prohibiting the use of biobased products is removed. The review shall be on a 4-year cycle. Significant review should be completed within 1 year of the date of this memorandum, and the results of the reviews shall be annually reported to OMB and the Office of Science and Technology Policy (OSTP); and

(d) the Secretary of Agriculture to amend USDA's automated contract writing system, the Integrated Acquisition System, to serve as a model for biobased product procurement throughout the Federal Government by adding elements related to acquisition planning, evaluation factors for source selection, and specifications and requirements. Once completed, USDA shall share the model with all agencies and, as appropriate, assist any agency efforts to adopt similar mechanisms.

Section 4. Small Business Assistance

A majority of the biobased product manufacturers and vendors selling biobased products and services that use biobased products to the Federal Government are small businesses. To improve the ability of small businesses to sell these products and services to the Federal Government, I direct:

(a) The Secretary of Commerce, in consultation with the Secretary of Agriculture, to use relevant programs of the Department, such as the Manufacturing Extension Partnership network, to improve the performance and competitiveness of biobased product manufacturers;

(b) the Secretary of Agriculture to work cooperatively with Procurement Technical Assistance Center programs located across the Nation to provide training and assistance to biobased product companies to make these companies aware of the BioPreferred program and opportunities to sell biobased products to Federal, State, and local government agencies; and

(c) the Secretary of Agriculture to develop training within 6 months of the date of this memorandum for small businesses on the BioPreferred program and the opportunities it presents, and the Administrator of the Small Business Administration (SBA) to disseminate that training to Small Business Development Centers and feature it on the SBA Web site.

Section 5. Reporting

The Federal Government should obtain the most reliable information to gauge its progress in purchasing biobased products, including measuring the annual number of procurements that include direct purchase of biobased products, the annual number of construction and service contracts that include the purchase of biobased products, and the annual volume and type of biobased products the Federal Government purchases. I direct that:

(a) Within 1 year of the date of this memorandum, the Federal Acquisition Regulatory Council shall propose an amendment to the Federal Acquisition Regulation to require reporting of biobased product purchases, to be made public on an annual basis; and

(b) following the promulgation of the proposed amendment referenced in subsection (a) of this section, the Secretary of Agriculture, in consultation with the Chief Acquisition Officers Council, shall develop a reporting template to facilitate the annual reporting requirement.

Section 6. Jobs Creation Research

Biobased products are creating jobs across America. These innovative products are creating new markets for agriculture and expanding opportunities in rural America. Therefore, I direct the Secretary of Agriculture to prepare a report on job creation and the economic impact associated with the biobased product industry to be submitted to the President through the Domestic Policy Council and OSTP within 2 years of the date of this memorandum. The study shall include:

(a) The number of American jobs originating from the biobased product industry annually over the last 10 years, including the job changes in specific sectors;

(b) the dollar value of the current domestic biobased products industry, including intermediates, feedstocks, and finished products, but excluding biofuels;

(c) a forecast for biobased job creation potential over the next 10 years;

(d) a forecast for growth in the biobased industry over the next 10 years; and

(e) jobs data for both biofuels and biobased products, but shall generate separate data for each category.

Section 7. Education and Outreach

In compliance with the 2002 Farm Bill, several agencies established agency promotion programs to support the biobased products procurement preference. The Federal Acquisition Institute has added biobased procurement training to its course offerings. To assure both formal and informal educational and outreach instruction on the BioPreferred program are in place and being implemented by each agency, I direct:

(a) The Secretary of Agriculture to update all existing USDA BioPreferred and related sustainable acquisition training materials within 1 year of the date of this memorandum;

(b) the Senior Sustainability Officers and Chief Acquisition Officers of agencies to work cooperatively with the Secretary of Agriculture to immediately implement such BioPreferred program agency education and outreach programs as are necessary to meet the requirements of this memorandum and relevant statutes; and

(c) the Secretary of Agriculture to work actively with the Committee for Purchase From People Who Are Blind or Severely Disabled to promote education and outreach to program, technical, and contracting personnel, and to purchase card holders on BioPreferred AbilityOne products.

Section 8. General Provisions

(a) This memorandum shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this memorandum shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policies set forth in this memorandum, to the extent the head of the agency determines practicable.

(c) For purposes of this memorandum, ''biobased product'' shall have the meaning set forth in section 8101(4) of title 7, United States Code.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Agriculture is hereby authorized and directed to publish this memorandum in the **Federal Register**.

Dated: March 8, 2012.

Pearlie S. Reed,

Assistant Secretary for Administration, S. Department of Agriculture.

[FR Doc. 2012–6101 Filed 3–13–12; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revised System of Records

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice of the revision of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Agriculture proposes to revise an existing Department of Agriculture system of records notice now titled, USDA/OCIO–2 eAuthentication Service (eAuth). The USDA eAuth provides the public and government businesses with a single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA's eAuth collects customer information through an electronic self-registration process provided through the eAuth Web site. This System of Records Notice was previously published as ''USDA eAuthentication Service'' in **Federal Register** Vol. 71, No. 143 on Wednesday July 26, 2006. The revision reflects updates to the system name; the system location; routine uses; storage policies; safeguards; retention and disposal; the system manager; and notification, record access, and contesting procedures.

DATES: Submit comments on or before April 23, 2012. This new system will be effective April 23, 2012.

ADDRESSES: You may submit comments, identified by docket number USDA/OCIO–2 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (970) 295–5168.
- *Mail:* Chris North, Enterprise Applications Services Director, eAuthentication, 2150 Centre Avenue, Suite 208, Fort Collins, Colorado 80526.
- *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.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Shari Erickson, Program Manager, (970) 295–5128, 301 South Howes Street, Suite 309, Fort Collins, Colorado 80521. For privacy issues, please contact: Ravoyne Payton, Chief Privacy Officer, Technology Planning, Architecture and E-Government, Office of the Chief Information Officer, Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

I. Background

The USDA eAuthentication Service provides USDA Agency customers and employees single sign-on capability and electronic authentication and authorization for USDA Web applications and services. Through an online self-registration process, USDA Agency customers and employees can obtain accounts as authorized users that will provide access to USDA resources without needing to re-authenticate within the context of a single Internet session. Once an account is activated, users may use the associated user ID and password that they created to access USDA resources that are protected by eAuthentication. Information stored in the eAuthentication Service may be shared with other USDA components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies as outlined in the routine uses or authorized by statute. This sharing will take place only after USDA 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. The revisions to this system of records include renaming the system to be consistent with the Department's naming system; updating the system location, storage policies, storage safeguards, and retention and disposal policies; and the system manager's location; and the notification, record access, and contesting procedures in order to be consistent with the Department's best practices. In addition, the routine uses were amended as follows:

- Former Routine Use 1 was deleted.
- Former Routine Use 2 was renumbered Routine Use 1 and revised.
- Former Routine Use 3 was renumbered Routine Use 2 and revised.
- Former Routine Use 4 was renumbered Routine Use 3 and revised.
- Former Routine Use 5 was renumbered Routine Use 4 and revised.
- Former Routine Use 6 was renumbered Routine Use 5 and revised.
- Routine Use 6 is added to permit disclosure to the Department of Justice in order to represent the government's interest in litigation.
- Routine Use 7 is added to permit disclosure to appropriate agencies, entities, and persons to prevent or address a security breach or suspected security breach.
- Former Routine Use 8 was deleted.

Dated: March 6, 2012.

Thomas J. Vilsack,

Secretary, Department of Agriculture.

SYSTEM OF RECORDS

USDA/OCIO–2

SYSTEM NAME:

USDA/OCIO–2 eAuthentication Service.

SECURITY CLASSIFICATION: UNCLASSIFIED.

SYSTEM LOCATION:

USDA–NRCS Information Technology Center, 2150 Centre Avenue Building A, Fort Collins, Colorado 80526; USDA–NITC, 8930 Ward Pkwy, Kansas City, Missouri 64114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who applied for and were granted access to USDA applications and services that are protected by eAuthentication. This includes members of the public and USDA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

CATEGORIES OF RECORDS IN THIS SYSTEM INCLUDE:

The eAuthentication system will collect the following information from individuals:

- Name
- Address
- Country of residence
- Telephone number
- Email address
- Date of birth
- Mother's maiden name
- The system will also require users to create a user ID and password

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government Paperwork Elimination Act (GPEA, Pub. L. 105–277) of 1998; Freedom to E-File Act (Pub. L. 106–222) of 2000; Electronic Signatures in Global and National Commerce Act (E-SIGN, Pub. L. 106–229) of 2000; eGovernment Act of 2002 (H.R. 2458).

PURPOSE(S):

The records in this system are used to electronically authenticate and authorize users accessing protected USDA applications and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system may be disclosed outside USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To external Web applications integrated with the government's federated architecture for authentication. Prior to any disclosure of information under this architecture, the user will request access to an external application with their USDA credential. All external applications will have undergone rigorous testing before joining the architecture. eAuthentication acts as a single sign-on point for USDA Agency applications. This allows a USDA customer to sign onto any USDA applications they have been authorized on via a single sign-on.

2. When a record on its face, on in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program, statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

3. To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. To a congressional office in response to an inquiry made at the written request of the individual to whom the record pertains.

5. At the individual's request to any Federal department, State or local agencies, or USDA partner utilizing or interfacing with eAuthentication to provide electronic authentication for electronic transactions. The disclosure of this information is required to securely provide, monitor, and analyze the requested program, service, registration, or other transaction.

6. To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

7. To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the USDA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored and maintained electronically on USDA-owned and operated systems in Kansas City, Missouri and Fort Collins, Colorado.

RETRIEVABILITY:

Records can be retrieved by name, username, or system ID.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with approved retention schedules, including: (1) Audit Reports File (N1–485–08–2, item 17), which provides for annual cut-off and for destruction 10 years after cutoff; and (2) Audit Work papers (N1–485–08–2, item 2), which provides for annual cut-off and for destruction 6 years and 3 months after cut-off. Additional approved schedules may apply. Destruction of records shall occur in the manner(s) appropriate to the type of record, such as shredding of paper records and/or deletion of computer records.

SYSTEM MANAGER AND ADDRESS:

Program Manager—Identity and Access Management, 301 South Howes Street, Suite 309, Fort Collins, Colorado 80521.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.dm.usda.gov/foia.htm* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits

statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250. In addition, you should provide the following:

• An explanation of why you believe the Department would have information on you,

• Identify which component(s) of the Department you believe may have the information about you,

• Specify when you believe the records would have been created,

• Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information from the system will be submitted by the user. When a user wishes to transact with USDA or its partner organizations electronically, the user must enter name, address, country of residence, telephone number, date of birth, mother's maiden name, username, and password. As the USDA eAuthentication Service is integrated with other government or private sector authentication systems, data may be obtained from those systems to facilitate single-sign on capabilities with the user's permission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

U.S. Department of Agriculture Narrative Statement on Revised eAuthentication System of Records Under the Privacy Act of 1974 USDA/OCIO–2 eAuthentication Service

The U.S. Department of Agriculture (USDA) eAuthentication Service provides USDA Agency customers and employees single sign-on capability and electronic authentication and authorization for USDA Web applications and services. Through an online self-registration process, USDA Agency customers and employees can obtain accounts as authorized users that will provide access to USDA resources without needing to re-authenticate within the context of a single Internet session. Once an account is activated, users may use the associated user ID and password that they created to access USDA resources that are protected by eAuthentication. Information stored in the eAuthentication Service may be shared with other USDA components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies as outlined in the routine uses or authorized by statute. This sharing will take place only after USDA 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. USDA is publishing the routine uses pursuant to which it may disclose information about individuals to the extent the disclosure is consistent with the purpose for which the information was collected. Routine uses include disclosure to external Web applications upon user request, to other government agencies for law enforcement purposes if the record on its face or in conjunction with other records indicates a violation of law, to a court or adjudicative body if relevant and necessary to appropriate litigation, to a congressional office upon written request of the individual, to other government entities of USDA partners upon user request, to USDA contractors or industry to identify fraud, waste, or abuse to the Department of Justice if relevant and necessary for appropriate litigation, or to agencies, entities, or persons to prevent or remedy security breach. The authority for maintaining this system is derived from: Government Paperwork Elimination Act (GPEA, Pub. L. 105–277) of 1998; Freedom to E-File Act (Pub. L. 106–222) of 2000; Electronic Signatures in Global and National Commerce Act (E-SIGN, Pub. L. 106–229) of 2000; eGovernment Act of 2002 (H.R. 2458).

Probable or potential effects on the privacy of individuals:

Although there is some risk to the privacy of individuals, that risk is outweighed by the benefits to those individuals who will be able to access multiple programs and applications with a single login. In addition, the safeguards in place will protect against unauthorized disclosure. Records are accessible only to individuals who are authorized, and physical and electronic safeguards are employed to ensure security. eAuthentication has a current Authority to Operate obtained via the completion of a Cyber Security Certification and Accreditation (C&A). A satisfactory risk assessment has been performed.

OMB information collection requirements:

OMB information collection approval: OMB No. 0503–0014

[FR Doc. 2012–6089 Filed 3–13–12; 8:45 am]

BILLING CODE 3410–ZV–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Farm Records File (Automated) System of Records

AGENCY: Department of Agriculture (USDA).

ACTION: Notice of revision to Privacy Act system of records.

SUMMARY: This notice proposes to revise the Privacy Act System of Records titled Farm Records File (Automated) USDA/FSA–2. The records include information about the majority of agricultural producers in the United States. In general, the Farm Service Agency (FSA) proposes to revise the system of records to make minor corrections and updates to meet additional requirements.

DATES: We will consider comments that we receive on or before April 13, 2012. The revised system of records and routine uses will become effective 40 days after publication, on April 23, 2012, unless modified by a subsequent notice to incorporate changes resulting from public comments.

ADDRESSES: We invite you to submit comments on this notice. In your comment, include the system of records number (USDA/FSA–2). You may submit comments by any of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Virginia Haynes, PECD FSA USDA, 1400 Independence Ave. SW., Mail Stop 0517, Department of Agriculture, Washington, DC 20250–0517.

• *Hand Delivery or Courier:* Deliver comments to the above address.

Instructions: All comments will be made public by USDA and will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For general questions, contact: Virginia Haynes, (202) 690–2798. For privacy

issues, contact: Ravoyne Payton, (202) 720–8755. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: FSA maintains the Farm Records File (Automated) USDA/FSA–2 Privacy Act (5 U.S.C. 552a) system of records to collect and manage information about the majority of agricultural producers in the United States. The mission of FSA is to deliver Federal farm program benefits and loans to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agricultural products. The system of records covers information regarding farm and ranch owners, operators, tenants, borrowers, and other agricultural producers.

FSA proposes to revise the current designations in USDA/FSA–2 from a numbered routine use designation to a lettered designation and to reorder the current routine uses. In addition, FSA proposes to revise 14 existing routine uses, delete 2 unnecessary routine uses, establish 6 new routine uses, and make miscellaneous corrections throughout the system of records notice to update and better reflect the information in the system of records and to update the system of records notice to comply with the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1515(j)), the Federal Funding Accountability and Transparency Act (31 U.S.C. 6101–6104), similar laws, and to comply with new requirements of the confidentiality provisions in section 1619 (7 U.S.C. 8791(b)) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246; referred to as the 2008 Farm Bill). Section 1619(b) of the 2008 Farm Bill prohibits disclosure of information concerning an agricultural operation, farming or conservation practice, or the land itself that agricultural producers or owners of agricultural land provide in order to participate in USDA programs; there are certain limited exceptions.

FSA proposes to (1) revise currently designated routine uses to lettered designations and reorder the routine uses; (2) revise currently designated routine uses 1 through 8, 10 through 23, and 25; (3) delete currently designated routine uses 9 and 24; and (4) add six new routine uses to be designated as routine uses A, C, D, F, Z, and BB. The revised designations and order are shown in the following table, listed in the new order:

Redesignated routine use letter	Former routine use No.	Status (new, revised, redesignated, or deleted)
A	.....	new.
B	4	revised.
C	.....	new.
D	.....	new.
E	25	revised.
F	.....	new.
G	2	revised.
H	1	redesignated.
I	5	redesignated.
J	6	redesignated.
K	7	revised.
L	8	revised.
M	10	redesignated.
N	11	revised.
O	12	redesignated.
P	13	revised.
Q	14	redesignated.
R	15	redesignated.
S	16	redesignated.
T	17	revised.
U	18	revised.
V	19	redesignated.
W	20	revised.
X	21	revised.
Y	22	revised.
Z	.....	new.
AA	23	revised.
BB	.....	new.
CC	3	revised.
	9	deleted.
	24	deleted.

Proposed New Routine Use A

FSA is adding new routine use A to establish that FSA will disclose the records to the Department of Justice (including United States Attorney Offices) or other Federal agency when certain conditions are met.

Proposed New Routine Use C

FSA is adding a new routine use C to establish that FSA will disclose the records to the National Archives and Records Administration or to the General Services Administration for records management program purposes pursuant to 44 U.S.C. 2906(a)(1).

Proposed New Routine Use D

FSA is adding a new routine use D to establish that FSA will disclose the records to an agency, organization, or individual that is required for performing audit or oversight operations as authorized by law.

Proposed New Routine Use F

FSA is adding a new routine use F to establish that FSA will disclose the records to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, grant, cooperative agreement, or other assignment for USDA when certain conditions are met.

Proposed Revised Routine Use T (Formerly Routine Use 17)

FSA is revising the routine use to clarify that disclosure of records to members of Congress can include the names and specifically the correspondence addresses of all producers in the system of records rather than just the name and correspondence address of producers that are recipients of a USDA program payment.

Proposed Revised Routine Use U (Formerly Routine Use 18)

FSA is revising the routine use to clarify that FSA will disclose the names and correspondence addresses of producers who have FSA or Commodity Credit Corporation (CCC) commodity loans to the public when they need to prevent one of those producers from purchasing a commodity that has been placed under a CCC loan. This change specifies that the addresses that we will disclose will be the producer's correspondence address.

Proposed Revised Routine Use W (Formerly Routine Use 20)

FSA is revising the routine use to limit the disclosure of records to only those State-certified or State-licensed appraisers and employees of Federal agencies other than USDA who are actually performing real estate appraisals for USDA. This revision ensures the routine use is consistent with 7 U.S.C. 8791(b) and as such disclosure of information will be limited to the information needed when State-certified or State-licensed appraisers are providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practice (7 U.S.C. 8791(b)(3)(A)). In addition, FSA is removing the specific list of information that was able to be disclosed through the routine use.

Proposed Revised Routine Use X (Formerly Routine Use 21)

FSA is revising the routine use to limit disclosure of records to only Federal, State, local, Tribal agencies, and State universities, or those persons working in cooperation with the USDA Secretary in any Department program. In addition, FSA is removing the specific list of information that was able to be disclosed through the routine use.

Proposed Revised Routine Use Y (Formerly Routine Use 22)

FSA is revising the routine use to clarify the disclosure of certain electronic records in this system of records through incorporation of the records into the Comprehensive Information Management System (CIMS). Previously, routine use number 22 referred to RMA and the CIMS contractors as well as Approved Insurance Providers (AIPs), however they did not have the same access to the information in CIMS. The routine use now clearly provides full disclosure to RMA and CIMS contractors; this disclosure is in accordance with 7 U.S.C. 8002(b)(5). The routine use also limits disclosure to AIPs to only the producer reported information that is associated with the AIP's insured producers and that insured producer's farming operations and limits disclosure of Common Land Unit (CLU) information to a defined data set that will be provided only for those States in the AIP plan of operation.

RMA and FSA have executed a memorandum of understanding for sharing program specific data included in USDA/FSA–2, Farm Records File (Automated). As sister Federal agencies, RMA and FSA comply with the Privacy Act and ensure their contractors do the same. Specifically, as agreed to in the Memorandum of Understanding between FSA and RMA for sharing this data for the Data Mining Project, all program data collected and handled by either RMA or FSA will be treated with the full security requirements of current Federal legislation, Office of Management and Budget (OMB) memoranda, USDA departmental regulations, and USDA cyber security policies. Only those employees and contractors (or persons otherwise acting as agents) with a need to know will be provided access to such data. RMA has a current Privacy Impact Assessment for the system of records.

In addition, FSA is removing the specific list of information that was able to be disclosed through the routine use.

Proposed New Routine Use Z

FSA is adding a new routine use Z to specify that FSA will disclose the records to RMA contractors for use in the USDA data warehouse and data mining operation. RMA will use the information to search or ''mine'' existing data records to compare insurance policies and detect individual producers whose policies demonstrate atypical patterns, which sometimes indicate fraudulent activity or possible breach of policy terms. Data mining may also be used to analyze and uncover larger national patterns that may indicate patterns of fraud, waste, and abuse. The data mining operation is authorized by the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1515(j)). This limited disclosure is within FSA's mandate to promote viable agriculture economy, and is necessary and appropriate for effective implementation of USDA programs.

Under this new routine use, RMA may provide data to AIPs, agents, or loss adjusters for the AIP's specific policyholders if analyses produced from the data mining operation reveal:

(1) Material contradictions in data reported to FSA and RMA; or

(2) A possible breach of policy terms.

FSA and RMA have entered into a memorandum of understanding in which RMA accepts responsibility for the security of privacy protected data, including information going to RMA's contractors, partners, and AIPs. RMA has certified that it will adhere to Federal Government data security statutes and regulations and that the data mining operation has a currently operative and approved security Certification and Accreditation in place. RMA has a current Privacy Impact Assessment for the system of records.

All information collected from customers by the AIPs for the Federal crop insurance program, as well as information received by AIPs from RMA, is covered by the provisions of the Privacy Act as the AIPs are contractually obligated to adhere to the Privacy Act. AIPs are accustomed to working with, and protecting, such information.

Proposed Revised Routine Use AA (Formerly Routine Use 23)

FSA is revising the routine use to clarify that records will only be disclosed to AIPs (excluding the AIP's insurance agents) and loss adjusters that request the information as required. The requester needs to specify the producer, the producer's identification number, and the type of information being requested. FSA will disclose records as requested that may include: the producer's names, crop name, County FSA Office address, program years, and the last 4 digits of tax ID number. In addition, upon request, FSA may disclose a copy of both current and prior Producer Print and Map Photocopies; Farm Operating Plan for Payment Eligibility Review for an Individual; and Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC)

Certification. In addition, as discussed above, FSA is removing the specific categories of information that FSA routinely shares with AIPs, their insurance agents, and loss adjusters.

Proposed New Routine Use BB

FSA is adding a new routine use BB to permit FSA to disclose names, locations, and award information identified by the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101–6104); section 204 of the E-Government Act of 2002 (44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403–440), or similar laws requiring agencies to make information publicly available concerning Federal financial assistance, including grants, sub-grants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders. This routine use will explicitly allow FSA to disclose records to the public as specified by those laws.

Proposed Revised Routine Use CC (Formerly Routine Use 3)

FSA is revising the routine use to clarify when the records will be disclosed. FSA will disclose the records to a court or adjudicative body in a proceeding not just when any record within the system of records constitutes evidence in a proceeding, or is sought in the course of discovery for records relevant to the subject of the proceeding. For FSA to disclose the information USDA must have reviewed the information and determined that it is both relevant and necessary to the litigation and USDA determined the use is for a purpose that is compatible with the purpose for which FSA collected the records. Further, FSA will only disclose the information when one of the following is a party to the litigation: FSA or any part of FSA, any FSA employee in an official capacity, or any FSA employee in an individual capacity if USDA has agreed to represent the employee, or the U.S. Government.

Deleted Routine Use 9

FSA is deleting routine use number 9. The deleted routine use addressed disclosure of information to the USDA Food Safety and Inspection Service. Because any such disclosure is intra-agency, it is already permitted as specified in the Privacy Act (see 5 U.S.C. 552a(b)(1)) and therefore the disclosure does not require a routine use.

Deleted Routine Use 24

FSA is deleting routine use number 24. The deleted routine use addressed disclosure of information to cooperating Federal, State, and local agencies, including State universities who are qualified to implement hurricane disaster programs or analyze the sugar industry. FSA is deleting routine use 24 because the releases permitted in routine use 24 are now included in the proposed revision to routine use X (which had been routine use 21).

Privacy Act

As required by the Privacy Act (specifically 5 U.S.C. 552a(r)) and implemented by the Office of Management and Budget (OMB) Circular A–130, USDA has provided a report of this system of records to the Office of Information and Regulatory Affairs, Office of Management and Budget; the Chairman, Committee on Government Reform and Oversight, House of Representatives; and the Chairman, Committee on Governmental Affairs, United States Senate on _____.

SYSTEM OF RECORDS

USDA/FSA–2

SYSTEM NAME:

Farm Records File (Automated).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), 1400 Independence Avenue SW., Stop 0539, Washington, DC 20250–0539.

Records are maintained at the FSA county offices, the FSA State offices, the FSA National office, the FSA Aerial Photography Field Office, the FSA Kansas City Commodity Office, and the USDA National Information Technology Center. The address of each FSA county office and FSA State office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.'' The FSA Aerial Photography Field Office is located in Salt Lake City, UT. The FSA Kansas City Commodity Office and the USDA National Information Technology Center are located in Kansas City, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farm and ranch owners, operators, tenants, borrowers, and other agricultural producers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system of records consists of electronic and hard copy documentation of participation in FSA programs, including active programs as well as discontinued programs. This includes names and addresses of producers and also includes, but is not limited to:

- Farm allotments, quotas, bases, and history;
- Compliance data; producer entity data;
- Combined producer data; production and marketing data;
- Lease and transfer of allotments and quotas;
- Appeals;
- New grower applications;
- Conservation program documents;
- Program participation and payment documents, including information related to a person's indirect interest in payments through shares or interest in a payee entity;
- Appraisals, leases, and data for farm reconstitution; and
- For payment limitation and conservation compliance purposes: financial statements, and other applicable farm information such as tax statements, wills, trusts, partnership agreements, and corporate charters.

The geospatial (GIS) data set contains producer boundaries of CLUs, farms, tracts, field identifiers and attributes used to identify the location of land that can be traced back to a producer's crops and benefits. By definition, a CLU identifies a farm's subdivisions and boundaries and is recommended as the common location identifier for reporting acreage.

Digital renditions of farm record boundaries include farm, tract, CLUs (fields), and personal attributes of that property including, but not limited to, cropland designation, wetland location, program participation designation (for example, Conservation Reserve Program or CRP), and presence of structures located on a property (for example, buildings, well heads, or other identifying structures).

Crop Acreage Data are used to promote a viable agriculture economy essential to effectively administering and enforcing the national crop insurance program and for the purpose of fulfilling loss adjustment obligations as well as audits and reviews of claims.

Specific automated systems processing the records include, but are not limited to:

- Acreage Reporting and Compliance Systems,
- Ag Credit System,
- Automated Price Support System,
- Average Crop Revenue Elections,

- Asparagus Revenue Market Loss Assistance,
- Cash Systems,
- COC Elections Systems,
- Commodity Management Systems,
- Commodity Operation Systems,
- Common Farm Programs Systems,
- Conservation Systems,
- Consolidated Farm Loan Program Information and Delivery System,
- Consolidated Financial Management Information Systems,
- Consolidated Natural Disaster Relief Programs,
- Consolidated Management System,
- Cooperative Marketing Association System,
- Cotton Management System,
- Customer Name and Address Systems,
- Dairy Disaster Assistance Program,
- Debt Systems,
- Direct Counter-Cyclical Enrollment and Payment Systems,
- Direct Loan Systems,
- Domestic Electronic Bid Entry System,
- Electronic Debt and Loan Restructuring System,
- Electronic Distribution of Disbursement Data,
- Enterprise Data Warehouse,
- Facility Loans Systems,
- Farm Business Plan Web Equity Manager,
- Farm Loan Programs Risk Assessment,
- Farm Programs Management Systems,
- Financial Management Systems,
- General Sales Manager Export Credit Guarantee System,
- Geographic Information Services (GIS),
- GIS Thin Client System,
- Grain Inventory Management System,
- Management of Ag Credit System,
- Market Loss Assistance Program,
- Milk Income Loss Contract,
- Natural Disaster Relief,
- Noninsured Crop Disaster Assistance Program,
- Payment Systems,
- Price Support Systems,
- Processed Commodities Inventory Management System,
- Program Loan Accounting System,
- Representative Link Manager System,
- Service Center Information Management System,
- Subsidiary Systems,
- Tobacco Transition Payment Program,
- Trade Adjustment Assistance, and
- Web-Based Supply Chain Management System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 450j, 450k, 450l, 1281–1393, 1421–1449, 1471–1472; 15 U.S.C. 714–714p; 16 U.S.C. 590a–590q, 1301–1311, 1606, 2101–2111, 2201–2206, 3501, 3801–3845, 4601, 26 U.S.C. 6109; 40 U.S.C. 14101, 14505, and 43 U.S.C. 1592.

PURPOSE(S):

To deliver Federal farm program benefits and loans legislated by Congress to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agriculture products.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records or information contained in this system of records may be disclosed outside USDA as a routine use (see 5 U.S.C. 552a(b)(3)) as follows:

A. To the Department of Justice when:

1. USDA or any part of USDA;

2. Any USDA employee in an official capacity if the Department of Justice has agreed to represent the employee; or

3. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which FSA collected the records.

B. To a Member of Congress or to a Congressional staff member in response to a request of the Congressional office made at the written request of the constituent about whom the record is maintained.

C. To the National Archives and Records Administration or to the General Services Administration, for records management inspections conducted as specified in 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to the specific audit or oversight.

E. To appropriate agencies, entities, and persons when:

1. USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system of records or other systems or programs (whether maintained by USDA or another agency or entity) or harm to the individuals that rely on the information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors, grantees, experts, consultants, and their agents, and others performing or working on a contract, grant, cooperative agreement, or other assignment for USDA, when necessary to accomplish a USDA function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

G. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general law or particular program law, or by regulation, rule, or order issued as a result of that law, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the law, or rule, regulation, or order issued as a result of that law, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

H. To a cooperative marketing association (CMA), designated marketing association (DMA), or loan servicing agent (LSA) approved to carry out Commodity Credit Corporation (CCC) price support loan and marketing programs. Records that will be disclosed include only data that is necessary for the CMA, DMA, or LSA to make producer eligibility determinations, reasonable quantity determinations, producer payment limitations, and denied benefit determinations.

I. To the Internal Revenue Service to establish the tax liability of individuals as required by the Internal Revenue Code.

J. To State or local tax authorities having an agreement with CCC to withhold taxes or fees from loan proceeds.

K. To the Department of Interior, Bureau of Reclamation (BOR), but only that data necessary for the BOR to administer the Reclamation Act of 1982, as amended.

L. To boards or other entities authorized by State law to collect commodity assessments.

M. To the Peanut Board, with respect to producers of peanuts and their participation in the peanut price support program.

N. To the Department of Interior, Bureau of Indian Affairs, the name and correspondence address of producers to assist in the distribution of funds to Native American Indians.

O. To candidates for FSA county committee positions, the names and correspondence addresses of producers in the county for the purpose of county committee elections.

P. To the public, farm allotment and quota data for marketing quota crops, as allowed by the Agricultural Act of 1938, as amended, and payment information for farm and related programs including information of indirect benefits from payments as indicated by shares of each individual or entity that receive payments or that themselves are considered to have an indirect interest in payments.

Q. To State Foresters, the names and correspondence addresses of producers and crop-specific data regarding their operations with respect to forestry conservation practices.

R. To cotton buyers, the name and correspondence address of cotton producers.

S. To cotton ginners, the names, correspondence addresses, farm numbers, cotton yields, and cotton acreages of cotton producers.

T. To members of Congress, the names and correspondence addresses of all producers in the system of records.

U. To the public when they need to obtain the names and correspondence addresses of producers who have commodity loans with FSA or CCC to prevent one of those producers from purchasing a commodity that has been placed under a CCC loan.

V. To State or local taxing authorities or their contracted appraisal companies, the name and correspondence address of producers for tax appraisal purposes.

W. To State-certified or State-licensed appraisers and employees of Federal agencies qualified to perform and actually performing real estate appraisals for USDA. Records that will be disclosed include only the data that is necessary for the appraiser to complete the appraisal.

X. To cooperating persons or Federal, State, local, or Tribal agencies working in cooperation with the Secretary in any USDA program. Records that will be disclosed include only the data that is necessary for the cooperating person or agency to complete work on the USDA program.

Y. To any Federal agency or any approved insurance provider (AIP), the information collected using the Comprehensive Information Management System (CIMS) used to administer the programs of FCIC and FSA as specified in 7 U.S.C. 8002(b)(2). All information disclosed to CIMS may be further disclosed to any contractor engaged in the development or maintenance of CIMS. Select CIMS data may also be further disclosed to AIPs and AIP employees, insurance agents, and loss adjusters, but will be limited to only the producer reported information that is associated with a given AIP's insured producers and that insured producer's farming operations (for data to be disclosed, the producer must actually be insured by the given AIP). For the disclosure of CLU information, CIMS will provide the AIP a limited file of CLU information containing data elements for those States in the AIP plan of operation to include Shape, (CLU boundaries), Location State Code, Location County Code, Administrative State Code, Administrative County Code, CLU Number, CLU Calculated Acres, CLU Class, Last Change Date, Common Land Unit Identifier, Farm Number, Tract Number, and Field Number information. The limited CLU data set provided to the AIP will not contain data reported to FSA by the producer via the FSA–578 (for example, planted acres, name, address, crops, etc.).

Z. To any Federal agency or any AIP, the information in the USDA data warehouse and data mining operation collected as authorized by the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1515(j)). All information disclosed to the USDA data warehouse and data mining operation may be further disclosed to any contractor engaged in the development or maintenance of the USDA data warehouse and data mining operation. Select data may also be further disclosed to AIPs and AIP employees, insurance agents, and loss adjusters. Disclosure is limited to only the producer reported information that is associated with a given AIP's insured producers and that insured producer's farming operations (for data to be disclosed, the producer must actually be insured by the given AIP).

AA. To the AIPs (excluding the AIP's insurance agents) and loss adjusters. USDA will disclose records that may include the producer's name, crop name, County FSA Office address, program years, and the last 4 digits of producer's tax ID number. USDA may disclose a copy of both current and prior Producer Print and Map Photocopies, Farm Operating Plan for Payment Eligibility Review for an Individual, Highly Erodible Land Conservation (HELC), and Wetland Conservation (WC) Certification. Disclosure will be made only in response to a properly submitted request for certain information.

BB. USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101–6106); section 204 of the E-Government Act of 2002 (44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403–440), or similar laws requiring agencies to make available publicly names, locations, and other information concerning Federal financial assistance, including grants, subgrants, loan awards, cooperative agreements, and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

CC. To a court or adjudicative body in a proceeding when:

1. USDA or any part of USDA;

2. Any USDA employee in an official capacity;

3. Any USDA employee in an individual capacity if USDA has agreed to represent the employee; or

4. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which FSA collected the records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Records in this system of records are stored electronically on security measure protected (for example, e-authentication, password, restricted access protocol, etc.) databases, electronically on e-media devices (computer hard drive, magnetic disc, tape, digital media, CD, DVD, etc.), and on paper copy. Record storage is located within secured or locked facilities.

STORAGE:

See ''Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system'' above.

RETRIEVABILITY:

Records may be retrieved by the individual's name, Social Security

Number, tax identification number, loan number, and farm number.

SAFEGUARDS:

Records in this system of records are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are maintained in file folders and Department computer systems at applicable locations as set out above under the heading ''System Location.'' Detailed retention and disposal instructions are provided in Records Control Schedule RG 0145: Farm Service Agency and Records Control Schedule RG 0161: Commodity Credit Corporation.

SYSTEM MANAGER AND ADDRESS:

Deputy Administrator for Farm Programs, FSA, 1400 Independence Avenue SW., Stop 0539, Washington, DC 20250–0539.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains record pertaining to the individual from the System Manager above.

RECORDS ACCESS PROCEDURE:

To request notification of and access to any record contained in the system of records, or to contest the content of a record, submit a request in writing to the FSA FOIA officer or the FOIA officer for the relevant part of USDA responsible for your information (contact information is at *http://www.da.usda.gov/foia.htm* under ''Where to Send Requests''). If you believe more than one USDA agency maintains Privacy Act records concerning you, submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations in 7 CFR 1.110–1.122, as follows. Verify your identity by providing your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, which is a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250. In addition, you should provide the following:

- Explain why you believe USDA would have information on you,
- Identify which USDA agency you believe may have the information about you,
- Specify when you believe the records would have been created, and
- Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying agreement for you to access the records.

If your request does not include the information specified above, FSA may not be able to conduct an effective search, and may result in your request being denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system of records is submitted by FSA State and county committees and their representatives, the Office of Inspector General and other investigatory agencies, the Office of General Counsel, the Kansas City Commodity Office, the Natural Resources and Conservation Service, by third parties, and by the individual who is the subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: February 28, 2012.

Thomas J. Vilsack,

Secretary.

PRIVACY ACT SYSTEM USDA/FSA–2 FARM RECORDS FILE (AUTOMATED) REVISED NARRATIVE STATEMENT

The Farm Service Agency (FSA) maintains the Farm Records File (Automated) USDA FSA–2 Privacy Act (5 U.S.C. 552a) system of records to collect and manage information about the majority of agricultural producers in the United States. The purpose of this system is to deliver Federal farm program benefits and loans to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agricultural products. This system of records covers information regarding farm and ranch owners, operators, tenants, borrowers, and other agricultural producers.

The purposes of revising the USDA/FSA–2 Farm Records File (Automated) system of records are to: (a) establish new routine uses, (b) make minor corrections to other routine uses, (c) update to meet current Privacy Act requirements, and (d) revise the designations of routine uses from a numbered list to a lettered list and reorder the routine uses. One substantive change is to establish a new routine use to allow us to share data with the Risk Management Agency for the Data Mining Project. Also, section 1619 of the 2008 Farm Bill limits disclosure by the Department of information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department that is contained in the system.

Specifically, FSA is revising 23 existing routine uses (6 with substantive changes and 17 are only being revised or redesignated), removing 2 unnecessary routine uses, and establishing 6 new routine uses. A ''routine use'' identifies individuals, groups, and entities to whom USDA may disclose the information in the attached system of records and under what circumstances such disclosures may be made.

The system discloses routinely to various agencies (Federal, State, local), associations, organizations, entities information on USDA programs, operations and services information, to Congress information related to Congressional written requests to USDA, to the Department of Justice information on USDA records for litigations, to the Internal Revenue

Service information on USDA employee's tax information, to the Department of Interior information on USDA land data and funding to Native American Indians, to the USDA Risk Management Agency information on USDA data warehouse, data mining operation, and Comprehensive Information Management System, to the National Archives and Records Administration information on USDA records, to FSA employees personnel information, and to contractors information on working performance in certain USDA functions. New routine uses for disclosure of records to share FSA data as described in the system of records are compatible with the purpose of both FSA and RMA activities in using the information.

All information contained in this system is collected and maintained in accordance with the Privacy Act, Title 5, United States Code, Section 552a. The authorities for maintenance of the system are 7 U.S.C. 450j, 450k, 450l, 1281–1393, 1421–1449, 1471–1472; 15 U.S.C. 714–714p; 16 U.S.C. 590a–590q, 1301–1311, 1606, 2101–2111, 2201–2206, 3501, 3801–3845, 4601, 26 U.S.C. 6109; 40 U.S.C. 14101, 14505, and 43 U.S.C. 1592.

The Privacy Act system of records affects the privacy interests of individual producers whose information is contained in them. The privacy interests of the affected individual producers are more than ''de minimis,'' because the Privacy Act system of records contains detailed information about their farming operations and assets. However, USDA has determined that the routine uses and maintenance of this information are warranted. The privacy interests of these producers are balanced with: (1) The benefits that the producers receive as program recipients and (2) the need of the Government to detect fraud and abuse as it administers USDA programs.

Records in this system of records are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Additionally, records in this system of records are stored electronically on security measure protected (for example, e-authentication, password, restricted access protocol, etc.) databases, electronically on e-media devices (computer hard drive, magnetic disc, tape, digital media, CD, DVD, etc.), and on paper copy. Record storage is located within secured or locked facilities.

A new routine use for disclosure of record to share FSA data with RMA as described in the system of records is compatible with the purpose of both FSA and RMA activities in using the information.

The information collection requests associated with this system were submitted to the Office of Management and Budget (OMB) for Paperwork Reduction Act in the following table, which contained each OMB control number with the expiration date.

OMB Control No.	Expiration date	Agency and other information (Agency, Title, and relevant notes if any)
0348–0046	12/31/13	OMB
0551–0040	06/30/13	USDA Foreign Agricultural Service (FAS)
0560–0004	01/31/12	USDA Farm Service Agency (FSA)
0560–0026	12/31/13	FSA
0560–0082	7/31/2011	FSA
0560–0175	01/31/14	FSA
0560–0183	07/31/12	FSA
0560–0185	06/30/13	FSA
0560–0190	12/31/13	FSA
0560–0215	10/31/11	FSA
0560–0253	10/31/11	FSA
0563–0053	03/31/2012	Risk Management Service (Automated System)
0581–0093	05/31/2014	Agricultural Marketing Service

[FR Doc. 2012–6090 Filed 3–13–12; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0105]

Privacy Act Systems of Records; APHIS Veterinary Services User Fee System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a proposed new system of records; request for comment.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) proposes to add a system of records to its inventory of records systems subject to the Privacy Act of 1974, as amended. The system of records being proposed is the APHIS Veterinary Services User Fee System. This notice is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

Although the Privacy Act requires only that the portion of the system that describes the ''routine uses'' of the system be published for comment, we invite comment on all portions of this notice.

DATES: This system will be adopted without further notice on April 23, 2012 unless modified to respond to comments received from the public and published in a subsequent notice.

Comments must be received in writing, on or before April 13, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0105-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0105, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, Maryland 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0105* 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: Ms. Cecilia Fuller, Project Manager, Office of the Chief Information Officer, VS, APHIS, 2150 Centre Avenue, Building B, Fort Collins, CO 80256–8117; (970) 494–7296.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish in the **Federal Register** a notice of new or revised systems of records maintained by the agency. A system of records is a group of any records under the control of any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture (USDA) is proposing to add a new system of records, entitled APHIS Veterinary Services User Fee System (UFS), USDA–APHIS–18. It will be used to maintain a record of activities conducted by the agency pursuant to its responsibilities under the Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*), the Debt Collection Improvement Act of 1996 (31 U.S.C. 3711 *et seq.*), the Food, Agriculture, Conservation and Trade Act of 1990 (Pub. L. 101–624), and the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).

In order to ensure that animals and animal products do not introduce pests or diseases when imported into the United States, the Veterinary Services (VS) program of APHIS performs services related to the importation and exportation of animals, animal products, birds, germ plasm, organisms, and vectors. VS incurs costs associated with inspections and other services, such as the costs of maintaining import centers and quarantine facilities, diagnostic testing, inspectors' salaries, supplies, and other miscellaneous expenses. Any person for whom a service is provided related to the importation, entry, or exportation of an animal is required to pay for the expenses of such services.

The UFS automates the tracking, collection, and processing of fees due to VS for its services provided at remote offices, import centers, port offices, or the National Veterinary Services Laboratories in Ames, Iowa.

Payment of fees due to VS for its services must take place at the location of service at the time the service is provided. The UFS generates an invoice for the fees and provides a receipt for the user. Users may also request approval for an APHIS credit account. The UFS tracks the accuracy of expenditures and collections transactions of credit accounts. Information obtained in the credit account application is entered into the Foundation Financial Information System (FFIS), the official APHIS financial system.

The UFS database contains personally identifiable information about VS customers. It contains the name; the social security number of an individual or taxpayer identification number of a business; the address, including city, county, State, and postal code; the name of the business or organization and its telephone and fax numbers; and an email address. The UFS also contains information about the user's credit account, including charges and payments made, date(s) and type of service, and APHIS credit account information. Routine uses of records maintained in the system include categories of users and the purposes of such uses.

APHIS may routinely share data in the UFS with certain Federal agencies, including the Department of the Treasury, to obtain assistance in identifying and locating individuals who are delinquent in their payments of debt owed to the Federal Government while receiving Federal salary or benefit payments, for the purpose of collecting debts. Data may also be shared with a debt collection agency or a consumer reporting agency when APHIS determines that such referral is appropriate for collecting the debtor's account.

Other routine uses of this information include releases related to investigations pertaining to violations of law or related to litigation. A complete listing of the routine uses for this system is included in the accompanying document that is published along with this notice.

The proposed information collection requests associated with the UFS system have been approved by the Office of Management and Budget under the Paperwork Reduction Act.

Report on New System

A report on the new system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A–130, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Ranking Member, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Government Reform, House of Representatives; the Ranking Member, Committee on Oversight and Government Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Dated: March 6, 2012.

Thomas J. Vilsack,

Secretary.

USDA–APHIS–18

SYSTEM NAME:

APHIS Veterinary Services User Fee System (UFS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The UFS is physically located in a secured room in APHIS–VS offices in Fort Collins, CO, and a backup of the system is maintained in APHIS offices in Riverdale, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include any person for whom a service is provided related to the importation and exportation of animals, animal products, birds, germ plasm, organisms, and vectors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information such as the name; the social security number of an individual or taxpayer identification number of a business; the address, including city, county, State, postal code; the name of business or organization and its telephone and fax numbers; and an email address. The UFS also contains information about the user's credit account, including charges and payments made, date(s) and type of service, and APHIS credit account information.

PURPOSE(S) OF THE SYSTEM:

The UFS automates the collection and processing of fees due to VS for its services provided at remote offices, import centers, port offices, or the National Veterinary Services Laboratories in Ames, IA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Debt Collection Act of 1982 (31 U.S.C. 3701 et seq.), the Debt Collection Improvement Act of 1996 (31 U.S.C. 3711 et seq.), the Food, Agriculture, Conservation and Trade Act of 1990 (Pub. L. 101–624), and the Animal Health Protection Act (7 U.S.C. 8301 et

seq.). Routine uses of records maintained in the system include categories of users and the purposes of such uses.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records maintained in the system may be disclosed outside USDA as follows:

(1) To certain Federal agencies, including the Department of the Treasury, to obtain assistance in identifying and locating individuals who are delinquent in their payments of debt owed to the Federal Government while receiving Federal salary, tax refunds, or benefit payments, for the purpose of collecting debts;

(2) To a debt collection agency when USDA determines that such referral is appropriate for collecting the debtor's account as provided for in 31 U.S.C. 3718;

(3) To the appropriate agency, whether Federal, State, local, or foreign, charged with responsibility of investigating or prosecuting a violation of law or of enforcing, implementing, or complying with a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and either arising by general statute or particular program statute, or by rule, regulation, or court order issued pursuant thereto;

(4) To the Department of Justice when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee or the United States, in litigation, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(5) For use in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(6) To appropriate agencies, entities, and persons when the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, a risk of identity theft or fraud, or a risk of harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(7) To contractors and other parties engaged to assist in administering the program. Such contractors and other parties will be bound by the nondisclosure provisions of the Privacy Act. This routine use assists the agency in carrying out the program, and thus is compatible with the purpose for which the records are created and maintained;

(8) To USDA contractors, partner agency employees or contractors, or private industry employed to identify patterns, trends, or anomalies indicative of fraud, waste, or abuse; and

(9) To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information in the UFS may be disclosed to a consumer reporting agency when USDA determines that such referral is appropriate in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Policies and official guidelines for storing, retrieving, accessing, retaining, and disposing of records are outlined in the APHIS Records Management Handbook and are summarized below.

STORAGE:

Records are maintained on magnetic tape, optical disk, and mainframe. Paper records are maintained in offices that are locked during non-business hours and require the presentation of employee identification for admittance at all times. Backup media is taken weekly to an offsite storage facility and stored on tape.

RETRIEVABILITY:

Records in the UFS database are retrieved by name; social security number; taxpayer identification number; address; telephone and fax numbers; email address; claim number; date of service; type of service provided; payments made; and APHIS credit account numbers.

SAFEGUARDS:

Numerous inherent safeguards exist to protect the data in the UFS system. These safeguards include required login and authentication for network access, data encryption in transmission, physical and environmental protections, configuration management, and role-based access given on a need-to-know basis.

RETENTION AND DISPOSAL:

Electronic data is maintained in the database and on the file server for 7 years. Archived data is maintained indefinitely in a table with read-only access. Paper records are maintained for 6 years, 3 months.

SYSTEM MANAGERS(S) AND ADDRESS:

The Office of the Chief Information Officer-Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 58, Riverdale, MD 20737.

NOTIFICATION PROCEDURE:

Any individual may request general information regarding this system of records or information as to whether the system contains records pertaining to him/her from the system manager at the address above. All inquiries pertaining to this system should be in writing, must name the system of records as set forth in the system notice, and must contain the individual's name, telephone number, address, and email address.

RECORD ACCESS PROCEDURES:

Any individual may obtain information from a record in the system that pertains to him or her. Requests for hard copies of records should be in writing, and the request must contain the requesting individual's name, address, name of the system of records, timeframe for the records in question, any other pertinent information to help identify the file, and a copy of his/her photo identification containing a current address for verification of identification. All inquiries should be addressed to the Freedom of Information and Privacy Act Staff, Legislative and Public Affairs, APHIS, 4700 River Road Unit 50, Riverdale, MD 20737–1232.

CONTESTING RECORD PROCEDURES:

Any individual may contest information contained within a record in the system that pertains to him/her by submitting a written request to the system manager at the address above. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in the UFS system is provided by the person for whom a service is provided related to the importation and exportation of animals, animal products, birds, germ plasm, organisms, and vectors. APHIS employees will also enter data into the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PRIVACY ACT SYSTEM USDA–APHIS–18

System name: Veterinary Services User Fee System

NARRATIVE STATEMENT

The purpose of this new system of records, entitled Veterinary Services User Fee System (UFS), is to support activities and maintain records conducted by the agency pursuant to its mission and responsibilities under the Debt Collection Act of 1982 (31 U.S.C. 3701 et seq.), the Debt Collection Improvement Act of 1996 (31 U.S.C. 3711 et seq.), the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101–624), and the Animal Health Protection Act (7 U.S.C. 8301 et seq.).

Within this area of responsibility, the Animal and Plant Health Inspection Service's (APHIS) Veterinary Services (VS) program uses the Veterinary Services User Fee System to automate the tracking, collection, and processing of fees due to VS for its services provided at remote offices, import centers, port offices, or the National Veterinary Services Laboratories in Ames, IA.

In order to ensure that animals and animal products do not introduce pests or diseases when imported into the United States, the VS program of APHIS performs services related to the importation and exportation of animals, animal products, birds, germ plasm, organisms, and vectors. VS incurs costs associated with inspections and other services, such as the costs of maintaining import centers and quarantine facilities, diagnostic testing, inspectors' salaries, supplies, and other miscellaneous expenses. Any person for whom a service is provided related to the importation, entry, or exportation of an animal is required to pay for the expenses of such services.

The UFS generates an invoice for the fees, provides a receipt for the user, and tracks the accuracy of expenditures and collections transactions.

The UFS database contains personally identifiable information about VS customers. It contains name; social security number of an individual or taxpayer identification number of a business; address, including city, county, State, postal code; name of business or organization, telephone and fax numbers; and email address. The UFS also contains information about the user's credit account, including charges and payments made, date(s) and type of service, and APHIS credit account information.

The UFS is physically located in a secured room in APHIS–VS offices in Fort Collins, Colorado, and a backup of the system is maintained in APHIS offices in Riverdale, MD.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records maintained in the system may be disclosed outside the Department of Agriculture (USDA) for 9 routine uses. These routine uses may be described as functional and housekeeping uses.

The housekeeping routine uses include release of information to the appropriate agency charged with investigating a violation or potential violation of law; to the Department of Justice for the purpose of defending the United States in litigation, for use in a judicial or administrative proceeding; to appropriate entities or parties where there is a suspected or confirmed breach of security and the release is reasonably necessary to protect program interests or the interests of members of the public to prevent identity theft and fraud; to contractors or partner agencies for the purpose of seeking out fraud, waste, or abuse; and to the National Archives and Records Administration or to the General Services Administration.

The functional routine uses of the information being collected include release of information to contractors and other parties engaged to assist in administering the program; to certain Federal agencies, including the Department of the Treasury, to obtain assistance in identifying and locating individuals who are delinquent in their payments of debt owed to the Federal Government while receiving Federal salary, tax refunds, or benefit payments, for the purpose of collecting debts; and to a debt collection agency when the Department of Agriculture (USDA) determines that such referral is appropriate for collecting the debtor's account as provided for in 31 U.S.C. 3718.

While these routine uses allow disclosures outside USDA, and so have some impact on privacy of individuals, they are either necessary for carrying the agency mission and minimizing waste, fraud and abuse, are required by law, or benefit the subjects of the records. On balance, the needs of the agency and the benefits to the individuals of these disclosures justify the minimal impact on privacy.

Use of this system, as established, should not result in undue infringement on any individual's right to privacy. VS personnel will use the information in this system to automate the tracking, collection, and processing of fees due to VS for its services. All individuals about whom information in this system is maintained will voluntarily submit the information for the express purpose of utilizing VS services associated with the importation, entry, or exportation of an animal or animal product. These individuals or the industry in which they participate will receive benefits equal to or greater than any potential impact on their privacy.

To address privacy issues and ensure protection of information provided by employees and customers, VS has completed and received USDA approval of a privacy impact assessment (PIA), which has been posted on the USDA Privacy Policy Web site. The PIA provides detailed information about steps taken by the agency to minimize the risk of unauthorized access to the system. These steps include the use of required login and authentication for network access, data encryption in transmission, physical and environmental protections,

configuration management, and role-based security and access rights.

The following information collection devices associated with this system have been approved by the Office of Management and Budget under the Paperwork Reduction Act. They have been assigned control numbers, which are listed here with their expiration dates: 0579–0094 (exp. March 2012) and 0579–0055 (exp. March 2014).

[FR Doc. 2012–6092 Filed 3–13–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Nutrition Program Operations Study (SNPOS)

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved information collection for the Special Nutrition Program Operations Study (SNPOS).

DATES: Written comments on this notice must be received by May 14, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of John Endahl at 703–305–2576 or via email to *john.endahl@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302; Fax: 703–305–2576; Email: *john.endahl@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Special Nutrition Program Operations Study (SNPOS).

OMB Number: 0584–0562.

Expiration Date of Approval: 09/30/2014.

Type of Information Collection Request: Revision of a currently approved collection.

Abstract: The objective of the Special Nutrition Program Operations Study is to collect timely data on policies, administrative, and operational issues on the Child Nutrition Programs. The ultimate goal is to analyze these data and provide input for new legislation on Child Nutrition Programs as well as to provide pertinent technical assistance and training to program implementation staff.

The Special Nutrition Program Operation Study (SNPOS) will help the Food and Nutrition Service (FNS) better understand and address current policy issues related to Special Nutrition Programs (SNP) operations. The policy and operational issues include, but are not limited to, the preparation of the program budget, development and implementation of program policy and regulations, and identification of areas for technical assistance and training. Specifically, this study will help FNS obtain:

- General descriptive data on the Child Nutrition (CN) program characteristics to help FNS respond to questions about the nutrition programs in schools;
- Data related to program administration for designing and revising program regulations, managing resources, and reporting requirements; and
- Data related to program operations to help FNS develop and provide training and technical assistance for School Food Authorities (SFAs) and State Agencies responsible for administering the CN programs.

The activities to be undertaken subject to this notice include:

- Conducting a multi-modal (e.g. paper, Web, and telephone) survey of approximately 1,500 School Food Authority (SFA) Directors.
- Conducting a paper survey of all 56 State Agency Child Nutrition Directors.
- On-site data collection at 125 School Food Authorities from the School Foodservice Managers.

Affected Public: State, Local and Tribal Governments.

Type of Respondents: 1,500 School Food Authority (SFA) Directors, 125 School Foodservice Managers, and 56 State Child Nutrition Program Directors.

Estimated Total Number of Respondents: 1,681.

Frequency of Response: Once annually.

Estimated Annual Responses: 1,681.

Estimate of Time per Respondent and Annual Burden: Public reporting burden for this collection of information is estimated to average sixty (60) minutes per Self Administered Survey for the SFA Directors and the State Agency Child Nutrition Directors (this includes 30 minutes for data gathering and 30 minutes to respond to the questionnaire). Respondents in the SNOPS include 1,500 School Food Service Directors, 125 School Foodservice Managers involved in the onsite data collection, and 56 State Child Nutrition Program Directors. The annual reporting burden is estimated at 1,681 hours (see table below).

Data collection activity	Respondents	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)
Self Administered/Web/ Telephone Survey.	School Food Authority (SFA) Directors.	1,500	1	1,500	1	1,500

Data collection activity	Respondents	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)
Self Administered/Telephone Survey.	State Agency Child Nutrition Directors.	56	1	56	1	56
On-site Data Collection	School Food Service Managers.	125	1	125	16	2,000
Total	.....	1,681	.....	1,681	.....	3,556

Dated: March 6, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–6150 Filed 3–13–12; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Alaska Advisory Committee (Committee) to the Commission will meet on Thursday, April 5, 2012. The meeting will begin at 1 p.m. and adjourn on or about 4 p.m. The meeting will be held at the University of Alaska—Anchorage, Library Room 307, 3211 Providence Drive, Anchorage, AK 95508. The purpose of the meeting is to plan future Committee activities.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by Monday, May 7, 2012. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 9, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–6140 Filed 3–13–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting of the Montana Advisory Committee to the U.S. Commission on Civil Rights will convene via teleconference on Wednesday, April 4, 2012 [MDT]. The meeting will begin at 2 p.m. and adjourn on or about 4 p.m. The meeting will be held by teleconference. The purpose of the meeting is for the Advisory Committee to select a project topic to study.

The public dial-in number is 1–800–516–9896; Conference ID # 8334. Hearing-impaired persons who will attend the meeting should dial 711 for relay services and enter 1–800–516–9896, followed by Conference ID # 8334. Members of the public are entitled to submit written comments; the comments must be received in the regional office by May 4, 2012. Comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 999–18th Street, Suite 1380 South, Denver, CO 80202, faxed to (303) 866–1050, or emailed to *ebohor@usccr.gov.* In addition, persons who desire additional information may contact Malee Craft, Regional Director, Rocky Mountain Regional Office, by phone at (303) 866–1040.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Rocky Mountain Regional Office at the above email, address, or telephone number.

To ensure that the Commission secures an appropriate number of telephone lines for the public, persons are asked to contact the Rocky Mountain Regional Office 10 days before the meeting date either by email at *ebohor@usccr.gov* or by phone.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 9, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–6143 Filed 3–13–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[Docket No.: 110906558–2142–02]

Amendment to Privacy Act System of Records

AGENCY: Office of Inspector General (OIG), Department of Commerce.

ACTION: Notice; COMMERCE/DEPT–12, OIG Investigative Records.

SUMMARY: In order to update the system of records the Department of Commerce (DOC) publishes this notice to announce the effective date of an amended Privacy Act System of Records titled ''COMMERCE/DEPT–12, OIG Investigative Records.'' The notice of proposed amendment to this system of records was published in the **Federal Register**, 77 FR 2692–2697, on January 19, 2012.

DATES: The system of records becomes effective on March 14, 2012.

ADDRESSES: For a copy of the system of records please mail requests to: Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On January 19, 2012, the DOC published and requested comments on proposed amendments to the Privacy Act System of Records titled, at that time, ''Investigative and Inspection Records—COMMERCE/DEPT–12.'' Upon amendment, the system will be titled ''COMMERCE/DEPT–12, OIG Investigative Records.'' The amendment serves to generally update the system of records notice by, among other things, updating OIG's practices for electronically storing, retrieving, and safeguarding records in the system and updating OIG routine uses. No comments were received in response to the request for comments. By this notice, the DOC is adopting the proposed amendment to the system as final without changes effective March 14, 2012.

Dated: March 8, 2012.

Jonathan R. Cantor,

U.S. Department of Commerce, Chief Privacy Officer.

[FR Doc. 2012–6145 Filed 3–13–12; 8:45 am]

BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 9, 2011, the Department of Commerce (''Department'') published the *Preliminary Results* of the seventh administrative review and sixth new shipper review of the antidumping duty order on certain frozen fish fillets (''frozen fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results of these reviews. The final weighted-average margins are listed below in the ''Final Results of the Reviews'' section of this notice. The period of review (''POR'') is August 1, 2009, through July 31, 2010.

DATES: *Effective Date:* March 14, 2012.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3927 or (202) 482–2243, respectively.

Case History

As noted above, on September 9, 2011, the Department published the *Preliminary Results* of this administrative review. We extended the deadlines for submission of surrogate value (''SV'') comments and case briefs multiple times based on requests from interested parties. On December 29, 2011, the Department fully extended the time limit for completion of the final results of this administrative review.[2] On November 15, 2011, and January 6, 2012, parties submitted SV comments and SV rebuttal comments, respectively. On January 13, 2012, and January 27, 2012, parties submitted case and rebuttal briefs, respectively.

On December 30, 2011, Petitioners[3] submitted comments on Vinh Hoan Corporation's (''Vinh Hoan'') factors of production (''FOP'') methodology. On January 9, 2012, the Department placed certain factual information from the sixth administrative review regarding Vinh Hoan on the record, and also issued a supplemental questionnaire to Vinh Hoan. On January 18, 2012, Vinh Hoan responded to the supplemental questionnaire. On February 1 and February 6, 2012, parties submitted case and rebuttal briefs, respectively, pertaining to Vinh Hoan's FOP methodology. On December 29, 2011, January 24, 2012, and February 21, 2012, Petitioners and/or their counsel met with officials from the Department. On February 16, 2012, counsel for certain Respondents[4] and VASEP,[5] an interested party, met with officials from the Department. As a result of our analysis, we have made changes to the *Preliminary Results.*

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus.* Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100, 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[6] The order

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review,* 76 FR 55872 (September 9, 2011) (''*Preliminary Results*'').

[2] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for the Final Results of the Seventh Antidumping Duty Administrative Review,* 76 FR 81913 (December 29, 2010).

[3] This includes: Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (''Petitioners'')

[4] These companies include: Vinh Hoan; Vinh Quang Fisheries Corporation (''Vinh Quang''); QVD Food Company Ltd. (''QVD'') (the Department is treating QVD, QVD Dong Thap Food Co., Ltd., and Thuan Hung Co., Ltd. as a single entity in this review); and certain separate rate companies.

[5] Vietnam Association of Seafood Exports and Producers.

[6] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS. On March 2, 2011, the Department added two HTSUS

Continued

covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the Seventh Antidumping Duty Administrative Review,'' dated concurrently with this notice (''Issues & Decision Memo''), and which is hereby adopted by this notice. A list of the issues which parties raised is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU'') of the main Commerce Building, Room 7046. In addition, a complete version of the Issues and Decision Memorandum is accessible on the Web at *http://trade.gov/frn.* The paper copy and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded the review with respect to four companies: (1) IDI; (2) CL–Fish; (3) THIMACO; and (4) NTSF.[7] These companies reported that they had no shipments of subject merchandise to the United States during the POR. As we stated in the *Preliminary Results,* our examination of shipment data from U.S. Customs and Border Protection (''CBP'') for these companies confirmed that there were no entries of subject merchandise from them during the POR.[8] The Department did not receive any comments regarding the preliminary rescission for any company claiming no shipments. Therefore, we are rescinding the administrative review with respect to these four companies.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made certain revisions to the margin calculation for Vinh Hoan, and QVD. For the reasons explained in the I&D Memo at Comment 1, we have changed our primary surrogate country selection from Indonesia to Bangladesh. For all other changes to the calculations of Vinh Hoan and QVD, see the I&D Memo and company-specific analysis memorandum. For changes to the SVs, *see* the I&D Memo and ''Memorandum to the File, through Matthew Renkey, Acting Program Manager, AC/CVD Operations, Office 9, from Javier Barrientos, Senior Case Analyst, and Alexis Polovina, Case Analyst, AD/CVD Operations, Office 9, Seventh Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results,'' dated March 7, 2012.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[9] None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[10] In the *Preliminary Results,* we determined that in addition to the mandatory respondents, the Separate-Rate Applicants[11] also met the criteria for separate-rate status. The separate rate is determined based on the estimated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on AFA.[12]

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis* and rates based entirely on facts available.[13] Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis,* or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents, including ''averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

For this administrative review, the Department has calculated positive margins for one mandatory respondent,

numbers at the request of U.S. Customs and Border Protection (''CBP''): 1604.19.2000 and 1604 19.3000. On January 30, 2012, the Department added eight HTSUS numbers at the request of U.S. CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100, 1604.19.8100.

[7] International Development & Investment Corporation (''IDI''); Cuu Long Fish Joint Stock Company (''CL Fish''); Thien Ma Seafood Co., Ltd. (''THIMACO''); and NTSF Seafoods Joint Stock Company (''NTSF'').

[8] *See Preliminary Results.*

[9] *See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum (''*3rd AR Final Results*'').

[10] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[11] These companies include: (1) Anvifish Co., Ltd.; (2) Anvifish JSC; (3) Acomfish; (4) Bien Dong Seafood; (5) Binh An; (6) CASEAMEX; (7) ESS LLC; (8) East Sea Seafoods Joint Venture Co., Ltd.; (9) Hiep Thanh; (10) South Vina; and (11) Vinh Quang (collectively, ''Separate-Rate Applicants'').

[12] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

[13] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part,* 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

QVD. Accordingly, consistent with our practice, for these final results, the Department has preliminarily established a margin for the Separate-Rate Applicants based on the rate calculated for one of the mandatory respondents, QVD. The rate established for the Separate-Rate Applicants is a per-unit rate of $0.03 dollars per kilogram. Entities receiving this rate are identified by name in the ''Preliminary Results of Review'' section of this notice.

Vietnam-Wide Rate and Vietnam-Wide Entity

As noted in the *Preliminary Results,* because some parties for which a review was requested did not apply for separate rate status, the Vietnam-Wide entity is considered to be under review in this segment of the proceeding. In NME proceedings, '' 'rates' may consist of a single dumping margin applicable to all exporters and producers.'' *See* 19 CFR 351.107(d). As explained above in the ''Separate Rates'' section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities. *See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003). In this regard, we note that no party has submitted evidence of the proceeding to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect. Therefore, we are assigning the entity's current rate of $2.11 per kilogram, the rate determined for the Vietnam-wide entity in this proceeding. *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 75 FR 12726 (March 17, 2010).

Final Results of the Review

The weighted-average dumping margins for the POR are asfollows:

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
(1) Vinh Hoan [14]	0.00
(2) QVD	0.03
(3) Anvifish Co., Ltd	0.03
(4) Anvifish JSC	0.03
(5) Acomfish	0.03
(6) Bien Dong Seafood	0.03
(7) Binh An	0.03
(8) CASEAMEX	0.03
(9) ESS LLC	0.03
(10) East Sea Seafoods Joint Venture Co., Ltd	0.03
(11) Hiep Thanh	0.03
(12) South Vina	0.03
(13) Vinh Quang	0.03
Vietnam-Wide Rate	2.11

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

[14] This rate is applicable to the Vinh Hoan Group which includes Vinh Hoan, Van Duc, and VD TG.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Vinh Hoan, QVD, and the Separate-Rate Applicants, the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-Wide rate of $2.11 per kilogram; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial

protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 7, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

COMMENT I: SELECTION OF SURROGATE COUNTRY
- A. Economic Comparability
- B. Significant Producer of the Comparable Merchandise
- C. Data Considerations

COMMENT II: SURROGATE VALUES
- A. Financial Ratios
- 1. Selection of Surrogate Companies
- B. By-Products Offsets
- 1. Fish Waste
- 2. Fish Oil
- 3. Fresh Broken Fillets
- 4. Frozen Broken Fillets
- 5. Fish Meal
- C. Farming Factors
- 1. Fingerlings, Fish Feed, Nutrients, Lime
- D. Other Surrogate Values
- 1. Labor
- 2. Salt
- 3. STPP, CO Gas, PE Bags, Cartons, Tape, Label, Plastic Sheet, Banding, Diesel, Coal
- 4. Brokerage & Handling

COMMENT III: ZEROING

Company-Specific Issues

COMMENT IV: VINH HOAN
- A. Fish Consumption
- B. Revocation
- C. Farming Water

COMMENT V: CONSIDERATION OF VINH QUANG AS A VOLUNTARY RESPONDENT

COMMENT VI: SOUTH VINA SEPARATE RATE CERTIFICATION

[FR Doc. 2012–6201 Filed 3–13–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Amended Final Results of the First Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 14, 2012.

SUMMARY: On September 13, 2011, the Department of Commerce (''Department'') published the final results of the antidumping duty administrative review of small diameter graphite electrodes (''SDGE'') from the People's Republic of China (''PRC''), covering the period August 21, 2008, through January 31, 2010.[1] We are amending our *Final Results* to correct certain ministerial errors made in the calculation of the antidumping duty margins for Fushun Jinly Petrochemical Carbon Co., Ltd. (''Fushun Jinly''); Beijing Fangda Carbon Tech Co., Ltd. (''Beijing Fangda''), Fangda Carbon New Material Co., Ltd. (''Fangda Carbon''), Fushun Carbon Co., Ltd. (''Fushun Carbon''), and Hefei Carbon Co., Ltd. (''Hefei''); and Xinghe County Muzi Co., Ltd. (''Muzi'') pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.224(e).

FOR FURTHER INFORMATION CONTACT: Lindsey Novom or Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5256 or (202) 482–4295, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2011, the Department published its affirmative final results in this proceeding.[2] On September 19, 2011, Fushun Jinly and Beijing Fangda, Chengdu Rongguang Carbon Co., Ltd. (''Rongguang''), Fangda Carbon, Fushun Carbon, and Hefei (collectively ''the Fangda Group''), mandatory respondents, submitted ministerial error allegations and requested, pursuant to 19 CFR 351.224(c), that the Department correct the alleged ministerial errors in the calculation of Fushun Jinly and the Fangda Group's dumping margins. Muzi, a separate rate company, also submitted ministerial error allegations on September 19, 2011. SGL Carbon LLC and Superior Graphite Co. (''Petitioners'') submitted rebuttal comments on September 23, 2011. Before the Department could take action on the alleged ministerial errors, Petitioners filed a summons and complaint with the U.S. Court of International Trade (''CIT'') challenging the *Final Results,* which vested the CIT with jurisdiction over the administrative proceeding. On February 22, 2012, the CIT granted the Department leave to publish these amended final results to correct certain ministerial errors.[3]

Ministerial Errors

A ministerial error as defined in section 751(h) of the Act includes ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [4]

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made certain ministerial errors in our calculations for the *Final Results.* For a detailed discussion of these ministerial errors, as well as the Department's analysis of the errors and allegations, *see* the Memorandum to the File, ''First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of Ministerial Error Allegations,'' dated concurrently with this notice (''Ministerial Error Memo'').

Additionally, in the *Final Results,* we determined that Muzi qualified for a separate rate.[5] Because the cash deposit rate for Muzi was based on the calculated rate of the mandatory respondents, Fushun Jinly and the Fangda Group, and the margins for both companies have changed since the *Final Results,* the separate rate has changed as well.[6] Finally, we have corrected a misspelling of Muzi's full name. The amended weighted-average dumping margins are as follows:

SDGEs from the PRC

Exporters	Percent margin
Beijing Fangda Carbon Tech Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., Hefei Carbon Co., Ltd	1.10
Fushun Jinly Petrochemical Carbon Co., Ltd	39.83
Xinghe County Muzi Carbon Co., Ltd	16.00

Notification of Interested Parties

This notice also serves as a final reminder to importers of their

[1] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part,* 76 FR 56397 (September 13, 2011) (''*Final Results*'').

[2] *See Final Results.*

[3] *See SGL Carbon LLC* v. *United States,* Consol. Court No. 11–00389 (Ct. Int'l Trade February 22, 2012) (order granting the Department leave to publish amended final results correcting ministerial errors no later than March 16, 2012).

[4] *See also* 19 CFR 351.224(f).

[5] *See Final Results.*

[6] *See* Ministerial Error Memo.

responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). On September 28, 2011, the U.S. Court of International Trade issued a preliminary injunction enjoining liquidation of certain entries which are subject to the antidumping duty order on SDGEs from the PRC, for the POR.[7] Accordingly, the Department will not issue assessment instructions for any entries subject to the above-mentioned injunction to CBP after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after September 13, 2011, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Fushun Jinly, the Fangda Group, and Muzi, the cash deposit rate will be the amended final margin rate shown above in the ''Ministerial Errors'' section of this notice; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 159.64 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(a)(1), 751(h) and 777(i)(1) of the Act.

Dated: March 7, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–6188 Filed 3–13–12; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See SGL Carbon LLC and Superior Graphite Co.* v. *United States,* CIT Court No. 11–00389 dated September 28, 2011.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Request for Tribal Consultation on the Minority Business Development Agency's (MBDA) Native American Business Enterprise Center (NABEC) Program; Notice of Public Webinars

AGENCY: Department of Commerce.

ACTION: Meeting Notice.

SUMMARY: The Department of Commerce's (Department) Minority Business Development Agency (MBDA) seeks to redesign its Native American Business Center (NABEC) program. The NABEC program is a key component of MBDA's business development assistance program and promotes the growth and competitiveness of eligible Native American and minority-owned businesses. As part of the NABEC program, businesses that are owned or controlled by the following persons or groups of persons are eligible to receive business assistance services: American Indians and Native Americans (including Alaska Natives, Alaska Native Corporations, Tribal entities, tribal universities and tribal governments), African Americans, Asian Indian Americans, Asian and Pacific Islander Americans, Hasidic Jewish Americans, and Hispanic Americans.

The MBDA will conduct two webinars, on March 13 and 15, 2012, to seek input and recommendations from tribal organizations and tribal governments on the proposed redesign of the NABEC program. MBDA has planned a more cohesive program involving collaboration among the NABECs and Minority Business Enterprises (MBEs) to achieve the same program goals, and to expand and promote export initiatives and international trade opportunities aligned with President Obama's National Export Initiative (NEI).

DATES: Webinars will be held on the following dates and times: March 13, 2012, 3 p.m.–4 p.m. EDT; and March 15, 2012 at 3 p.m.–4 p.m. EDT. Registration information is provided in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dee Alexander, Senior Advisor on Native American Affairs, Office of Legislative and Intergovernmental Affairs, Department of Commerce, 1401 Constitution Avenue NW., Room 5422, Washington, DC 20230, by telephone at (202) 482–0789, or by email at *dalexander@doc.gov.* You may also contact Holden Hoofnagle, Chief of the MBDA Office of Business Development,

by telephone at (202) 482–3937, or by email at *hhoofnagle@mbda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Executive Order 11625, MBDA was created specifically to foster the establishment and growth of MBEs. MBDA promotes the strategic growth and expansion of MBEs by offering management and technical assistance through a nationwide network of 40 business centers. Among the 40 business centers, there are six NABECs and one satellite office specifically designed to serve the Native American and Alaska Native population providing overall business development assistance services and promoting the growth and competitiveness of eligible Native American and minority-owned businesses. The NABECs are located in the following cities: Mesa, Arizona; El Monte, California; Albuquerque, New Mexico; Tulsa, Oklahoma; Seattle, Washington; Bismarck, North Dakota; and Anchorage, Alaska (satellite office). Each NABEC has a designated geographic area surrounding the state in which it is located, with the following exceptions: the NABEC in Seattle, Washington covers the states of Washington, Oregon, and Idaho; and the NABEC in Bismarck, North Dakota covers the states of North Dakota and South Dakota. The Anchorage, Alaska satellite office is operated from the NABEC located in Mesa, Arizona.

The NABEC services include, but are not limited to, initial consultations and assessments, business technical assistance, education, and access to federal and non-federal procurement and financing opportunities. Specific performance requirements and metrics are used by MBDA to evaluate each project and become a key component of the NABEC program. More information on the NABEC programs can be found on MBDA's Web site at *http://www.mbda.gov/main/grantcompetitions.*

Under the current program, federal funding for centers ranges from $200,000 to $297,500 and each center has a required cost share of 10 percent of total project cost. All six centers are under three-year cooperative agreements which expire in August 2012. MBDA expects to redesign the current NABEC program with an anticipated start date of September 1, 2012.

The Department's Tribal Consultation Official and Senior Advisor on Native American Affairs, Dee Alexander, will coordinate and schedule tribal consultations in conjunction with the MBDA Office of Business Development (OBD) regarding the business development services available to Native American organizations through MBDA. MBDA has designed the webinars, as part of the tribal consultation schedule, to allow tribal governments and organizations an opportunity to provide information into the planned redesign of the current NABEC program. MBDA intends that the new program will be more cohesive and compatible for collaboration among the funded Centers so the Centers can achieve their program goals, expand operations, and participate in export initiatives and international deals aligned with President Obama's National Export Initiative (NEI).

II. Registration

Participants may register for the webinars online using the links provided below. The registration links may also be found on MBDA's Web site at *www.mbda.gov.*

- March 13, 2012, 3 p.m.–4 p.m. EDT. Webinar registration site: *https://www.mymeetings.com/nc/join.php?i=PW6862819&p=7403577&t=c.*
- March 15, 2012, 3 p.m.–4 p.m. EDT. Webinar registration site: *https://www.mymeetings.com/nc/join.php?i=PW6862819&p=7403577&t=c.*

If there are specific questions you would like MBDA to address during the webinars, please send your question(s) to MBDA no later than March 12, 2012. There will be time for questions from the participants at the end of each Webinar.

Dated: March 8, 2012.

Josephine Arnold,

Chief Counsel, Minority Business Development Agency.

[FR Doc. 2012–6087 Filed 3–13–12; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB081

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet March 31–April 6, 2012. The Pacific Council meeting will begin on Sunday, April 1, 2012 at 10 a.m., reconvening each day through Friday, April 6, 2012. All meetings are open to the public, except a closed session will be held at the end of the day on Sunday, April 1 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings of the Council will be held at the Sheraton Seattle Hotel, 1400 Sixth Avenue, Seattle, WA 98101; telephone: (206) 621–9000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Open Comment Period
  Comment on Non-Agenda Items
C. Habitat
  Current Habitat Issues
D. Enforcement Issues
  Current Enforcement Issues
E. Salmon Management
  1. National Marine Fisheries Service (NMFS) Report
  2. Tentative Adoption of 2012 Ocean Salmon Management Measures for Analysis
  3. Sacramento Winter Run Impact Specifications
  4. Methodology Review Process and Preliminary Topic Selection for 2012
  5. Clarify Council Direction on 2012 Management Measures
  6. Southern Oregon-Northern California Coastal Coho Plan
  7. Final Action on 2012 Management Measures
F. Pacific Halibut Management
  Final Incidental Catch Recommendations for 2012 Salmon Troll and Fixed Gear Sablefish Fisheries
G. Coastal Pelagic Species Management
  1. NMFS Report
  2. Exempted Fishing Permit for 2012 Northwest Aerial Sardine Survey
H. Administrative Matters
  1. Coastal Marine Spatial Planning Update
  2. Legislative Matters
  3. Draft Memorandum of Understanding for the Conservation of Migratory Birds
  4. Membership Appointments and Council Operating Procedures

5. Future Council Meeting Agenda and Workload Planning

I. Groundfish Management
1. NMFS Report
2. Implementation of the 2012 Pacific Whiting Fishery under the U.S.-Canada Pacific Whiting Agreement
3. Tentative Adoption of 2013–14 Biennial Harvest Specifications and Management Measures
4. Trawl Rationalization Trailing Actions and Allocation Amendments and Actions
5. Reconsideration of Initial Individual Fishery Quotas in the At-Sea Mothership and Shoreside Pacific Whiting Trawl Fisheries
6. Groundfish Essential Fish Habitat Review
7. Consideration of Inseason Adjustments
8. Adoption of 2013–14 Biennial Harvest Specifications and Management Measures

Schedule of Ancillary Meetings

Day 1—Saturday, March 31, 2012

Groundfish Management Team: 8 a.m.
Habitat Committee: 8 a.m.
Legislative Committee: 3 p.m.

Day 2—Sunday, April 1, 2012

California State Delegation: 7 a.m.
Oregon State Delegation: 7 a.m.
Washington State Delegation: 7 a.m.
Groundfish Advisory Subpanel: 8 a.m.
Groundfish Management Team: 8 a.m.
Model Evaluation Workgroup: 8 a.m.
Salmon Advisory Subpanel: 8 a.m.
Salmon Technical Team: 8 a.m.
Scientific and Statistical Committee: 8 a.m.
Tribal Policy Group: 8 a.m.
Tribal and Washington Technical Group: 8 a.m.
Enforcement Consultants: 4:30 p.m.
Chair's Reception: 6 p.m.

Day 3—Monday, April 2, 2012

California State Delegation: 7 a.m.
Oregon State Delegation: 7 a.m.
Washington State Delegation: 7 a.m.
Groundfish Advisory Subpanel: 8 a.m.
Groundfish Management Team: 8 a.m.
Salmon Advisory Subpanel: 8 a.m.
Salmon Technical Team: 8 a.m.
Tribal Policy Group: 8 a.m.
Tribal and Washington Technical Group: 8 a.m.
Scientific and Statistical Committee Economic and Groundfish Subcommittees: 8:30 a.m.
Enforcement Consultants: As Necessary

Day 4—Tuesday, April 3, 2012

California State Delegation: 7 a.m.
Oregon State Delegation: 7 a.m.
Washington State Delegation: 7 a.m.
Groundfish Advisory Subpanel: 8 a.m.
Groundfish Management Team: 8 a.m.
Salmon Advisory Subpanel: 8 a.m.
Salmon Technical Team: 8 a.m.
Tribal Policy Group: 8 a.m.
Tribal and Washington Technical Group: 8 a.m.
Electronic Monitoring Technical Presentation: 7 p.m.
Enforcement Consultants: As Necessary

Day 5—Wednesday, April 4, 2012

California State Delegation: 7 a.m.
Oregon State Delegation: 7 a.m.
Washington State Delegation: 7 a.m.
Groundfish Advisory Subpanel: 8 a.m.
Groundfish Management Team: 8 a.m.
Salmon Advisory Subpanel: 8 a.m.
Salmon Technical Team: 8 a.m.
Tribal Policy Group: 8 a.m.
Tribal and Washington Technical Group: 8 a.m.
Observer Data Workshop: 7 p.m.
Enforcement Consultants: As Necessary
Integrated Ecosystem Analysis Informational Sessions: 8 a.m.–5 p.m.

Day 6—Thursday, April 5, 2012

California State Delegation: 7 a.m.
Oregon State Delegation: 7 a.m.
Washington State Delegation: 7 a.m.
Groundfish Advisory Subpanel: 8 a.m.
Groundfish Management Team: 8 a.m.
Salmon Advisory Subpanel: 8 a.m.
Salmon Technical Team: 8 a.m.
Tribal Policy Group: 8 a.m.
Tribal and Washington Technical Group: 8 a.m.
Enforcement Consultants: As Necessary

Day 7—Friday, April 6, 2012

California State Delegation: 7 a.m.
Oregon State Delegation: 7 a.m.
Washington State Delegation: 7 a.m.
Salmon Technical Team: 8 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 8, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–6061 Filed 3–13–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA916

Takes of Marine Mammals Incidental to Specified Activities; Pile Placement for ORPC Maine's Cobscook Bay Tidal Energy Pilot Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Ocean Renewable Power Company Maine, LLC (ORPC), allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to pile driving in Cobscook Bay, Maine.

DATES: Effective March 12, 2012, through March 11, 2013.

ADDRESSES: A copy of the IHA, the application, and the Environmental Assessment may be obtained by writing to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On November 2, 2011, NMFS received an application from ORPC requesting an IHA for the take, by Level B harassment, of small numbers of harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harbor porpoise (*Phocoena phocoena*), and Atlantic white-sided dolphin (*Lagenorhynchus acutus*) incidental to pile driving activities in Cobscook Bay, Maine. In accordance with the MMPA and implementing regulations, NMFS issued a notice in the **Federal Register** on January 19, 2012 (77 FR 2701), requesting comments from the public on the proposed IHA.

Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' proposed IHA notice (77 FR 2701, January 19, 2012) and a summary is provided here. ORPC plans to install foundational piles to support an underwater tidal turbine unit as part of the first phase of a long-term project. The turbine unit is approximately 30 meters (m) (98 feet (ft)) long, 5 m (17 ft) high, and 5 m (17 ft) wide and is attached to a bottom support frame, which holds the unit in place about 4.5 m (15 ft) above the sea floor. The turbine unit weighs about 69,000 pounds (lbs) and is coupled with the bottom support frame to comprise what is called a single-device TidGen™ Power System. At the interface with the seabed, the bottom support frame requires a site-specific design based on the environmental conditions at the deployment area. The foundation design for the single-device TidGen™ Power System is a pile bent arrangement consisting of 10 steel pipe piles. Each foundation pile will have a 76-centimeter (cm) (30 inch (in)) diameter and a 1-cm (half-inch) wall thickness and will rest on bedrock. Piles will vary in length from 15–18 m (50–60 ft) due to bottom sediment depth, but each pile will be driven to the top of bedrock and will protrude 3–5 m (10–15 ft) above the seafloor.

A total of 11 piles (10 for the foundation and one for mounting environmental monitoring equipment) will be driven from a moored barge for the first phase. Piles will be placed about six m (20 ft) apart in two rows of five and the rows will be separated by about 15 m (50 ft). Geotechnical data shows that the TidGen™ device will be located in an area with up to 12 m (40 ft) of marine clay and some thin layers of glacial till overlaying bedrock. Based on this data and extensive soil studies in the area, piles are expected to sink fairly deep into the mud line under their own weight. Piles will be driven the remaining depth using vibratory and impact pile driving procedures from barge-based pile driving equipment. A pile for mounting environmental monitoring equipment will also be installed with the same pile driving equipment. The monitoring pile will be two m (six ft) in diameter, or consist of an array of three piles not greater than 76 cm (30 in) in diameter. The monitoring pile will protrude about six m (20 ft) above the seafloor.

ORPC plans to use an H&M model H–1700 vibratory hammer to drive piles to the extent possible. If additional energy is required to reach bedrock, a Berminghammer model B–3505 diesel impact hammer may be used, with maximum rated impact energy of 21,533 ft-lb. ORPC expects that the need for an impact hammer will be minimal and for very short durations. To lessen the amount and intensity of sound propagation, ORPC is evaluating the use of wooden sound absorption cushions and/or bubble curtains.

Date and Duration of Proposed Activity

ORPC plans to begin pile driving in mid-March, 2012. Pile driving with a vibratory hammer may take up to three minutes per pile and pile driving with an impact hammer may take up to five minutes per pile. Due to strong currents during ebb and flood tides, pile driving will only occur during slack tides. ORPC expects that only one pile will be driven per tide cycle for a total of 7–12 days of pile driving during daylight hours only. NMFS Northeast Region recommends that in-water construction involving pile driving be conducted between November 8 and April 9 to avoid impacts to fisheries resources. However, ORPC may be able to conduct pile driving activities after April 9 if they can demonstrate that noise levels caused by the impact hammer are below NMFS guidelines. Although pile driving is only expected to last 7–12 days, NMFS issued the IHA for a 1-year period to allow for permitting and weather delays. Pile driving will only occur in weather that provides adequate visibility for marine mammal monitoring activities.

Region of Proposed Activity

The activity will occur in Cobscook Bay, in between Lubec and Eastport, Maine. Piles and other deployment materials will be transported by barge from a staging area at the Eastport Boat School or other local access point. Cobscook Bay has extremely strong tidal currents and notably high tides, creating an extensive intertidal habitat for marine and coastal species. Water depth at the proposed project location is 26 m (85 ft) at mean lower low water. The Bay is considered a relatively intact marine system, as the area has not experienced much industrialization.

Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the

sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Source levels for the vibratory and impact hammer are expected to be 175 dB and 190 dB, respectively. Assuming a practical spreading loss of 15 log R, OPRC estimates that the 180-dB (Level A harassment) isopleth for the impact hammer could be as far as 100 m (328 ft). The 120-dB (Level B harassment for continuous sound sources) isopleth for the vibratory hammer could be as far as 4,600 m (2.5 mi).

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on January 19, 2012 (77 FR 2701). During the 30-day public comment period, NMFS only received comments from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommends that NMFS defer issuance of the IHA until NMFS evaluates the potential effects of construction, installation, and subsequent operation of the tidal turbine. Furthermore, the Commission recommends that NMFS then use that information as a basis for (1) determining the potential for marine mammal injury or mortality, (2) designing mitigation and monitoring measures to minimize injury and mortality caused by direct interactions, and (3) determining whether the anticipated takes are expected to have negligible impacts on marine mammal species and stocks.

Response: NMFS disagrees that issuance of the IHA should be deferred. ORPC requested authorization for incidental takings subject to a specified activity (i.e., pile driving). NMFS has not received an IHA request for incidental takings subject to further construction, installation, or subsequent operation of the tidal turbine. However, NMFS did analyze the cumulative effects of ongoing and future Cobscook Bay activities in an Environmental Assessment (EA), which included the eventual operation of ORPC's tidal turbine. The environmental effects of ORPC's long-term project were also analyzed in an EA prepared by the Federal Energy Regulatory Commission and the Department of Energy (FERC and DOE, 2012). In summary, an assortment of mitigation and monitoring measures are expected to minimize impacts to marine species and the surrounding environment. To date, information on currently operating tidal turbines does not suggest the need for an incidental take authorization. However, if ORPC determines that there is a potential for further marine mammal harassment, they may choose to apply for another authorization.

Comment 2: If an IHA is issued, the Commission recommends that NMFS authorize the taking of harbor seals and gray seals by both in-water and in-air harassment. If authorization does not include both in-water and in-air harassment, the Commission recommends that NMFS require ORPC to shutdown pile driving activities whenever a seal is observed within the in-air Level B harassment zone.

Response: As explained in the notice of proposed IHA (77 FR 2701, January 19, 2012), elevated in-air sound levels are not a concern because the nearest significant haul-out is more than six nautical miles (nmi) away. ORPC has not observed any pinnipeds hauled out within the proposed project area during their 3 years of conducting visual observations in Cobscook Bay. Any pinniped observed swimming or diving within 152 m (500 ft) of the pile driving location would be considered to be taken by elevated underwater sounds from pile driving; therefore, there is no additional need to shutdown any time a pinniped is within the in-air Level B harassment zone.

Comment 3: The Commission recommends that NMFS require ORPC to monitor the presence and behavior of marine mammals for 30 minutes before, during, and 30 minutes after all impact and vibratory pile driving activities.

Response: As detailed in the notice of proposed IHA (77 FR 2701, January 19, 2012) and the mitigation and monitoring sections of this notice, ORPC is required to monitor the exclusion zone for 30 minutes before, during, and 30 minutes after all impact pile driving. ORPC is also required to monitor the larger Level B harassment zone on at least three days of vibratory pile driving. NMFS believes that this amount of monitoring is sufficient to prevent the injury or mortality of marine mammals and to document behavioral responses of marine mammals to pile driving.

Comment 4: The Commission recommends that NMFS require ORPC to record distances to observed marine mammals and document their behavior within the entirety of the Level B harassment zone for vibratory pile driving.

Response: As detailed in the notice of proposed IHA (77 FR 2701, January 19, 2012) and the mitigation and monitoring sections of this notice, ORPC is required to monitor the Level B harassment zone on at least three days of vibratory pile driving to validate take estimates and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleth. Protected species observers will record species, behaviors, and responses to pile driving within this area.

Comment 5: The Commission recommends that NMFS require ORPC to monitor before, during, and after all soft-starts of vibratory and impact pile driving activities to gather the data needed to determine the effectiveness of this technique as a mitigation measure.

Response: NMFS disagrees that ORPC needs to monitor for marine mammals before, during, and after all soft-starts. Protected species observers will be on-site and monitoring for marine mammals at least 30 minutes before, during, and 30 minutes after all impact driving (including during soft-starts) and on at least three days of vibratory pile driving. NMFS believes that monitoring for all impact driving and on at least three days of vibratory pile driving will allow for adequate interpretation of how marine mammals are behaving in response to pile driving, including during soft-starts.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with known presence in this region of Cobscook Bay are the harbor seal, grey seal, harbor porpoise, and Atlantic white-sided dolphin. ORPC has been conducting incidental visual observations of marine mammals in Cobscook Bay since 2007, for a total effort of 252 4-hr

observational periods over 222 days. During this time, marine mammal observers have recorded 57 seals, 47 harbor porpoises, and two Atlantic white-sided dolphins (Table 1). No observations of any whale species have been made in Cobscook Bay by ORPC since monitoring began in 2007. In addition, a review of available databases does not indicate any recorded whale sightings in Cobscook Bay. Other species that may possibly occur in the vicinity of the proposed activity include North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaengliae*), fin whale (*Balaenoptera borealis*), minke whale (*Balaenoptera acutorostrata*), and sei whale (*Balaenoptera borealis*). However, these five species are generally associated with open ocean habitats and occur in more offshore locations. NMFS has concluded that the specified activity will not impact these five species and they are not discussed further. Information on the harbor seal, grey seal, harbor porpoise, and Atlantic white-sided dolphin was provided in the January 19, 2012 **Federal Register** notice (77 FR 2701).

TABLE 1—MARINE MAMMAL OBSERVATIONS IN THE PROPOSED PROJECT VICINITY BETWEEN DECEMBER 2007, AND DECEMBER 2010

Month	Hours of effort	Harbor and grey seal	Harbor porpoise	Atlantic white-sided dolphin
January	16	0	0	0
February	36	0	1	0
March	56	1	0	0
April	160	4	3	0
May	56	1	3	0
June	84	8	1	0
July	84	4	10	0
August	120	16	24	2
September	100	9	5	0
October	96	8	0	0
November	72	4	0	0
December	104	2	0	0
Total	1,008	57	47	2

Potential Effects on Marine Mammals

Elevated in-water sound levels from pile driving in the project area may temporarily impact marine mammal behavior. A detailed description of potential impacts to marine mammals can be found in NMFS' January 19, 2012 **Federal Register** notice (77 FR 2701) and is summarized here.

Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for when PTS first occurs in marine mammals; therefore, it must be estimated from when TTS first occurs and from the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥ 40 dB of TTS. PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Due to proposed mitigation measures and source levels in the proposed project area, NMFS does not expect marine mammals to be exposed to PTS levels.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, but is recoverable. TTS also occurs in specific frequency ranges; therefore, an animal might experience a temporary loss of hearing sensitivity only between the frequencies of 1 and 10 kHz, for example. The amount of change in hearing sensitivity is also variable and could be reduced by 6 dB or 30 dB, for example. Recent literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to subbotom profilers). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) to be a sufficient definition of TTS-onset. NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Behavioral Effects

Behavioral responses to sound are highly variable and context-specific. An

animal's perception of and response to (in both nature and magnitude) an acoustic event can be influenced by prior experience, perceived proximity, bearing of the sound, familiarity of the sound, etc. (Southall *et al.,* 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or populations. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Based on the limited amount of pile driving and use of vibratory pile driving, any impacts to marine mammal behavior from ORPC's pile driving operations are expected to be temporary. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the pile driving location.

Non-pulse Sounds

The studies that address responses of mid-frequency cetaceans (such as Atlantic white-sided dolphins) to non-pulse sounds (like vibratory pile driving) include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps) including: pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, acoustic harassment devices (AHDs), acoustic deterrent devices (ADDs), mid-frequency active sonar, and non-pulse bands and tones. While none of these studies are specific to Atlantic white-sided dolphins, they include species with similar auditory bandwidths. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. This disparity is likely due to contextual variables beyond received level and species differences.

The studies that address responses of high-frequency cetaceans (such as the harbor porpoise) to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (around 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies.

There are limited data available on the behavioral effects of non-pulse noise on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 μPa; no data exist from exposures at higher levels.

Impulse Sounds

Southall *et al.* (2007) also addressed behavioral responses of marine mammals to impulse sounds (like impact pile driving). The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to boomers), including: small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available. Although individual elements of some non-pulse sources (such as pingers) could be considered pulses, it is believed that some mammalian auditory systems perceive them as non-pulse sounds (Southall *et al.,* 2007).

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources, including: small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds is limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.,* 2007).

As discussed below, impacts to marine mammal reproduction are not anticipated because there are no known pinniped rookeries within the proposed project area and Cobscook Bay is not a known breeding ground for cetaceans. Marine mammals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels. NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment (for example, avoidance or alteration of behavior). ORPC conservatively assumes 12 pile driving days may occur over the validity of the IHA. Marine mammal injury or mortality is not likely, as the 180 dB isopleth (NMFS' Level A harassment threshold for cetaceans) for the impact hammer is expected to be no more than a 100-m (328 ft) radius. ORPC proposes to continuously monitor a 152-m (500-ft) area around the sound source and cease all pile driving if a marine mammal is observed nearing or within this 152-m (500-ft) isopleth.

Anticipated Effects on Habitat

No permanent detrimental impacts to marine mammal habitat are expected to result from pile driving. Pile driving (resulting in temporary ensonification) may impact prey species and marine mammals by causing avoidance or abandonment of the area; however these impacts are expected to be local and temporary. The benthic impact of the foundation for this phase of the proposed project will be about 10 m^2 (113 ft^2) during pile placement. While the foundation frame will take up a limited amount of space on the seafloor, there are no expected adverse impacts to marine mammal habitat.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. There are no subsistence hunting grounds within the action area and since the activity will not result in marine mammal mortality, the availability of marine mammals for subsistence uses will not be impacted. ORPC will implement the following mitigation measures to minimize adverse impacts to marine mammals:

Sound Attenuation Device

When using a diesel impact hammer to ''proof'' piles, ORPC will use wooden sound absorption cushions and/or a bubble curtain to reduce hydroacoustic sound levels and avoid the potential for marine mammal injury. Based on previous studies, sound attenuation devices are expected to reduce sound levels by at least 5 dB.

Exclusion Zone

The purpose of the proposed exclusion zone is to prevent Level A harassment (injury) of any marine mammal species. Current NMFS practice regarding exposure of marine mammals to anthropogenic sound is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. These levels are considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). During all in-water impact pile driving, ORPC will establish a preliminary marine mammal exclusion zone around each pile to avoid exposure to sounds at or above 180 dB. The preliminary exclusion zone will have a radius of 152 m (500 ft). This encompasses the initial estimate of the 180 dB isopleth, where injury could occur, plus a 52-m (171-ft) buffer zone. Once hydroacoustic monitoring is conducted, the exclusion and buffer zone may be adjusted accordingly so that marine mammals are not exposed to Level A harassment sound pressure levels. The exclusion zone will be monitored continuously during impact pile driving to ensure that no marine mammals enter the area. Protected species observers (PSOs) will be stationed on two observer boats, one 152 m (500 ft) upstream and one 152 m (500 ft) downstream of the installation site. One observer on each vessel will survey the exclusion zone, while the second observer will conduct behavioral monitoring outwards to a distance of 1 nmi. Several floats anchored at 152 m (500 ft) and 305 m (1,000 ft) will be located around the installation site to help identify when marine mammals are entering or within the exclusion zone. An exclusion zone for vibratory pile driving or installation of concrete piles is unnecessary as source levels will not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a PSO sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer will notify the on-site project lead (or other authorized individual) who will then be required to delay pile driving until the marine mammal has moved 305 m (1,000 ft) from the sound source or if the animal has not been resighted within 30 minutes. If a marine mammal is sighted within or on a path toward the 152-m (500-ft) exclusion zone during pile driving, pile driving will cease until that animal has moved 305 m (1,000 ft) and is on a path away from the exclusion zone or 30 minutes has lapsed since the last sighting.

Soft-start Procedures

A ''soft-start'' technique will be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times before full energy may be achieved. For impact hammering, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Soft-start procedures will be conducted any time hammering ceases for more than 30 minutes.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Hydroacoustic monitoring will be performed at the initial installation of each pile driving method to ensure that the harassment isopleths are not extending past the calculated distances described in this notice and the proposed IHA (77 FR 2701, January 19, 2012) and to assess the efficiency of the sound attenuation devices. ORPC will designate two biologically-trained, on-site PSOs, approved in advance by NMFS, to monitor the exclusion zone (preliminarily set at 152 m [500 ft]) for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the exclusion zone. These PSOs will be positioned on two vessels, one anchored upstream and one anchored downstream at 152 m (500 ft) on the edge of the exclusion zone. One observer on each vessel will survey inwards toward the pile driving site and the second observer will conduct behavioral monitoring outwards to a distance of 1 nmi during all impact pile driving. Additional PSOs will be stationed at the Level B harassment isopleth (preliminarily set at 4,600 m [2.5 mi]) on at least three days of vibratory pile driving to validate take estimates and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleth.

PSOs will be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder as well as a digital SLR camera with telephoto lens and video capability) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving. If hydroacoustic monitoring indicates that threshold isopleths are greater than originally calculated, ORPC will contact NMFS within 48 hours and make the necessary adjustments. Likewise, if threshold isopleths are actually less than originally calculated, downward adjustments may be made to the exclusion and buffer zone. PSOs will submit a report to NMFS within 90 days of completion of pile driving. The report will include data from marine mammal sightings (such as date, time, location, species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (wind speed and direction, Beaufort sea state, cloud cover, and visibility).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality, ORPC will immediately cease the specified activities and immediately report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Tammy.Adams@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;

• Status of all sound source use in the 24 hrs preceding the incident;
• Water depth;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hrs preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with ORPC to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ORPC may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ORPC discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ORPC will immediately report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Tammy.Adams@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ORPC to determine whether modifications in the activities are appropriate.

In the event that ORPC discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ORPC will report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Tammy.Adams@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the NMFS Northeast Stranding Hotline (866–755–6622) and/or by email to the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*), within 24 hrs of the discovery. ORPC will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the application and subsequent analysis, the impact of the described pile driving activities, in conjunction with the required mitigation and monitoring measures, may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure. Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral Level B harassment is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving). These levels are also considered precautionary.

Distances to NMFS' harassment thresholds were calculated based on the expected sound levels at each source and the expected attenuation rate of sound (see 77 FR 2701, January 19, 2012). The 100-m (328-ft) distance to the Level A harassment threshold provides protected species observers plenty of time and adequate visibility to prevent marine mammals from entering the area during impact pile driving. This will prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold.

Based on ORPC's marine mammal monitoring records and the maximum number of pile driving days, NMFS authorized the take by Level B harassment of 72 total seals (because they cannot always be identified to the species-level), 72 harbor porpoises, and two Atlantic white-sided dolphins. These numbers are extremely conservative and indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth 4,600 m (2.5 mi). For more detailed information on how these numbers were calculated, see the notice of proposed IHA (77 FR 2701, January 19, 2012).

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, the number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals will not be exposed to activities or sound levels which could result in injury (PTS), serious injury, or mortality. Pile driving will occur in relatively shallow coastal waters of Cobscook Bay. The project area is not considered significant habitat for marine mammals. The closest significant pinniped haul out is more than six nmi away, which is well outside the project area's largest harassment zone. Marine mammals approaching the action area will likely be traveling or opportunistically foraging. The amount of take NMFS authorized, is considered small (less than one percent) relative to the estimated populations of 91,000 harbor seals, 250,000 gray seals, 89,054 harbor porpoises, and 63,000 Atlantic white-sided dolphins. Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area, thereby reducing exposure and impacts, and mitigation will prevent injury. Pile driving activities are expected to occur for about 7–12 days total. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals. Based on the application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid

the area or temporarily alter their behavior at time of exposure.

Based on the analysis contained in this notice, the proposed IHA notice (77 FR 2701, January 19, 2012), and the IHA application, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS has determined that ORPC's pile driving activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the environmental impacts of issuance of a 1-year IHA and made a finding of no significant impact FONSI. The EA and FONSI are available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: March 8, 2012.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–6196 Filed 3–13–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Dataset Workshop—U.S. Billion Dollar Disasters Dataset (1980–2011): Assessing Dataset Strengths and Weaknesses for a Pathway to an Improved Dataset

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of request for information.

SUMMARY: This notice sets forth the schedule and topics of an upcoming workshop hosted by NOAA's National Climatic Data Center in Asheville, North Carolina. Invited participants will discuss topics as outlined below.

Members of the administrative public, private and academic sectors are invited to attend the workshop, and are required to fulfill a request to RSVP to *Karen.L.Miller@noaa.gov* by 5 p.m. EDT, Friday, April 27, 2012 if they wish to attend. The workshop is to be held in a federal facility; building-security restrictions preclude attendance for those who do not RSVP by the deadline. Space is also limited to the first 35 responses, but remote access via webinar will be made available for the first 50 participants requesting webinar participation. The remote access participation information will be provided on an individual basis once participation has been confirmed through RSVP.

Workshop Date and Time: The workshop will be held on May 3, 2012 from 9 a.m. to 5 p.m. and May 4, 2012 from 9 a.m. to 12:30 p.m.

RSVP Deadline: Anyone wishing to attend the workshop must RSVP no later than 5:00 pm EDT on April 27, 2012.

ADDRESSES: The workshop will be held at the Veach-Baley Federal Complex, located at 151 Patton Avenue, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Adam Smith, National Climatic Data Center, 151 Patton Avenue, Rm. 471, Asheville, North Carolina 28801. (Phone: 828–271–4183, Email: *Adam.Smith@noaa.gov*) For RSVP responses, use the email address noted above (*Karen.L.Miller@noaa.gov*).

Workshop Goals

The workshop will focus on a review, discussion, and evaluation of NOAA's U.S. Billion Dollar Disasters (1980–2011) dataset and associated methods used to develop the data set. An important goal of the meeting is to identify strengths and weaknesses of the current dataset and related methodology. Emphasis will be placed on dataset accuracy and time-dependent biases. Pathways to overcome accuracy and bias issues will be an important focus.

Participants will consider:

- Historical development and current state of the U.S. Billion Dollar Disasters Report;
- What additional data sources and/or new methods should be considered to enhance the robustness of the Billion Dollar Disasters dataset;
- Examination of unique uncertainties related to the cost of each of the major types of weather and climate disasters the data set addresses;
- What steps should be taken to enhance the robustness of the billion-dollar disaster dataset and the input sources used for it; and
- What steps might NOAA take to leverage the expertise of the public, private and academic partners in the development, maintenance and the timely review/revision of the U.S. Billion Dollar Dataset in the long-term?

The report from this workshop will include:

- A peer review of the current methods used to estimate disaster costs.
- Guidance for improving these methods.
- Recommendations for rectifying any known time-dependent biases.
- Recommendations for minimizing future errors and biases.

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2012–6069 Filed 3–13–12; 8:45 am]

BILLING CODE P

COUNCIL ON ENVIRONMENTAL QUALITY

National Ocean Council—National Ocean Policy Draft Implementation Plan

AGENCY: Council on Environmental Quality.

ACTION: Extension of comment period.

SUMMARY: On July 19, 2010, President Obama signed Executive Order 13547 establishing a National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes (National Ocean Policy). As part of the President's charge for Federal agencies to implement the National Ocean Policy, the National Ocean Council developed actions to achieve the Policy's nine priority objectives, and to address some of the most pressing challenges facing the ocean, our coasts, and the Great Lakes. Collectively, the actions are encompassed in a single draft *National Ocean Policy Implementation Plan (Implementation Plan).* The draft *Implementation Plan* describes more than 50 actions the Federal Government will take to improve the health of the ocean, coasts, and Great Lakes, which support tens of millions of jobs,

contribute trillions of dollars a year to the national economy, and are essential to public health and national security.

Next, public comments on the draft *Implementation Plan* will inform the preparation of the final plan. Per our prior notice, which was published at 77 FR 2514 on January 18, 2012, we welcome your general input, and also pose the following questions:

- Does the draft *Implementation Plan* reflect actions you see are needed to address the nine priorities for the ocean, coasts, and the Great Lakes?
- What is the most effective way to measure outcomes and to detect whether a particular action in the *Implementation Plan* has achieved its intended outcome? Would a report card format be useful?

With this notice, we are pleased to inform you that the comment period on the draft *Implementation Plan* has been extended. As stated on the National Ocean Council's Web site, *http://www.WhiteHouse.gov/oceans,* on February 28, 2012, the new deadline for public comment on the draft *Implementation Plan* is March 28, 2012. Comments received will be collated and posted on the National Ocean Council Web site. The final *Implementation Plan* is expected in the spring of 2012.

DATES: The National Ocean Council must receive comments by midnight, March 28, 2012.

ADDRESSES: The draft *Implementation Plan* and additional information can be found at *http://www.WhiteHouse.gov/oceans.* Comments should be submitted electronically to *http://www.WhiteHouse.gov/oceans.* Comments may also be sent in writing to ''ATTN: National Ocean Council'' by fax to (202) 456–0753, or by mail to National Ocean Council, 722 Jackson Place NW., Washington, DC 20503. Heightened security measures in force may delay mail delivery; therefore, please allow at least two (2) to three (3) weeks of additional time for mailed comments to arrive. We encourage you to also submit comments through the National Ocean Council Web site.

FOR FURTHER INFORMATION CONTACT: Questions about the content of this request may be submitted through the National Ocean Council Web site at *http://www.WhiteHouse.gov/administration/eop/oceans/contact* or by mail to National Ocean Council, 722 Jackson Place NW., Washington, DC 20503. Please note, heightened security measures in force may delay mail delivery; therefore, we encourage you to also submit questions through the National Ocean Council Web site.

Dated: March 9, 2012.

Nancy H. Sutley,

Chair.

[FR Doc. 2012–6215 Filed 3–13–12; 8:45 am]

BILLING CODE 3225–F2–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2011–OS–0112]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of response to public comments on proposed amendments to the Military Rules of Evidence (M.R.E.) in the Manual for Courts-Martial, United States (2008 ed.) (MCM).

SUMMARY: The Joint Service Committee on Military Justice (JSC) is forwarding final proposed amendments to the Manual for Courts-Martial, United States (MCM) to the Department of Defense. The proposed changes constitute the 2012 revision of the Military Rules of Evidence (M.R.E.) in the MCM in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003. The proposed changes affect all the M.R.E. and are in conformity, to the extent practicable, with the Federal Rules of Evidence. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the U.S. Army Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3B548, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Christopher A. Kennebeck, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3B548, Washington DC 20310–2200, (571) 256–8136, (571) 693–7368 fax, *c.kennebeck@us.army.mil.*

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2011 (76 FR 65062–65093), the JSC published a Notice of Proposed Amendments to the Military Rules of Evidence contained within the Manual for Courts-Martial and a Notice of Public Meeting to receive comments on these proposals. The public meeting was held on November 17, 2011. No member of the public appeared. Several comments were received via electronic mail and were considered by the JSC.

Discussion of Comments and Changes

The JSC considered each public comment, and after making minor modifications, the JSC is satisfied that the proposed amendments are appropriate to implement. The JSC will forward the public comments and proposed amendments to the Department of Defense.

The public comments regarding the proposed changes follow:

a. Commenter recommended that the JSC prepare and include comments for each M.R.E. similar to Committee Notes accompanying F.R.E. The notes contained in the Appendix 22, Analysis of the Military Rules of Evidence, are intended to serve the same purpose as the Committee Notes. In addition to the analysis in the MCM, the JSC prepared an Executive Summary of the amendments to the M.R.E. and a Word document using color-coded text and comments to explain amendments. Updated analysis is being prepared by the JSC and will be included in the next Executive Order; however, the analysis currently in the MCM will suffice until the MCM is updated to include both the amended M.R.E. and its amended analysis (projected in 2013).

b. Commenter recommended that the revised M.R.E. 412 not limit its purpose to the privacy interests of a single affected victim. JSC removed reference to victim ''privacy'' and instead refers to M.R.E. 403 (military judge determines what evidence is relevant and material and whether its probative value outweighs the danger of unfair prejudice). A new discussion lists ''ordinary countervailing interests'' for the military judge to consider, including, but not limited to, harassment of a victim.

c. Commenter recommended renaming the title of M.R.E. 412(c)(3) from ''Privacy'' to ''Order'' because privacy is no longer part of the M.R.E. 412(c)(3) balancing test. The JSC renamed the subsection from ''Privacy'' to ''Scope'' because it addresses the scope of admissible evidence as determined by the military judge's order.

d. Commenter recommended adding a more specific definition of ''sexual behavior'' in M.R.E. 412 to give practitioners specific guidance on what behavior is intended by the rule. The JSC rejected this proposal in recognition that the term ''sexual behavior'' should be left intentionally broad as it is designed to protect acts beyond those which can reasonably be described in a narrow definition.

e. Commenter recommended revising the discussion under M.R.E. 412(c)(3) to eliminate reference to a victim's privacy rights in conformity with *United States* v. *Gaddis,* which held that the accused's constitutional right to present certain evidence cannot be limited by a victim's privacy interests. The JSC addressed this concern by amending subsection (c)(3) similar to a its 2005 version and by revising the discussion in conformity with recent jurisprudence to properly reflect the balance between an accused's constitutional rights and the countervailing interests that must be weighed before admitting evidence.

f. Commenter recommended using the words ''pursuant to statutory authority'' in M.R.E. 807. JSC disagreed and defined the applicable provisions when hearsay would not apply to ''a federal statue applicable in trial by courts-martial.''

g. Commenter recommended that M.R.E. 804(b)(3)(B) be amended to include circumstances in which evidence is presented to inculpate the accused, rather than limiting it to evidence presented to exculpate the accused. JSC disagreed, and retained the provision in the rule, intended to differentiate from the Federal Rule.

h. Commenter recommended removing the phrase ''on the merits'' from proposed M.R.E. 301(c) to ensure limited waiver of accused's right against self-incrimination when testifying applies during sentencing. The JSC removed ''on the merits,'' making the rule consistent with the prior 301(e) which did not have such language, and preventing unintentional limitation of the rule to findings.

i. Commenter recommended removing the word ''allegedly'' from proposed M.R.E. 304(b)(2) because its usage in this section is unnecessarily confusing when ''allegedly'' is not used elsewhere. The JSC removed ''allegedly'' from 304(b)(2) and added it to 304(b), capturing the intent of the rule to preclude use of challenged evidence unless it met one of three criteria. The JSC also removed the word ''derivative'' from 304(b)(2) to eliminate internal contradiction within the exception, and make the rule consistent with its prior iteration.

j. Commenter recommended removal of proposed M.R.E. 704(b) which precludes a psychiatrist from offering an opinion about the defendant's responsibility. JSC agreed and removed the proposed subdivision which is consistent with the drafting of current M.R.E. 704.

k. Commenter recommended replacing the word ''belief'' with the word ''suspicion'' in M.R.E. 314(f)(2). JSC agreed; amended accordingly; and added discussion to address stop and frisk.

l. Commenter recommended that the word ''waiver'' be replaced with the word ''forfeiture'' in M.R.E. 304(f)(1), 311(d)(2)(A), and 317(d)(2). JSC agreed and amended accordingly.

c. Commenter recommended amending R.C.M. 704(b) to clarify what is meant by ''future crimes.'' JSC will consider this recommendation as a new proposal as it outside the scope of the F.R.E. conforming stylistic revisions and would require more detailed research.

m. Commenter noted that amended language in M.R.E 402(a)(2) and M.R.E. 802 was potentially confusing. In conformity with F.R.E. amendment, the JSC had changed ''acts of Congress'' to ''federal statute.'' As a result of the comment, the text ''members of the armed forces'' and ''trial by court-martial'' was included in the M.R.E. to clearly delineate the scope of the Rules.

n. Commenter recommended that M.R.E. 611(d)(3) be amended to satisfy the constitutional standard for confrontation in *Maryland* v. *Craig,* 497 U.S. 836 (1990). JSC added the three-part-test of *U.S.* v. *Pack,* 65 M.J. 381 (C.A.A.F. 2007), referring to *Maryland* v. *Craig,* to M.R.E. 611(d)(3).

o. Commenter noted the shift in verb tense in M.R.E. 313(a). JSC corrected the discrepancy.

p. Commenter noted that the first and last sentence of M.R.E. 312(d) appear redundant and inconsistent. JSC replaced the word ''involuntary'' to consistently and uniformly refer to ''nonconsensual'' extraction of body fluids and will address the change when revising Appendix 22, Analysis of the Military Rules of Evidence.

q. Commenter recommended that the drafter's analysis of M.R.E. 313 be amended to better define ''appropriate supervisory position.'' JSC will address this issue when revising Appendix 22, Analysis of the Military Rules of Evidence.

r. Commenter recommended changing the definition of probable cause to ''a search where there is a reasonable belief that the person, property, or evidence sought might be located'' from current language of ''is located'' in M.R.E. 315(f)(2). JSC did not adopt the recommended change because case law indicates that both definitions are acceptable and therefore no change was needed. The JSC will address when revising Appendix 22, Analysis of the Military Rules of Evidence.

s. Commenter recommended in M.R.E. 315(g) clarifying circumstances when exigency would allow officers to enter a residence without a warrant. JSC agreed with recommendation and will address it when revising Appendix 22, Analysis of the Military Rules of Evidence.

t. Commenter noted in M.R.E. 316(c)(4) subdivision (e) was mislabeled (d). JSC amended accordingly.

u. Commenter recommended clarification in M.R.E. 316(b)(5)(C) regarding what it means to ''observe something in a reasonable fashion,'' and clarification of when an officer can seize an item in plain view. JSC agreed with recommendation that clarification is needed and will provide discussion, case citations, and examples when revising Appendix 22, Analysis of the Military Rules of Evidence.

v. Commenter recommended clarification in M.R.E. 317(b) and (c) to specifically address one-party, consent phone calls. JSC did not take action because this rule addresses wire intercepts, not pretext phone calls.

w. Commenter recommended changing M.R.E. 314(c) to allow inspections conducted on military installations, rather than just at entry and exit. JSC did not make the recommended change because there is no specific case law permitting such an unrestricted practice, other than entry and exit points, and it too drastically narrows an individual's privacy interest while on a military installation.

x. Commenter recommended clarification in M.R.E. 314(e)(2) regarding dual consent when a physically present resident has told the officers that they may not search the property. JSC agreed with recommendation that clarification is needed and will address this issue when revising Appendix 22, Analysis of the Military Rules of Evidence.

y. Commenter recommended amending the phrase ''criminal activity is afoot'' in M.R.E. 314(f)(1) because it is antiquated. JSC did not adopt recommended change because it believed that ''afoot'' accurately describes the standard and is consistent with relevant jurisprudence.

z. Commenter recommended changing the language in M.R.E. 314(f)(2) from ''reasonably believed to be armed'' to ''reasonably suspected of being armed'' with regard to a lawful investigatory

stop. JSC adopted the recommended change, and added a Discussion under the rule to further address the standard.

aa. Commenter recommended clarifying in M.R.E. 314(f)(3) the automobile ''pat-down'' rule because it was oversimplified as written. JSC agreed, made changes to the rule and added a discussion to further address the standard.

bb. Commenter recommended amending MRE 314(g)(2) to more accurately capture the holding in *Arizona* v. *Gant,* 129 S.Ct. 1710 (2009). JSC agreed with the recommendation and added discussion under the rule to clarify the standard.

cc. Commenter recommended clarification in M.R.E. 314(g)(3)(B) regarding the application of the wider protective sweep rule. JSC agreed with recommendation and will address it in when revising Appendix 22, Analysis of the Military Rules of Evidence.

dd. Commenter recommended a discussion be added to M.R.E. 314 to address when exigent circumstances permit officers to search without a warrant. JSC did not add a discussion because the topic is covered in MRE 315(g).

ee. Commenter recommended M.R.E. 305(a)(2) differentiate between pre-invocation statements, and post-invocation statements. JSC added the words ''after such request'' following ''interrogation'' to establish a temporal boundary for admissibility which was required after rewording the rule in terms of admissibility and changing passive to active voice.

ff. Commenter recommended a clear statement in M.R.E. 305(a)(3) relating to whether the intention was to make the rule more restrictive than required under the Sixth Amendment. JSC will address when revising Appendix 22, Analysis of the Military Rules of Evidence.

gg. Commenter recommended a clear statement in M.R.E. 305(e)(1) relating to whether the intention was to make the rule more restrictive than required under *Berghuis* v. *Thompkins,* 130 S. Ct. 2250 (2010). JSC acknowledged the higher standard, but left the language unchanged. JSC will address when revising Appendix 22, Analysis of the Military Rules of Evidence.

hh. Commenter recommended that the order of provisions and numbering of rules remain the same for ease of research and consistency. Although JSC agreed, certain rules and provisions were moved to better reflect the natural flow of evidence and to simplify the rules.

ii. Commenter recommended that Section 3 not be amended to alleviate conduct-based guidance, arguing that many rules are specifically intended to proscribe or prescribe specific conduct. Although JSC agreed on principle, some conduct-based provisions were moved to discussion paragraphs and some Section 3 rules were amended to address admissibility rather than conduct.

jj. Commenter recommended that discussion not be used in the M.R.E. because it would be a new practice and could confuse practitioners when discerning what authority should be given to discussion content. JSC disagreed, but added an introductory discussion to address the purpose of the newly added M.R.E. discussion paragraphs. See discussion following M.R.E. 101(c). Discussion is commonly used in the MCM and its treatise-like purpose is well understood. See Appendix 21, Analysis of the Rules for Courts-Martial.

kk. Commenter recommended moving the definitions contained within a specific rule to the beginning of the rule. JSC agreed and amended accordingly.

ll. Commenter recommended retaining the elements of Article 31 within M.R.E. 305(c)(1) and using the word ''Warnings'' in the title. JSC agreed and amended accordingly.

mm. Commenter recommended that Miranda warnings be specifically included within the text of the rule. JSC agreed, but will instead address the Miranda warnings fully in Appendix 22, Analysis of the Military Rules of Evidence.

nn. Commenter recommended that M.R.E. 305 should address the procedure to be used when the right to counsel or the right to remain silent is invoked. JSC determined that the rule adequately provided guidance to practitioners, but will address the issue when revising Appendix 22, Analysis of the Military Rules of Evidence.

oo. Commenter recommended that M.R.E. 305(d) should be titled ''Presence of Counsel'' instead of ''Provision for Counsel''. JSC agreed and amended accordingly.

pp. Commenter recommended that the word ''answer'' in M.R.E. 301(d) be changed to ''response'' to more accurately focus on the fact the answer must be made in response to the question. JSC disagreed, but will address the issue when revising Appendix 22, Analysis of the Military Rules of Evidence.

qq. Commenter recommended leaving the term ''rules prescribed by the Supreme Court pursuant to statutory authority'' in M.R.E. 402(a)(5). JSC disagreed and modified the definition to better conform with UCMJ jurisdiction.

rr. Commenter recommended adding the words ''in the armed forces'' to the definition of ''community'' in M.R.E. 405(d) and to keep its current phrasing. JSC agreed and amended accordingly.

Proposed Amendments After Period for Public Comment

The proposed revision to the M.R.E. to be forwarded through the DoD for action by Executive Order of the President of the United States are as follows:

Rule 101. Scope

(a) Scope. These rules apply to court-martial proceedings to the extent and with the exceptions stated in Mil. R. Evid. 1101.

(b) Sources of Law. In the absence of guidance in this Manual or these rules, courts-martial will apply:

(1) first, the Federal Rules of Evidence and the case law interpreting them; and

(2) second, when not inconsistent with subdivision (b)(1), the rules of evidence at common law.

(c) Rule of construction. Except as otherwise provided in these rules, the term ''military judge'' includes the president of a special court-martial without a military judge and a summary court-martial officer.

Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Rule 103. Rulings on Evidence

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error materially prejudices a substantial right of the party and:

(1) If the ruling admits evidence, a party, on the record:

(A) Timely objects or moves to strike; and

(B) States the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the military judge of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the military judge rules definitively on the record admitting or excluding evidence, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) Review of Constitutional Error. The standard provided in this

subdivision does not apply to errors implicating the United States Constitution as it applies to members of the armed forces, unless the error arises under these rules and this subdivision provides a standard that is more advantageous to the accused than the constitutional standard.

(d) Military Judge's Statement about the Ruling; Directing an Offer of Proof. The military judge may make any statement about the character or form of the evidence, the objection made, and the ruling. The military judge may direct that an offer of proof be made in question-and-answer form.

(e) Preventing the Members from Hearing Inadmissible Evidence. In a court-martial composed of a military judge and members, to the extent practicable, the military judge must conduct a trial so that inadmissible evidence is not suggested to the members by any means.

(f) Taking Notice of Plain Error. A military judge may take notice of a plain error that materially prejudices a substantial right, even if the claim of error was not properly preserved.

Rule 104. Preliminary Questions

(a) In General. The military judge must decide any preliminary question about whether a witness is available or qualified, a privilege exists, a continuance should be granted, or evidence is admissible. In so deciding, the military judge is not bound by evidence rules, except those on privilege.

(b) Relevance that Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The military judge may admit the proposed evidence on the condition that the proof be introduced later. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge, except where these rules or this Manual provide expressly to the contrary.

(c) Conducting a Hearing so that the Members Cannot Hear It. Except in cases tried before a special court-martial without a military judge, the military judge must conduct any hearing on a preliminary question so that the members cannot hear it if:

(1) The hearing involves the admissibility of a statement of the accused under Mil. R. Evid. 301–306;

(2) The accused is a witness and so requests; or

(3) Justice so requires.

(d) Cross-Examining the Accused. By testifying on a preliminary question, the accused does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the members evidence that is relevant to the weight or credibility of other evidence.

Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

If the military judge admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the military judge, on timely request, must restrict the evidence to its proper scope and instruct the members accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts that May Be Judicially Noticed. The military judge may judicially notice a fact that is not subject to reasonable dispute because it:

(1) Is generally known universally, locally, or in the area pertinent to the event; or

(2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The military judge:

(1) May take judicial notice whether requested or not; or

(2) Must take judicial notice if a party requests it and the military judge is supplied with the necessary information. The military judge must inform the parties in open court when, without being requested, he or she takes judicial notice of an adjudicative fact essential to establishing an element of the case.

(d) Timing. The military judge may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the military judge takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Members. The military judge must instruct the members that they may or may not accept the noticed fact as conclusive.

Rule 202. Judicial Notice of Law

(a) Domestic Law. The military judge may take judicial notice of domestic law. If a domestic law is a fact that is of consequence to the determination of the action, the procedural requirements of Mil. R. Evid. 201—except Rule 201(f)—apply.

(b) Foreign Law. A party who intends to raise an issue concerning the law of a foreign country must give reasonable written notice. The military judge, in determining foreign law, may consider any relevant material or source, in accordance with Mil. R. Evid. 104. Such a determination is a ruling on a question of law.

Rule 301. Privilege Concerning Compulsory Self-Incrimination

(a) General Rule. An individual may claim the most favorable privilege provided by the Fifth Amendment to the United States Constitution, Article 31, or these rules. The privileges against self-incrimination are applicable only to evidence of a testimonial or communicative nature.

(b) Standing. The privilege of a witness to refuse to respond to a question that may tend to incriminate the witness is a personal one that the witness may exercise or waive at the discretion of the witness.

(c) Limited Waiver. An accused who chooses to testify as a witness waives the privilege against self-incrimination only with respect to the matters about which he or she testifies. If the accused is on trial for two or more offenses and on direct examination testifies about only one or some of the offenses, the accused may not be cross-examined as to guilt or innocence with respect to the other offenses unless the cross-examination is relevant to an offense concerning which the accused has testified. This waiver is subject to Mil. R. Evid. 608(b).

(d) Exercise of the Privilege. If a witness states that the answer to a question may tend to incriminate him or her, the witness cannot be required to answer unless the military judge finds that the facts and circumstances are such that no answer the witness might make to the question would tend to incriminate the witness or that the witness has, with respect to the question, waived the privilege against self-incrimination. A witness may not assert the privilege if he or she is not subject to criminal penalty as a result of an answer by reason of immunity,

running of the statute of limitations, or similar reason.

(1) Immunity Requirements. The minimum grant of immunity adequate to overcome the privilege is that which under either R.C.M. 704 or other proper authority provides that neither the testimony of the witness nor any evidence obtained from that testimony may be used against the witness at any subsequent trial other than in a prosecution for perjury, false swearing, the making of a false official statement, or failure to comply with an order to testify after the military judge has ruled that the privilege may not be asserted by reason of immunity.

(2) Notification of Immunity or Leniency. When a prosecution witness before a court-martial has been granted immunity or leniency in exchange for testimony, the grant must be reduced to writing and must be served on the accused prior to arraignment or within a reasonable time before the witness testifies. If notification is not made as required by this rule, the military judge may grant a continuance until notification is made, prohibit or strike the testimony of the witness, or enter such other order as may be required.

(e) Waiver of the Privilege. A witness who answers a self-incriminating question without having asserted the privilege against self-incrimination may be required to answer questions relevant to the disclosure, unless the questions are likely to elicit additional self-incriminating information.

(1) If a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are purely collateral.

(2) Any limited waiver of the privilege under this subdivision (e) applies only at the trial in which the answer is given, does not extend to a rehearing or new or other trial, and is subject to Mil. R. Evid. 608(b).

(f) Effect of Claiming the Privilege.

(1) No Inference to Be Drawn. The fact that a witness has asserted the privilege against self-incrimination cannot be considered as raising any inference unfavorable to either the accused or the government.

(2) Pretrial Invocation Not Admissible. The fact that the accused during official questioning and in exercise of rights under the Fifth Amendment to the United States Constitution or Article 31 remained silent, refused to answer a certain question, requested counsel, or requested that the questioning be terminated, is not admissible against the accused.

(3) Instructions Regarding the Privilege. When the accused does not testify at trial, defense counsel may request that the members of the court be instructed to disregard that fact and not to draw any adverse inference from it. Defense counsel may request that the members not be so instructed. Defense counsel's election will be binding upon the military judge except that the military judge may give the instruction when the instruction is necessary in the interests of justice.

Rule 302. Privilege Concerning Mental Examination of an Accused

(a) General Rule. The accused has a privilege to prevent any statement made by the accused at a mental examination ordered under R.C.M. 706 and any derivative evidence obtained through use of such a statement from being received into evidence against the accused on the issue of guilt or innocence or during sentencing proceedings. This privilege may be claimed by the accused notwithstanding the fact that the accused may have been warned of the rights provided by Mil. R. Evid. 305 at the examination.

(b) Exceptions.

(1) There is no privilege under this rule when the accused first introduces into evidence such statements or derivative evidence.

(2) If the court-martial has allowed the defense to present expert testimony as to the mental condition of the accused, an expert witness for the prosecution may testify as to the reasons for his or her conclusions, but such testimony may not extend to statements of the accused except as provided in (1).

(c) Release of Evidence from an R.C.M. 706 Examination. If the defense offers expert testimony concerning the mental condition of the accused, the military judge, upon motion, must order the release to the prosecution of the full contents, other than any statements made by the accused, of any report prepared pursuant to R.C.M. 706. If the defense offers statements made by the accused at such examination, the military judge, upon motion, may order the disclosure of such statements made by the accused and contained in the report as may be necessary in the interests of justice.

(d) Noncompliance by the Accused. The military judge may prohibit an accused who refuses to cooperate in a mental examination authorized under R.C.M. 706 from presenting any expert medical testimony as to any issue that would have been the subject of the mental examination.

(e) Procedure. The privilege in this rule may be claimed by the accused only under the procedure set forth in Mil. R. Evid. 304 for an objection or a motion to suppress.

Rule 303. Degrading Questions

Statements and evidence are inadmissible if they are not material to the issue and may tend to degrade the person testifying.

Rule 304. Confessions and Admissions

(a) General Rule. If the accused makes a timely motion or objection under this rule, an involuntary statement from the accused, or any evidence derived therefrom, is inadmissible at trial except as provided in subdivision (e).

(1) Definitions. As used in this rule:

(A) ''Involuntary statement'' means a statement obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the United States Constitution, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.

(B) ''Confession'' means an acknowledgment of guilt.

(C) ''Admission'' means a self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended by its maker to be exculpatory.

(2) Failure to deny an accusation of wrongdoing is not an admission of the truth of the accusation if at the time of the alleged failure the person was under investigation or was in confinement, arrest, or custody for the alleged wrongdoing.

(b) Evidence Derived from a Statement of the Accused. When the defense has made an appropriate and timely motion or objection under this rule, evidence allegedly derived from a statement of the accused may not be admitted unless the military judge finds by a preponderance of the evidence that:

(1) The statement was made voluntarily,

(2) The evidence was not obtained by use of the accused's statement, or

(3) The evidence would have been obtained even if the statement had not been made.

(c) Corroboration of a Confession or Admission.

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that corroborates the essential facts admitted to justify sufficiently an inference of their truth.

(2) Other uncorroborated confessions or admissions of the accused that would

themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of some but not all of the essential facts admitted, then the confession or admission may be considered as evidence against the accused only with respect to those essential facts stated in the confession or admission that are corroborated by the independent evidence.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) Quantum of Evidence Needed. The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) Procedure. The military judge alone will determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.

(d) Disclosure of Statements by the Accused and Derivative Evidence. Before arraignment, the prosecution must disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces, and all evidence derived from such statements, that the prosecution intends to offer against the accused.

(e) Limited Use of an Involuntary Statement. A statement obtained in violation of Article 31 or Mil. R. Evid. 305(a)–(c) may be used only:

(1) To impeach by contradiction the in-court testimony of the accused; or

(2) In a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

(f) Motions and Objections.

(1) Motions to suppress or objections under this rule, or Mil. R. Evid. 302 or 305, to any statement or derivative evidence that has been disclosed must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a forfeiture of the objection.

(2) If the prosecution seeks to offer a statement made by the accused or derivative evidence that was not disclosed before arraignment, the prosecution must provide timely notice to the military judge and defense counsel. The defense may object at that time and the military judge may make such orders as are required in the interests of justice.

(3) The defense may present evidence relevant to the admissibility of evidence as to which there has been an objection or motion to suppress under this rule. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily.

(A) Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under this subdivision.

(B) When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(4) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

(5) Rulings. The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(6) Burden of Proof. When the defense has made an appropriate motion or objection under this rule, the prosecution has the burden of establishing the admissibility of the evidence. When the military judge has required a specific motion or objection under subdivision (f)(4), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(7) Standard of Proof. The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence. When trial is by a special court-martial without a military judge, a determination by the president of the court that a statement was made voluntarily is subject to objection by any member of the court. When such objection is made, it will be resolved pursuant to R.C.M. 801(e)(3)(C).

(8) Effect of Guilty Plea. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this rule with respect to that offense regardless of whether raised prior to plea.

(g) Weight of the Evidence. If a statement is admitted into evidence, the military judge must permit the defense to present relevant evidence with respect to the voluntariness of the statement and must instruct the members to give such weight to the statement as it deserves under all the circumstances.

(h) Completeness. If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

(i) Evidence of an Oral Statement. A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing is not accounted for.

(j) Refusal to Obey an Order to Submit a Body Substance. If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

(1) a charge of violating an order to submit such a sample; or

(2) any other charge on which the results of the chemical analysis would have been admissible.

Rule 305. Warnings About Rights

(a) General Rule. A statement obtained in violation of this rule is

involuntary and will be treated under Mil. R. Evid. 304.

(b) Definitions. As used in this rule:

(1) ''Person subject to the code'' means a person subject to the Uniform Code of Military Justice as contained in Chapter 47 of Title 10, United States Code. This term includes, for purposes of subdivision (c) of this rule, a knowing agent of any such person or of a military unit.

(2) ''Interrogation'' means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

(3) ''Custodial interrogation'' means questioning that takes place while the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way.

(c) Warnings Concerning the Accusation, Right to Remain Silent, and Use of Statements.

(1) Article 31 Rights Warnings. A statement obtained from the accused in violation of the accused's rights under Article 31 is involuntary and therefore inadmissible against the accused except as provided in subdivision (d). Pursuant to Article 31, a person subject to the code may not interrogate or request any statement from an accused or a person suspected of an offense without first:

(A) Informing the accused or suspect of the nature of the accusation;

(B) Advising the accused or suspect that the accused or suspect has the right to remain silent; and

(C) Advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.

(2) Fifth Amendment Right to Counsel. If a person suspected of an offense and subjected to custodial interrogation requests counsel, any statement made in the interrogation after such request, or evidence derived from the interrogation after such request, is inadmissible against the accused unless counsel was present for the interrogation.

(3) Sixth Amendment Right to Counsel. If an accused against whom charges have been preferred is interrogated on matters concerning the preferred charges by anyone acting in a law enforcement capacity, or the agent of such a person, and the accused requests counsel, or if the accused has appointed or retained counsel, any statement made in the interrogation, or evidence derived from the interrogation, is inadmissible unless counsel was present for the interrogation.

(4) Exercise of Rights. If a person chooses to exercise the privilege against self-incrimination, questioning must cease immediately. If a person who is subjected to interrogation under the circumstances described in subdivisions (c)(2) or (c)(3) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.

(d) Presence of Counsel. When a person entitled to counsel under this rule requests counsel, a judge advocate or an individual certified in accordance with Article 27(b) will be provided by the United States at no expense to the person and without regard to the person's indigency and must be present before the interrogation may proceed. In addition to counsel supplied by the United States, the person may retain civilian counsel at no expense to the United States. Unless otherwise provided by regulations of the Secretary concerned, an accused or suspect does not have a right under this rule to have military counsel of his or her own selection.

(e) Waiver.

(1) Waiver of the Privilege Against Self-Incrimination. After receiving applicable warnings under this rule, a person may waive the rights described therein and in Mil. R. Evid. 301 and make a statement. The waiver must be made freely, knowingly, and intelligently. A written waiver is not required. The accused or suspect must affirmatively acknowledge that he or she understands the rights involved, affirmatively decline the right to counsel, and affirmatively consent to making a statement.

(2) Waiver of the Right to Counsel. If the right to counsel is applicable under this rule and the accused or suspect does not affirmatively decline the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(3) Waiver After Initially Invoking the Right to Counsel.

(A) Fifth Amendment Right to Counsel. If an accused or suspect subjected to custodial interrogation requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that:

(i) The accused or suspect initiated the communication leading to the waiver; or

(ii) The accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(B) Sixth Amendment Right to Counsel. If an accused or suspect interrogated after preferral of charges as described in subdivision (c)(1) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.

(f) Standards for Nonmilitary Interrogations.

(1) United States Civilian Interrogations. When a person subject to the code is interrogated by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, the person's entitlement to rights warnings and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar interrogations.

(2) Foreign Interrogations. Warnings under Article 31 and the Fifth and Sixth Amendments to the United States Constitution are not required during an interrogation conducted outside of a state, district, commonwealth, territory, or possession of the United States by officials of a foreign government or their agents unless such interrogation is conducted, instigated, or participated in by military personnel or their agents or by those officials or agents listed in subdivision (d)(1). A statement obtained from a foreign interrogation is admissible unless the statement is obtained through the use of coercion, unlawful influence, or unlawful inducement. An interrogation is not ''participated in'' by military personnel or their agents or by the officials or agents listed in subdivision (d)(1) merely because such a person was present at an interrogation conducted in a foreign nation by officials of a foreign government or their agents, or because such a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign interrogation.

Rule 306. Statements by One of Several Accused

When two or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the

accused may not be received in evidence unless all references inculpating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination.

Rule 311. Evidence Obtained From Unlawful Searches and Seizures

(a) General Rule. Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) The accused makes a timely motion to suppress or an objection to the evidence under this rule; and

(2) The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces.

(b) Definition. As used in this rule, a search or seizure is ''unlawful'' if it was conducted, instigated, or participated in by:

(1) Military personnel or their agents and was in violation of the Constitution of the United States as applied to members of the armed forces, a federal statute applicable to trials by court-martial that requires exclusion of evidence obtained in violation thereof, or Mil. R. Evid. 312–317;

(2) Other officials or agents of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States or any political subdivision of such a State, Commonwealth, or possession, and was in violation of the Constitution of the United States, or is unlawful under the principles of law generally applied in the trial of criminal cases in the United States district courts involving a similar search or seizure; or

(3) Officials of a foreign government or their agents, and the accused was subjected to gross and brutal maltreatment. A search or seizure is not ''participated in'' by a United States military or civilian official merely because that person is present at a search or seizure conducted in a foreign nation by officials of a foreign government or their agents, or because that person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign search or seizure.

(c) Exceptions.

(1) Impeachment. Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

(2) Inevitable Discovery. Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

(3) Good Faith Execution of a Warrant or Search Authorization. Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) The search or seizure resulted from an authorization to search, seize or apprehend issued by an individual competent to issue the authorization under Mil. R. Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority;

(B) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(C) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith is to be determined using an objective standard.

(d) Motions to Suppress and Objections.

(1) Disclosure. Prior to arraignment, the prosecution must disclose to the defense all evidence seized from the person or property of the accused, or believed to be owned by the accused, or evidence derived therefrom, that it intends to offer into evidence against the accused at trial.

(2) Time Requirements.

(A) When evidence has been disclosed prior to arraignment under subdivision (d)(1), the defense must make any motion to suppress or objection under this rule prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a forfeiture of the motion or objection.

(B) If the prosecution intends to offer evidence described in subdivision (d)(1) that was not disclosed prior to arraignment, the prosecution must provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interest of justice.

(3) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence described in subdivision (d)(1). If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the search or seizure, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(4) Challenging Probable Cause.

(A) Relevant Evidence. If the defense challenges evidence seized pursuant to a search warrant or search authorization on the grounds that the warrant or authorization was not based upon probable cause, the evidence relevant to the motion is limited to evidence concerning the information actually presented to or otherwise known by the authorizing officer, except as provided in subdivision (d)(4)(B).

(B) False Statements. If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, is entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion must be granted unless the search is otherwise lawful under these rules.

(5) Burden and Standard of Proof.

(A) In general. When the defense makes an appropriate motion or objection under this subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.

(B) Statement Following Apprehension. In addition to subdivision (d)(5)(A), a statement obtained from a person apprehended in a dwelling in violation R.C.M. 302(d)(2) and (e), is admissible if the prosecution shows by a preponderance of the

evidence that the apprehension was based on probable cause, the statement was made at a location outside the dwelling subsequent to the apprehension, and the statement was otherwise in compliance with these rules.

(C) Specific Grounds of Motion or Objection. When the military judge has required the defense to make a specific motion or objection under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or objected to the evidence.

(6) Defense Evidence. The defense may present evidence relevant to the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the search or seizure giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(7) Rulings. The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(8) Informing the Members. If a defense motion or objection under this rule is sustained in whole or in part, the court-martial members may not be informed of that fact except when the military judge must instruct the members to disregard evidence.

(e) Effect of Guilty Plea. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under the Fourth Amendment to the Constitution of the United States and Mil. R. Evid. 311–317 with respect to the offense whether or not raised prior to plea.

Rule 312. Body Views and Intrusions

(a) General Rule. Evidence obtained from body views and intrusions conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) Visual Examination of the Body.

(1) Consensual Examination. Evidence obtained from a visual examination of the unclothed body is admissible if the person consented to the inspection in accordance with Mil. R. Evid. 314(e).

(2) Involuntary Examination. Evidence obtained from an involuntary display of the unclothed body, including a visual examination of body cavities, is admissible only if the inspection was conducted in a reasonable fashion and authorized under the following provisions of the Military Rules of Evidence:

(A) Inspections and inventories under Mil. R. Evid. 313;

(B) Searches under Mil. R. Evid. 314(b) and 314(c) if there is a reasonable suspicion that weapons, contraband, or evidence of crime is concealed on the body of the person to be searched;

(C) Searches incident to lawful apprehension under Mil. R. Evid. 314(g);

(D) Searches within jails and similar facilities under Mil. R. Evid. 314(h) if reasonably necessary to maintain the security of the institution or its personnel;

(E) Emergency searches under Mil. R. Evid. 314(i); and

(F) Probable cause searches under Mil. R. Evid. 315.

(c) Intrusion into Body Cavities.

(1) Mouth, Nose, and Ears. Evidence obtained from a reasonable nonconsensual physical intrusion into the mouth, nose, and ears is admissible under the same standards that apply to a visual examination of the body under subdivision (b).

(2) Other Body Cavities. Evidence obtained from nonconsensual intrusions into other body cavities is admissible only if made in a reasonable fashion by a person with appropriate medical qualifications and if:

(A) At the time of the intrusion there was probable cause to believe that a weapon, contraband, or other evidence of crime was present;

(B) Conducted to remove weapons, contraband, or evidence of crime discovered under subdivisions (b) or (c)(2)(A) of this rule;

(C) Conducted pursuant to Mil. R. Evid. 316(c)(5)(C);

(D) Conducted pursuant to a search warrant or search authorization under Mil. R. Evid. 315; or

(E) Conducted pursuant to Mil. R. Evid. 314(h) based on a reasonable suspicion that the individual is concealing a weapon, contraband, or evidence of crime.

(d) Extraction of Body Fluids. Evidence obtained from nonconsensual extraction of body fluids is admissible if seized pursuant to a search warrant or a search authorization under Mil. R. Evid. 315. Evidence obtained from nonconsensual extraction of body fluids made without such a warrant or authorization is admissible, not withstanding Mil. R. Evid. 315(g), only when probable cause existed at the time of extraction to believe that evidence of crime would be found and that the delay necessary to obtain a search warrant or search authorization could have resulted in the destruction of the evidence. Evidence obtained from nonconsensual extraction of body fluids is admissible only when executed in a reasonable fashion by a person with appropriate medical qualifications.

(e) Other Intrusive Searches. Evidence obtained from a nonconsensual intrusive search of the body, other than searches described in subdivisions (c) or (d), conducted to locate or obtain weapons, contraband, or evidence of crime is admissible only if obtained pursuant to a search warrant or search authorization under Mil. R. Evid. 315 and conducted in a reasonable fashion by a person with appropriate medical qualifications in such a manner so as not to endanger the health of the person to be searched.

(f) Intrusions for Valid Medical Purposes. Evidence or contraband obtained in the course of a medical examination or an intrusion conducted for a valid medical purpose is admissible. Such an examination or intrusion may not, for the purpose of obtaining evidence or contraband, exceed what is necessary for the medical purpose.

(g) Medical Qualifications. The Secretary concerned may prescribe appropriate medical qualifications for persons who conduct searches and seizures under this rule.

Rule 313. Inspections and Inventories in the Armed Forces

(a) General Rule. Evidence obtained from lawful inspections and inventories in the armed forces is admissible at trial when relevant and not otherwise inadmissible under these rules. An unlawful weapon, contraband, or other evidence of a crime discovered during a lawful inspection or inventory may be seized and is admissible in accordance with this rule.

(b) Lawful Inspections. An ''inspection'' is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as

an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. Inspections must be conducted in a reasonable fashion and, if applicable, must comply with Mil. R. Evid. 312. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected.

(1) Purpose of Inspections. An inspection may include, but is not limited to, an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness; and that personnel are present, fit, and ready for duty. An order to produce body fluids, such as urine, is permissible in accordance with this rule.

(2) Searches for Evidence. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule.

(3) Examinations to Locate and Confiscate Weapons or Contraband.

(A) An inspection may include an examination to locate and confiscate unlawful weapons and other contraband provided that the criteria set forth in this subdivision (b)(3)(B) are not implicated.

(B) The prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this rule if a purpose of an examination is to locate weapons or contraband, and if:

(i) The examination was directed immediately following a report of a specific offense in the unit, organization, installation, vessel, aircraft, or vehicle and was not previously scheduled;

(ii) specific individuals are selected for examination; or

(iii) persons examined are subjected to substantially different intrusions during the same examination.

(c) Lawful Inventories. An ''inventory'' is a reasonable examination, accounting, or other control measure used to account for or control property, assets, or other resources. It is administrative and not prosecutorial in nature, and if applicable, the inventory must comply with Mil. R. Evid. 312. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this rule.

Rule 314. Searches Not Requiring Probable Cause

(a) General Rule. Evidence obtained from reasonable searches not requiring probable cause is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) Border Searches. Evidence from a border search for customs or immigration purposes authorized by a federal statute is admissible.

(c) Searches Upon Entry to or Exit from United States Installations, Aircraft, and Vessels Abroad. In addition to inspections under Mil. R. Evid. 313(b), evidence is admissible when a commander of a United States military installation, enclave, or aircraft on foreign soil, or in foreign or international airspace, or a United States vessel in foreign or international waters, has authorized appropriate personnel to search persons or the property of such persons upon entry to or exit from the installation, enclave, aircraft, or vessel to ensure the security, military fitness, or good order and discipline of the command. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceeding is not authorized by this subdivision (c).

(d) Searches of Government Property. Evidence resulting from a search of government property without probable cause is admissible under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Normally a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use, but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

(e) Consent Searches.

(1) General Rule. Evidence of a search conducted without probable cause is admissible if conducted with lawful consent.

(2) Who May Consent. A person may consent to a search of his or her person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(3) Scope of Consent. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(4) Voluntariness. To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(5) Burden and Standard of Proof. The prosecution must prove consent by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the standard of proof.

(f) Searches Incident to a Lawful Stop.

(1) Lawfulness. A stop is lawful when conducted by a person authorized to apprehend under R.C.M. 302(b) or others performing law enforcement duties and when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The stop must be temporary and investigatory in nature.

(2) Stop and Frisk. Evidence is admissible if seized from a person who was lawfully stopped and who was frisked for weapons because he or she was reasonably suspected to be armed and dangerous. Contraband or evidence that is located in the process of a lawful frisk may be seized.

(3) Vehicles. Evidence is admissible if seized in the course of a search for weapons from the passenger compartment of a vehicle in which a person lawfully stopped is the driver or a passenger and if the official who made the stop has a reasonable suspicion that the person stopped is dangerous and may gain immediate control of a weapon.

(g) Searches Incident to Apprehension.

(1) General Rule. Evidence is admissible if seized in a search of a person who has been lawfully apprehended or if seized as a result of a reasonable protective sweep.

(2) Search for Weapons and Destructible Evidence. A lawful search incident to apprehension may include a search for weapons or destructible evidence in the area within the immediate control of a person who has been apprehended. ''Immediate control'' means that area in which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property.

(3) Protective Sweep for Other Persons.

(A) Area of Potential Immediate Attack. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

(B) Wider Protective Sweep. When an apprehension takes place at a location in which another person might be present who might endanger the apprehending officials or others in the area of the apprehension, a search incident to arrest may lawfully include a reasonable examination of those spaces where a person might be found. Such a reasonable examination is lawful under this subdivision if the apprehending official has a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(h) Searches within Jails, Confinement Facilities, or Similar Facilities. Evidence obtained from a search within a jail, confinement facility, or similar facility is admissible even if conducted without probable cause provided that it was authorized by persons with authority over the institution.

(i) Emergency Searches to Save Life or for Related Purposes. Evidence obtained from emergency searches of persons or property conducted to save life, or for a related purpose, is admissible provided that the search was conducted in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(j) Searches of Open Fields or Woodlands. Evidence obtained from a search of an open field or woodland is admissible provided that the search was not unlawful within the meaning of Mil. R. Evid. 311.

Rule 315. Probable Cause Searches

(a) General Rule. Evidence obtained from reasonable searches conducted pursuant to a search warrant or search authorization, or under the exigent circumstances described in this rule, is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) Definitions. As used in these rules:

(1) ''Search authorization'' means express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) ''Search warrant'' means express permission to search and seize issued by competent civilian authority.

(c) Scope of Search Authorization. A search authorization may be valid under this rule for a search of:

(1) the physical person of anyone subject to military law or the law of war wherever found;

(2) military property of the United States or of nonappropriated fund activities of an armed force of the United States wherever located;

(3) persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) nonmilitary property within a foreign country.

(d) Who May Authorize. A search authorization under this rule is valid only if issued by an impartial individual in this subdivision (d)(1) and (d)(2). An otherwise impartial authorizing official does not lose the character merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(1) Commander. A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) Military Judge or Magistrate. A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned.

(e) Who May Search.

(1) Search Authorization. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

(2) Search Warrants. Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable federal statute.

(f) Basis for Search Authorizations.

(1) Probable Cause Requirement. A search authorization issued under this rule must be based upon probable cause.

(2) Probable Cause Determination. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule will be based upon any or all of the following:

(A) Written statements communicated to the authorizing officer;

(B) oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(C) such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements.

(g) Exigencies. Evidence obtained from a probable cause search is admissible without a search warrant or search authorization when there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought. Military operational necessity may create an exigency by prohibiting or

preventing communication with a person empowered to grant a search authorization.

Rule 316. Seizures

(a) General Rule. Evidence obtained from reasonable seizures is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) Apprehension. Apprehension is governed by R.C.M. 302.

(c) Seizure of Property or Evidence.

(1) Based on Probable Cause. Evidence is admissible when seized based on a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

(2) Abandoned Property. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(3) Consent. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Mil. R. Evid. 314.

(4) Government Property. Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subdivision (d), unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided in Mil. R. Evid. 314(d), at the time of the seizure.

(5) Other Property. Property or evidence not included in paragraph (1)–(4) may be seized for use in evidence by any person listed in subdivision (d) if:

(A) Authorization. The person is authorized to seize the property or evidence by a search warrant or a search authorization under Mil. R. Evid. 315;

(B) Exigent Circumstances. The person has probable cause to seize the property or evidence and under Mil. R. Evid. 315(g) a search warrant or search authorization is not required; or

(C) Plain View. The person while in the course of otherwise lawful activity observes in a reasonable fashion property or evidence that the person has probable cause to seize.

(6) Temporary Detention. Nothing in this rule prohibits temporary detention of property on less than probable cause when authorized under the Constitution of the United States.

(d) Who May Seize. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

(e) Other Seizures. Evidence obtained from a seizure not addressed in this rule is admissible provided that its seizure was permissible under the Constitution of the United States as applied to members of the armed forces.

Rule 317. Interception of Wire and Oral Communications

(a) General Rule. Wire or oral communications constitute evidence obtained as a result of an unlawful search or seizure within the meaning of Mil. R. Evid. 311 when such evidence must be excluded under the Fourth Amendment to the Constitution of the United States as applied to members of the armed forces or if such evidence must be excluded under a federal statute applicable to members of the armed forces.

(b) When Authorized by Court Order. Evidence from the interception of wire or oral communications is admissible when authorized pursuant to an application to a federal judge of competent jurisdiction under the provisions of a federal statute.

(c) Regulations. Notwithstanding any other provision of these rules, evidence obtained by members of the armed forces or their agents through interception of wire or oral communications for law enforcement purposes is not admissible unless such interception:

(1) Takes place in the United States and is authorized under subdivision (b);

(2) Takes place outside the United States and is authorized under regulations issued by the Secretary of Defense or the Secretary concerned; or

(3) Is authorized under regulations issued by the Secretary of Defense or the Secretary concerned and is not unlawful under applicable federal statutes.

Rule 321. Eyewitness Identification

(a) General Rule. Testimony concerning a relevant out of court identification by any person is admissible, subject to an appropriate objection under this rule, if such testimony is otherwise admissible under these rules. The witness making the identification and any person who has observed the previous identification may testify concerning it. When in testimony a witness identifies the accused as being, or not being, a participant in an offense or makes any other relevant identification concerning a person in the courtroom, evidence that on a previous occasion the witness made a similar identification is admissible to corroborate the witness's testimony as to identity even if the credibility of the witness has not been attacked directly, subject to appropriate objection under this rule.

(b) When Inadmissible. An identification of the accused as being a participant in an offense, whether such identification is made at the trial or otherwise, is inadmissible against the accused if:

(1) The identification is the result of an unlawful lineup or other unlawful identification process, as defined in subdivision (c), conducted by the United States or other domestic authorities and the accused makes a timely motion to suppress or an objection to the evidence under this rule; or

(2) Exclusion of the evidence is required by the due process clause of the Fifth Amendment to the Constitution of the United States as applied to members of the armed forces. Evidence other than an identification of the accused that is obtained as a result of the unlawful lineup or unlawful identification process is inadmissible against the accused if the accused makes a timely motion to suppress or an objection to the evidence under this rule and if exclusion of the evidence is required under the Constitution of the United States as applied to members of the armed forces.

(c) Unlawful Lineup or Identification Process.

(1) Unreliable. A lineup or other identification process is unreliable, and therefore unlawful, if the lineup or other identification process is so suggestive as to create a substantial likelihood of misidentification.

(2) In Violation of Right to Counsel. A lineup is unlawful if it is conducted in violation of the accused's rights to counsel.

(A) Military Lineups. An accused or suspect is entitled to counsel if, after preferral of charges or imposition of pretrial restraint under R.C.M. 304 for the offense under investigation, the accused is required by persons subject to the code or their agents to participate in a lineup for the purpose of identification. When a person entitled to counsel under this rule requests counsel, a judge advocate or a person certified in accordance with Article 27(b) will be provided by the United States at no expense to the accused or suspect and without regard to indigency or lack thereof before the lineup may proceed. The accused or suspect may waive the rights provided in this rule if

the waiver is freely, knowingly, and intelligently made.

(B) Nonmilitary Lineups. When a person subject to the code is required to participate in a lineup for purposes of identification by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, and the provisions of subdivision (2)(A) do not apply, the person's entitlement to counsel and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar lineups.

(d) Motions to Suppress and Objections.

(1) Disclosure. Prior to arraignment, the prosecution must disclose to the defense all evidence of, or derived from, a prior identification of the accused as a lineup or other identification process that it intends to offer into evidence against the accused at trial.

(2) Time Requirement. When such evidence has been disclosed, any motion to suppress or objection under this rule must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move constitutes a forfeiture of the motion or objection.

(3) Continuing Duty. If the prosecution intends to offer such evidence and the evidence was not disclosed prior to arraignment, the prosecution must provide timely notice to the military judge and counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interests of justice.

(4) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the lineup or other identification process, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(5) Defense Evidence. The defense may present evidence relevant to the issue of the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the lineup or identification process giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(6) Burden and Standard of Proof. When the defense has raised a specific motion or objection under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(A) Right to Counsel.

(i) Initial Violation of Right to Counsel at a Lineup. When the accused raises the right to presence of counsel under this rule, the prosecution must prove by a preponderance of the evidence that counsel was present at the lineup or that the accused, having been advised of the right to the presence of counsel, voluntarily and intelligently waived that right prior to the lineup.

(ii) Identification Subsequent to a Lineup Conducted in Violation of the Right to Counsel. When the military judge determines that an identification is the result of a lineup conducted without the presence of counsel or an appropriate waiver, any later identification by one present at such unlawful lineup is also a result thereof unless the military judge determines that the contrary has been shown by clear and convincing evidence.

(B) Unreliable Identification.

(i) Initial Unreliable Identification. When an objection raises the issue of an unreliable identification, the prosecution must prove by a preponderance of the evidence that the identification was reliable under the circumstances.

(ii) Identification Subsequent to an Unreliable Identification. When the military judge determines that an identification is the result of an unreliable identification, a later identification may be admitted if the prosecution proves by clear and convincing evidence that the later identification is not the result of the inadmissible identification.

(7) Rulings. A motion to suppress or an objection to evidence made prior to plea under this rule will be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at the trial of the general issue or until after findings, but no such determination will be deferred if a party's right to appeal the ruling is affected adversely. Where factual issues are involved in ruling upon such motion or objection, the military judge will state his or her essential findings of fact on the record.

(e) Effect of Guilty Pleas. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under this rule with respect to that offense whether or not raised prior to the plea.

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) It has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) The fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

(a) Relevant evidence is admissible unless any of the following provides otherwise:

(1) The United States Constitution as it applies to members of the armed forces;

(2) A federal statute applicable to trial by courts-martial;

(3) These rules; or

(4) This Manual.

(b) Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The military judge may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: Unfair prejudice, confusing the issues, misleading the members, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for an Accused or Victim.

(A) The accused may offer evidence of the accused's pertinent trait, and if the evidence is admitted, the prosecution may offer evidence to rebut it.

(B) Subject to the limitations in Mil. R. Evid. 412, the accused may offer

evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecution may:

(i) Offer evidence to rebut it; and

(ii) Offer evidence of the accused's same trait; and

(C) In a homicide or assault case, the prosecution may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Mil R. Evid. 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by the accused, the prosecution must:

(A) Provide reasonable notice of the general nature of any such evidence that the prosecution intends to offer at trial; and

(B) Do so before trial—or during trial if the military judge, for good cause, excuses lack of pretrial notice.

Rule 405. Methods of Proving Character

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the military judge may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(c) By Affidavit. The defense may introduce affidavits or other written statements of persons other than the accused concerning the character of the accused. If the defense introduces affidavits or other written statements under this subdivision, the prosecution may, in rebuttal, also introduce affidavits or other written statements regarding the character of the accused. Evidence of this type may be introduced by the defense or prosecution only if, aside from being contained in an affidavit or other written statement, it would otherwise be admissible under these rules.

(d) Definitions. ''Reputation'' means the estimation in which a person generally is held in the community in which the person lives or pursues a business or profession. ''Community'' in the armed forces includes a post, camp, ship, station, or other military organization regardless of size.

Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The military judge may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

(a) When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

(1) Negligence;

(2) Culpable conduct;

(3) A defect in a product or its design; or

(4) A need for a warning or instruction.

(b) The military judge may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations

(a) Prohibited Uses. Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) Furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in order to compromise the claim; and

(2) Conduct or a statement made during compromise negotiations about the claim—except when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers To Pay Medical and Similar Expenses

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. Evidence of the following is not admissible against the accused who made the plea or participated in the plea discussions:

(1) A guilty plea that was later withdrawn;

(2) A nolo contendere plea;

(3) Any statement made in the course of any judicial inquiry regarding either of the foregoing pleas; or

(4) Any statement made during plea discussions with the convening authority, staff judge advocate, trial counsel or other counsel for the Government if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The military judge may admit a statement described in subdivision (a)(3) or (a)(4):

(1) When another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) In a proceeding for perjury or false statement, if the accused made the statement under oath, on the record, and with counsel present.

(c) Request for Administrative Disposition. A ''statement made during plea discussions'' includes a statement made by the accused solely for the purpose of requesting disposition under an authorized procedure for administrative action in lieu of trial by court-martial; ''on the record'' includes the written statement submitted by the accused in furtherance of such request.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice or proving agency, ownership, or control.

Rule 412. Sex Offense Cases: The Victim's Sexual Behavior or Predisposition

(a) Prohibited Uses. The following evidence is not admissible in any proceeding involving an alleged sexual offense:

(1) Evidence offered to prove that a victim engaged in other sexual behavior; or

(2) Evidence offered to prove a victim's sexual predisposition.

(b) Exceptions. The military judge may admit the following evidence:

(1) Evidence of specific instances of a victim's sexual behavior, if offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(2) Evidence of specific instances of a victim's sexual behavior with respect to the accused, if offered by the accused to prove consent or if offered by the prosecution; and

(3) Evidence the exclusion of which would violate the accused's constitutional rights.

(c) Procedure to Determine Admissibility.

(1) Motion. If a party intends to offer evidence under Rule 412(b), the party must:

(A) File a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) Do so at least 5 days prior to entry of pleas unless the military judge, for good cause, sets a different time;

(C) Serve the motion on all parties; and

(D) Notify the victim or, when appropriate, the victim's guardian or representative.

(2) Hearing. Before admitting evidence under this rule, the military judge must conduct a hearing pursuant to Article 39(a) which must be closed to the public and outside the presence of the members. At this hearing, the parties may call witnesses, including the victim, and offer relevant evidence. The victim must be afforded a reasonable opportunity to attend and be heard. Unless the military judge orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed in accordance with R.C.M. 1103A.

(3) Scope. If the military judge determines on the basis of the hearing described in paragraph (2) of this subdivision that the evidence that the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the victim or witness may be questioned.

(d) Definitions. As used in this rule:

(1) ''Sexual behavior'' means any sexual behavior not encompassed by the alleged offense.

(2) ''Sexual offense'' means any sexual misconduct punishable under the Uniform Code of Military Justice, federal law or state law.

(3) ''Sexual predisposition'' means a victim's mode of dress, speech, or lifestyle, that may have a sexual connotation for the factfinder, but that does not directly relate to sexual activities or thoughts.

(4) ''Victim'' includes an alleged victim.

Rule 413. Similar Crimes in Sexual Offense Cases

(a) Permitted Uses. In a court-martial proceeding for a sexual offense, the military judge may admit evidence that the accused committed any other sexual offense. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the Accused. If the prosecution intends to offer this evidence, the prosecution must disclose it to the accused, including any witnesses' statements or a summary of the expected testimony. The prosecution must do so at least 5 days prior to entry of pleas or at a later time that the military judge allows for good cause.

(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

(d) Definition. As used in this rule, ''sexual offense'' means an offense punishable under the Uniform Code of Military Justice, or a crime under federal or state law (as ''state'' is defined in 18 U.S.C. § 513), involving:

(1) Any conduct prohibited by Article 120;

(2) Any conduct prohibited by 18 U.S.C. chapter 109A;

(3) Contact, without consent, between any part of the accused's body—or an object—and another person's genitals or anus;

(4) Contact, without consent, between the accused's genitals or anus and any part of another person's body;

(5) Deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or

(6) An attempt or conspiracy to engage in conduct described in subdivisions (1)–(5).

Rule 414. Similar Crimes in Child-Molestation Cases

(a) Permitted Uses. In a court-martial proceeding in which an accused is charged with an act of child molestation, the military judge may admit evidence that the accused committed any other offense of child molestation. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the Accused. If the prosecution intends to offer this evidence, the prosecution must disclose it to the accused, including witnesses' statements or a summary of the expected testimony. The prosecution must do so at least 5 days prior to entry of pleas or at a later time that the military judge allows for good cause.

(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

(d) Definitions. As used in this rule:

(1) ''Child'' means a person below the age of 16; and

(2) ''Child molestation'' means an offense punishable under the Uniform Code of Military Justice, or a crime under federal law or under state law (as ''state'' is defined in 18 U.S.C. 513), that involves:

(A) Any conduct prohibited by Article 120 and committed with a child;

(B) Any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;

(C) Any conduct prohibited by 18 U.S.C. chapter 110;

(D) Contact between any part of the accused's body—or an object—and a child's genitals or anus;

(E) Contact between the accused's genitals or anus and any part of a child's body;

(F) Deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(G) An attempt or conspiracy to engage in conduct described in subdivisions (A)–(F).

Rule 501. Privilege in General

(a) A person may not claim a privilege with respect to any matter except as required by or provided for in:

(1) The United States Constitution as applied to members of the armed forces;

(2) A federal statute applicable to trials by courts-martial;

(3) These rules;

(4) This Manual; or

(4) The principles of common law generally recognized in the trial of criminal cases in the United States district courts under rule 501 of the Federal Rules of Evidence, insofar as the application of such principles in trials by courts-martial is practicable and not contrary to or inconsistent with the Uniform Code of Military Justice, these rules, or this Manual.

(b) A claim of privilege includes, but is not limited to, the assertion by any person of a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

(c) The term ''person'' includes an appropriate representative of the Federal Government, a State, or political subdivision thereof, or any other entity claiming to be the holder of a privilege.

(d) Notwithstanding any other provision of these rules, information not otherwise privileged does not become privileged on the basis that it was acquired by a medical officer or civilian physician in a professional capacity.

Rule 502. Lawyer-Client Privilege

(a) General Rule. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) Between the client or the client's representative and the lawyer or the lawyer's representative;

(2) Between the lawyer and the lawyer's representative;

(3) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;

(4) Between representatives of the client or between the client and a representative of the client; or

(5) Between lawyers representing the client.

(b) Definitions. As used in this rule:

(1) ''Client'' means a person, public officer, corporation, association, organization, or other entity, either public or private, who receives professional legal services from a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) ''Lawyer'' means a person authorized, or reasonably believed by the client to be authorized, to practice law; or a member of the armed forces detailed, assigned, or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding. The term ''lawyer'' does not include a member of the armed forces serving in a capacity other than as a judge advocate, legal officer, or law specialist as defined in Article 1, unless the member:

(A) Is detailed, assigned, or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding;

(B) Is authorized by the armed forces, or reasonably believed by the client to be authorized, to render professional legal services to members of the armed forces; or

(C) Is authorized to practice law and renders professional legal services during off-duty employment.

(3) ''Lawyer's representative'' means a person employed by or assigned to assist a lawyer in providing professional legal services.

(4) A communication is ''confidential'' if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The lawyer or the lawyer's representative who received the communication may claim the privilege on behalf of the client. The authority of the lawyer to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule under any of the following circumstances:

(1) Crime or Fraud. If the communication clearly contemplated the future commission of a fraud or crime or if services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

(2) Claimants through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

(3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(4) Document Attested by the Lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) Joint Clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Rule 503. Communications to Clergy

(a) General Rule. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) Definitions. As used in this rule:

(1) ''Clergyman'' means a minister, priest, rabbi, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergyman.

(2) ''Clergyman's assistant'' means a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor.

(3) A communication is ''confidential'' if made to a clergyman in the clergyman's capacity as a spiritual adviser or to a clergyman's assistant in the assistant's official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the guardian, or conservator, or by a personal representative if the person is deceased. The clergyman or clergyman's assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergyman or clergyman's assistant to do so is presumed in the absence of evidence to the contrary.

Rule 504. Husband-Wife Privilege

(a) Spousal Incapacity. A person has a privilege to refuse to testify against his or her spouse.

(b) Confidential Communication Made During the Marriage.

(1) General Rule. A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were husband and wife and not separated as provided by law.

(2) Definition. As used in this rule, a communication is ''confidential'' if made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.

(3) Who May Claim the Privilege. The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent

disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused regardless of whether the spouse who made the communication objects to its disclosure.

(c) Exceptions.

(1) To Spousal Incapacity Only. There is no privilege under subdivision (a) when, at the time the testimony of one of the parties to the marriage is to be introduced in evidence against the other party, the parties are divorced or the marriage has been annulled.

(2) To Spousal Incapacity and Confidential Communications. There is no privilege under subdivisions (a) or (b):

(A) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

(B) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and with respect to the privilege in subdivision (a), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other; or with respect to the privilege in subdivision (b), the relationship was a sham at the time of the communication; or

(C) In proceedings in which a spouse is charged, in accordance with Article 133 or 134, with importing the other spouse as an alien for prostitution or other immoral purpose in violation of 18 U.S.C. 1328; with transporting the other spouse in interstate commerce for immoral purposes or other offense in violation of 18 U.S.C. 2421–2424; or with violation of such other similar statutes under which such privilege may not be claimed in the trial of criminal cases in the United States district courts.

(D) Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b), and are not entitled to protection under the privilege in subdivision (b).

(d) Definitions. As used in this rule:

(1) ''A child of either'' means a biological child, adopted child, or ward of one of the spouses and includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is:

(A) An individual under the age of 18; or

(B) An individual with a mental handicap who functions under the age of 18.

(2) ''Temporary physical custody'' means a parent has entrusted his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody, nor is a written agreement required. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments.

Rule 505. Classified Information

(a) General Rule. Classified information must be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information. The Secretary of Defense may prescribe security procedures for protection against the compromise of classified information submitted to courts-martial and appellate authorities.

(b) Definitions. As used in this rule:

(1) ''Classified information'' means any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulations, to require protection against unauthorized disclosure for reasons of national security, and any restricted data, as defined in 42 U.S.C. 2014(y).

(2) ''National security'' means the national defense and foreign relations of the United States.

(3) ''In camera hearing'' means a session under Article 39(a) from which the public is excluded.

(4) ''In camera review'' means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(5) ''Ex parte'' means a discussion between the military judge and either the defense counsel or prosecution, without the other party or the public present. This discussion can be on or off the record, depending on the circumstances. The military judge will grant a request for an ex parte discussion or hearing only after finding that such discussion or hearing is necessary to protect classified information or other good cause. Prior to granting a request from one party for an ex parte discussion or hearing, the military judge must provide notice to the opposing party on the record. If the ex parte discussion is conducted off the record, the military judge should later state on the record that such ex parte discussion took place and generally summarize the subject matter of the discussion, as appropriate.

(c) Access to Evidence. Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge must be provided to the accused.

(d) Declassification. Trial counsel should, when practicable, seek declassification of evidence that may be used at trial, consistent with the requirements of national security. A decision not to declassify evidence under this section is not subject to review by a military judge or upon appeal.

(e) Action Prior to Referral of Charges.

(1) Prior to referral of charges, upon a showing by the accused that the classified information sought is relevant and necessary to an element of the offense or a legally cognizable defense, the convening authority must respond in writing to a request by the accused for classified information if the privilege in this rule is claimed for such information. In response to such a request, the convening authority may:

(A) Delete specified items of classified information from documents made available to the accused;

(B) Substitute a portion or summary of the information for such classified documents;

(C) Substitute a statement admitting relevant facts that the classified information would tend to prove;

(D) Provide the document subject to conditions that will guard against the compromise of the information disclosed to the accused; or

(E) Withhold disclosure if actions under (A) through (D) cannot be taken without causing identifiable damage to the national security.

(2) An Article 32 investigating officer may not rule on any objection by the accused to the release of documents or information protected by this rule.

(3) Any objection by the accused to withholding of information or to the conditions of disclosure must be raised through a motion for appropriate relief at a pretrial conference.

(f) Actions after Referral of Charges.

(1) Pretrial Conference. At any time after referral of charges, any party may move for a pretrial conference under

Article 39(a) to consider matters relating to classified information that may arise in connection with the trial. Following such a motion, or when the military judge recognizes the need for such conference, the military judge must promptly hold a pretrial conference under Article 39(a).

(2) Ex Parte Permissible. Upon request by either party and with a showing of good cause, the military judge must hold such conference ex parte to the extent necessary to protect classified information from disclosure.

(3) Matters To Be Established at Pretrial Conference.

(A) Timing of Subsequent Actions. At the pretrial conference, the military judge must establish the timing of:

(i) Requests for discovery;

(ii) The provision of notice required by subdivision (i) of this rule; and

(iii) The initiation of the procedure established by subdivision (j) of this rule.

(B) Other Matters. At the pretrial conference, the military judge may also consider any matter which relates to classified information or which may promote a fair and expeditious trial.

(4) Convening Authority Notice and Action. If a claim of privilege has been made under this rule with respect to classified information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter will be reported to the convening authority. The convening authority may:

(A) Institute action to obtain the classified information for the use by the military judge in making a determination under subdivision (j);

(B) Dismiss the charges;

(C) Dismiss the charges or specifications or both to which the information relates; or

(D) Take such other action as may be required in the interests of justice.

(5) Remedies. If, after a reasonable period of time, the information is not provided to the military judge in circumstances where proceeding with the case without such information would materially prejudice a substantial right of the accused, the military judge must dismiss the charges or specifications or both to which the classified information relates.

(g) Protective Orders. Upon motion of the trial counsel, the military judge must issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused in any court-martial proceeding or that has otherwise been provided to, or obtained by, any such accused in any such court-martial proceeding. The terms of any such protective order may include, but are not limited to, provisions:

(1) Prohibiting the disclosure of the information except as authorized by the military judge;

(2) Requiring storage of material in a manner appropriate for the level of classification assigned to the documents to be disclosed;

(3) Requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

(4) Mandating that all persons requiring security clearances will cooperate with investigatory personnel in any investigations which are necessary to obtain a security clearance;

(5) Requiring the maintenance of logs regarding access by all persons authorized by the military judge to have access to the classified information in connection with the preparation of the defense;

(6) Regulating the making and handling of notes taken from material containing classified information; or

(7) Requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

(h) Discovery and Access by the Accused.

(1) Limitations.

(A) Government Claim of Privilege. In court-martial proceeding in which the government seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, the trial counsel must submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration must be signed by the head, or designee, of the executive or military department or government agency concerned.

(B) Standard for Discovery or Access by the Accused. Upon the submission of a declaration under subdivision (h)(1)(A), the military judge may not authorize the discovery of or access to such classified information unless the military judge determines that such classified information would be noncumulative and relevant to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing. If the discovery of or access to such classified information is authorized, it must be addressed in accordance with the requirements of subdivision (h)(2).

(2) Alternatives to Full Discovery.

(A) Substitutions and Other Alternatives. The military judge, in assessing the accused's right to discover or access classified information under this subdivision, may authorize the Government:

(i) To delete or withhold specified items of classified information;

(ii) To substitute a summary for classified information; or

(iii) To substitute a statement admitting relevant facts that the classified information or material would tend to prove, unless the military judge determines that disclosure of the classified information itself is necessary to enable the accused to prepare for trial.

(B) In Camera Review. The military judge must, upon the request of the prosecution, conduct an in camera review of the prosecution's motion and any materials submitted in support thereof and must not disclose such information to the accused.

(C) Action by Military Judge. The military judge must grant the request of the trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with subdivision (h)(2)(A), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific classified information.

(3) Reconsideration. An order of a military judge authorizing a request of the trial counsel to substitute, summarize, withhold, or prevent access to classified information under this subdivision (h) is not subject to a motion for reconsideration by the accused, if such order was entered pursuant to an ex parte showing under this subdivision.

(i) Disclosure by the Accused.

(1) Notification to Trial Counsel and Military Judge. If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused must, within the time specified by the military judge or, where no time is specified, prior to arraignment of the accused, notify the trial counsel and the military judge in writing.

(2) Content of Notice. Such notice must include a brief description of the classified information.

(3) Ex Parte Proffer. At the request of the defense counsel, the military judge may allow defense counsel to make an ex parte proffer of the classified information to the military judge so that

the military judge can determine the relevance of the information for use by the accused.

(4) Continuing Duty To Notify. Whenever the accused learns of additional classified information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused must notify trial counsel and the military judge in writing as soon as possible thereafter and must include a brief description of the classified information.

(5) Limitation on Disclosure by Accused. The accused may not disclose, or cause the disclosure of, any information known or believed to be classified in connection with a trial or pretrial proceeding until:

(A) Notice has been given under this subdivision (i); and

(B) The Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in subdivision (j).

(6) Failure to comply. If the accused fails to comply with the requirements of this subdivision, the military judge:

(A) May preclude disclosure of any classified information not made the subject of notification; and

(B) May prohibit the examination by the accused of any witness with respect to any such information.

(j) Procedure for Use of Classified Information in Trials and Pretrial Proceedings.

(1) Hearing on Use of Classified Information.

(A) Motion for Hearing. Within the time specified by the military judge for the filing of a motion under this rule, either party may move for a hearing concerning the use at any proceeding of any classified information. Upon a request by either party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.

(B) Request for In Camera Hearing. Any hearing held pursuant to this subdivision (or any portion of such hearing specified in the request of a knowledgeable United States official) must be held in camera if a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration that a public proceeding may result in the disclosure of classified information.

(C) Notice to Accused. Before the hearing, trial counsel must provide the accused with notice of the classified information that is at issue. Such notice must identify the specific classified information at issue whenever that information previously has been made available to the accused by the United States. When the United States has not previously made the information available to the accused in connection with the case the information may be described by generic category, in such forms as the military judge may approve, rather than by identification of the specific information of concern to the United States.

(D) Standard for Disclosure. Classified information is not subject to disclosure under this subdivision unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment must be admitted only if no unclassified version of such information is available.

(E) Written Findings. As to each item of classified information, the military judge must set forth in writing the basis for the determination.

(2) Alternatives to Full Disclosure.

(A) Motion by the Prosecution. Upon any determination by the military judge authorizing the disclosure of specific classified information under the procedures established by this subdivision (j), the trial counsel may move that, in lieu of the disclosure of such specific classified information, the military judge order:

(i) The substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove;

(ii) The substitution for such classified information of a summary of the specific classified information; or

(iii) Any other procedure or redaction limiting the disclosure of specific classified information.

(B) Declaration of Damage to National Security. The trial counsel may, in connection with a motion under this subdivision (j), submit to the military judge a declaration signed by the head, or designee, of the executive or military department or government agency concerned certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the trial counsel, the military judge must examine such declaration during an in camera review.

(C) Hearing. The military judge must hold a hearing on any motion under this subdivision. Any such hearing must be held in camera at the request of a knowledgeable United States official possessing authority to classify information.

(D) Standard for Use of Alternatives. The military judge must grant such a motion of the trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the accused with substantially the same ability to make his or her defense as would disclosure of the specific classified information.

(3) Sealing of Records of In Camera Hearings. If at the close of an in camera hearing under this subdivision (or any portion of a hearing under this subdivision that is held in camera), the military judge determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing must be sealed in accordance with R.C.M. 1103A and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(4) Remedies. If the military judge determines that alternatives to full disclosure may not be used and the prosecution continues to object to disclosure of the information, the military judge must issue any order that the interests of justice require, including but not limited to, an order:

(A) Striking or precluding all or part of the testimony of a witness;

(B) Declaring a mistrial;

(C) Finding against the Government on any issue as to which the evidence is relevant and material to the defense;

(D) Dismissing the charges, with or without prejudice; or

(E) Dismissing the charges or specifications or both to which the information relates.

The Government may avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

(5) Disclosure of Rebuttal Information. Whenever the military judge determines that classified information may be disclosed in connection with a trial or pretrial proceeding, the military judge must, unless the interests of fairness do not so require, order the prosecution to provide the accused with the information it expects to use to rebut the classified information.

(A) Continuing Duty. The military judge may place the prosecution under a continuing duty to disclose such rebuttal information.

(B) Sanction for Failure To Comply. If the prosecution fails to comply with its obligation under this subdivision, the military judge:

(i) May exclude any evidence not made the subject of a required disclosure; and

(ii) May prohibit the examination by the prosecution of any witness with respect to such information.

(6) Disclosure at Trial of Previous Statements by a Witness.

(A) Motion for Production of Statements in Possession of the Prosecution. After a witness called by the trial counsel has testified on direct examination, the military judge, on motion of the accused, may order production of statements of the witness in the possession of the Prosecution which relate to the subject matter as to which the witness has testified. This paragraph does not preclude discovery or assertion of a privilege otherwise authorized.

(B) Invocation of Privilege by the Government. If the Government invokes a privilege, the trial counsel may provide the prior statements of the witness to the military judge for in camera review to the extent necessary to protect classified information from disclosure.

(C) Action by Military Judge. If the military judge finds that disclosure of any portion of the statement identified by the Government as classified would be detrimental to the national security in the degree required to warrant classification under the applicable Executive Order, statute, or regulation, that such portion of the statement is consistent with the testimony of the witness, and that the disclosure of such portion is not necessary to afford the accused a fair trial, the military judge must excise that portion from the statement. If the military judge finds that such portion of the statement is inconsistent with the testimony of the witness or that its disclosure is necessary to afford the accused a fair trial, the military judge must, upon the request of the trial counsel, consider alternatives to disclosure in accordance with this subdivision (j)(2).

(k) Introduction into Evidence of Classified Information.

(1) Preservation of Classification Status. Writings, recordings, and photographs containing classified information may be admitted into evidence in court-martial proceedings under this rule without change in their classification status.

(A) Precautions. The military judge in a trial by court-martial, in order to prevent unnecessary disclosure of classified information, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(B) Classified Information Kept Under Seal. The military judge must allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the Government, seal exhibits containing classified information in accordance with R.C.M. 1103A for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

(2) Testimony.

(A) Objection by Trial Counsel. During the examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) Action by Military Judge. Following an objection under this subdivision (k), the military judge must take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness's response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect classified information from disclosure.

(3) Closed session. The military judge may, subject to the requirements of the United States Constitution, exclude the public during that portion of the presentation of evidence that discloses classified information.

(l) Record of Trial. If under this rule any information is withheld from the accused, the accused objects to such withholding, and the trial is continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as the prosecution's motion and any materials submitted in support thereof must be sealed in accordance with R.C.M. 1103A and attached to the record of trial as an appellate exhibit. Such material must be made available to reviewing authorities in closed proceedings for the purpose of reviewing the determination of the military judge. The record of trial with respect to any classified matter will be prepared under R.C.M. 1103(h) and 1104(b)(1)(D).

Rule 506. Government Information Other Than Classified Information

(a) Protection of Government Information. Except where disclosure is required by a federal statute, government information is privileged from disclosure if disclosure would be detrimental to the public interest.

(b) Scope. ''Government information'' includes official communication and documents and other information within the custody or control of the Federal Government. This rule does not apply to classified information (Mil. R. Evid. 505) or to the identity of an informant (Mil. R. Evid. 507).

(c) Definitions. As used in this rule:

(1) ''In camera hearing'' means a session under Article 39(a) from which the public is excluded.

(2) ''In camera review'' means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(3) ''Ex parte'' means a discussion between the military judge and either the defense counsel or prosecution, without the other party or the public present. This discussion can be on or off the record, depending on the circumstances. The military judge will grant a request for an ex parte discussion or hearing only after finding that such discussion or hearing is necessary to protect government information or other good cause. Prior to granting a request from one party for an ex parte discussion or hearing, the military judge must provide notice to the opposing party on the record. If the ex parte discussion is conducted off the record, the military judge should later state on the record that such ex parte discussion took place and generally summarize the subject matter of the discussion, as appropriate.

(d) Who May Claim the Privilege. The privilege may be claimed by the head, or designee, of the executive or military department or government agency concerned. The privilege for records and information of the Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, the Inspector General, or any other superior authority. A person who may claim the privilege may authorize a witness or the trial counsel to claim the privilege on his or her behalf. The authority of a witness or the trial counsel to do so is presumed in the absence of evidence to the contrary.

(e) Action Prior to Referral of Charges.

(1) Prior to referral of charges, upon a showing by the accused that the government information sought is relevant and necessary to an element of the offense or a legally cognizable defense, the convening authority must respond in writing to a request by the accused for government information if the privilege in this rule is claimed for such information. In response to such a request, the convening authority may:

(A) Delete specified items of government information claimed to be privileged from documents made available to the accused;

(B) Substitute a portion or summary of the information for such documents;

(C) Substitute a statement admitting relevant facts that the government information would tend to prove;

(D) Provide the document subject to conditions similar to those set forth in subdivision (g) of this rule; or

(E) Withhold disclosure if actions under (1) through (4) cannot be taken without causing identifiable damage to the public interest.

(2) Any objection by the accused to withholding of information or to the conditions of disclosure must be raised through a motion for appropriate relief at a pretrial conference.

(f) Action After Referral of Charges.

(1) Pretrial Conference. At any time after referral of charges, any party may move for a pretrial conference under Article 39(a) to consider matters relating to government information that may arise in connection with the trial. Following such a motion, or when the military judge recognizes the need for such conference, the military judge must promptly hold a pretrial conference under Article 39(a).

(2) Ex Parte Permissible. Upon request by either party and with a showing of good cause, the military judge must hold such conference ex parte to the extent necessary to protect government information from disclosure.

(3) Matters to be Established at Pretrial Conference.

(A) Timing of Subsequent Actions. At the pretrial conference, the military judge must establish the timing of:

(i) Requests for discovery;

(ii) The provision of notice required by subdivision (i) of this rule; and

(iii) The initiation of the procedure established by subdivision (j) of this rule.

(B) Other Matters. At the pretrial conference, the military judge may also consider any matter which relates to government information or which may promote a fair and expeditious trial.

(4) Convening Authority Notice and Action. If a claim of privilege has been made under this rule with respect to government information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority. The convening authority may:

(A) Institute action to obtain the information for use by the military judge in making a determination under subdivision (j);

(B) Dismiss the charges;

(C) Dismiss the charges or specifications or both to which the information relates; or

(D) Take such other action as may be required in the interests of justice.

(5) Remedies. If after a reasonable period of time the information is not provided to the military judge in circumstances where proceeding with the case without such information would materially prejudice a substantial right of the accused, the military judge must dismiss the charges or specifications or both to which the information relates.

(g) Protective Orders. Upon motion of the trial counsel, the military judge must issue an order to protect against the disclosure of any government information that has been disclosed by the United States to any accused in any court-martial proceeding or that has otherwise been provided to, or obtained by, any such accused in any such court-martial proceeding. The terms of any such protective order may include, but are not limited to, provisions:

(1) Prohibiting the disclosure of the information except as authorized by the military judge;

(2) Requiring storage of the material in a manner appropriate for the nature of the material to be disclosed;

(3) Requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

(4) Requiring the maintenance of logs recording access by persons authorized by the military judge to have access to the government information in connection with the preparation of the defense;

(5) Regulating the making and handling of notes taken from material containing government information; or

(6) Requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

(h) Discovery and Access by the Accused.

(1) Limitations.

(A) Government Claim of Privilege. In court-martial proceeding in which the government seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any government information subject to a claim of privilege, the trial counsel must submit a declaration invoking the United States' government information privilege and setting forth the detriment to the public interest that the discovery of or access to such information reasonably could be expected to cause. The declaration must be signed by a knowledgeable United States official as described in subdivision (d) of this rule.

(B) Standard for Discovery or Access by the Accused. Upon the submission of a declaration under subdivision (h)(1)(A), the military judge may not authorize the discovery of or access to such government information unless the military judge determines that such government information would be noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing. If the discovery of or access to such government information is authorized, it must be addressed in accordance with the requirements of subdivision (h)(2).

(2) Alternatives to Full Disclosure.

(A) Substitutions and Other Alternatives. The military judge, in assessing the accused's right to discover or access government information under this subdivision, may authorize the Government:

(i) To delete or withhold specified items of government information;

(ii) To substitute a summary for government information; or

(iii) To substitute a statement admitting relevant facts that the government information or material would tend to prove, unless the military judge determines that disclosure of the government information itself is necessary to enable the accused to prepare for trial.

(B) In Camera Review. The military judge must, upon the request of the prosecution, conduct an in camera review of the prosecution's motion and any materials submitted in support thereof and must not disclose such information to the accused.

(C) Action by Military Judge. The military judge must grant the request of the trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with subdivision (h)(2)(A), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would

discovery of or access to the specific government information.

(i) Disclosure by the Accused.

(1) Notification to Trial Counsel and Military Judge. If an accused reasonably expects to disclose, or to cause the disclosure of, government information subject to a claim of privilege in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused must, within the time specified by the military judge or, where no time is specified, prior to arraignment of the accused, notify the trial counsel and the military judge in writing.

(2) Content of Notice. Such notice must include a brief description of the government information.

(3) Ex Parte Review. At the request of the defense counsel, the military judge may allow defense counsel to make an ex parte proffer of the government information to the military judge so that the military judge can determine the relevance of the information for use by the accused.

(4) Continuing Duty to Notify. Whenever the accused learns of additional government information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused must notify trial counsel and the military judge in writing as soon as possible thereafter and must include a brief description of the government information.

(5) Limitation on Disclosure by Accused. The accused may not disclose, or cause the disclosure of, any information known or believed to be subject to a claim of privilege in connection with a trial or pretrial proceeding until:

(A) Notice has been given under this subdivision (i); and

(B) The Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in subdivision (j).

(6) Failure to Comply. If the accused fails to comply with the requirements of this subdivision, the military judge:

(A) May preclude disclosure of any government information not made the subject of notification; and

(B) May prohibit the examination by the accused of any witness with respect to any such information.

(j) Procedure for Use of Government Information Subject to a Claim of Privilege in Trials and Pretrial Proceedings.

(1) Hearing on Use of Government Information.

(A) Motion for Hearing. Within the time specified by the military judge for the filing of a motion under this rule, either party may move for an in camera hearing concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Upon a request by either party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.

(B) Request for In Camera Hearing. Any hearing held pursuant to this subdivision must be held in camera if a knowledgeable United States official described in subdivision (d) of this rule submits to the military judge a declaration that disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

(C) Notice to Accused. Subject to subdivision (j)(2) below, the prosecution must disclose government information claimed to be privileged under this rule for the limited purpose of litigating, in camera, the admissibility of the information at trial. The military judge must enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subdivision (g), above. The accused may not disclose any information provided under this subdivision unless, and until, such information has been admitted into evidence by the military judge. In the in camera hearing, both parties may have the opportunity to brief and argue the admissibility of the government information at trial.

(D) Standard for Disclosure. Government information is subject to disclosure at the court-martial proceeding under this subdivision if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused, and is otherwise admissible in the court-martial proceeding.

(E) Written Findings. As to each item of government information, the military judge must set forth in writing the basis for the determination.

(2) Alternatives to Full Disclosure.

(A) Motion by the Prosecution. Upon any determination by the military judge authorizing disclosure of specific government information under the procedures established by this subdivision (j), the prosecution may move that, in lieu of the disclosure of such information, the military judge order:

(i) The substitution for such government information of a statement admitting relevant facts that the specific government information would tend to prove;

(ii) The substitution for such government information of a summary of the specific government information; or

(iii) Any other procedure or redaction limiting the disclosure of specific government information.

(B) Hearing. The military judge must hold a hearing on any motion under this subdivision. At the request of the trial counsel, the military judge will conduct an in camera hearing.

(C) Standard for Use of Alternatives. The military judge must grant such a motion of the trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the accused with substantially the same ability to make his or her defense as would disclosure of the specific government information.

(3) Sealing of Records of In Camera Hearings. If at the close of an in camera hearing under this subdivision (or any portion of a hearing under this subdivision that is held in camera), the military judge determines that the government information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing must be sealed in accordance with R.C.M. 1103A and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(4) Remedies. If the military judge determines that alternatives to full disclosure may not be used and the prosecution continues to object to disclosure of the information, the military judge must issue any order that the interests of justice require, including but not limited to, an order:

(A) Striking or precluding all or part of the testimony of a witness;

(B) Declaring a mistrial;

(C) Finding against the Government on any issue as to which the evidence is relevant and necessary to the defense;

(D) Dismissing the charges, with or without prejudice; or

(E) Dismissing the charges or specifications or both to which the information relates.

The Government may avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

(5) Disclosure of Rebuttal Information. Whenever the military judge determines that government information may be disclosed in connection with a trial or pretrial proceeding, the military judge must, unless the interests of fairness do not so require, order the prosecution to provide the accused with the

information it expects to use to rebut the government information.

(A) Continuing Duty. The military judge may place the prosecution under a continuing duty to disclose such rebuttal information.

(B) Sanction for Failure to Comply. If the prosecution fails to comply with its obligation under this subdivision, the military judge may make such ruling as the interests of justice require, to include:

(i) Excluding any evidence not made the subject of a required disclosure; and

(ii) Prohibiting the examination by the prosecution of any witness with respect to such information.

(k) Appeals of Orders and Rulings. In a court-martial in which a punitive discharge may be adjudged, the Government may appeal an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The Government may also appeal an order or ruling in which the military judge refuses to issue a protective order sought by the United States to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The Government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification.

(l) Introduction into Evidence of Government Information Subject to a Claim of Privilege.

(1) Precautions. The military judge in a trial by court-martial, in order to prevent unnecessary disclosure of government information after there has been a claim of privilege under this rule, may order admission into evidence of only part of a writing, recording, or photograph or admit into evidence the whole writing, recording, or photograph with excision of some or all of the government information contained therein, unless the whole ought in fairness be considered.

(2) Government Information Kept Under Seal. The military judge must allow government information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the prosecution, seal exhibits containing government information in accordance with R.C.M. 1103A for any period after trial as necessary to prevent a disclosure of government information when a knowledgeable United States official described in subdivision (d) submits to the military judge a declaration setting forth the detriment to the public interest that the disclosure of such information reasonably could be expected to cause.

(3) Testimony.

(A) Objection by Trial Counsel. During examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose government information not previously found admissible if such information has been or is reasonably likely to be the subject of a claim of privilege under this rule.

(B) Action by Military Judge. Following such an objection, the military judge must take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any government information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness's response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect government information from disclosure.

(m) Record of Trial. If under this rule any information is withheld from the accused, the accused objects to such withholding, and the trial is continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as the prosecution's motion and any materials submitted in support thereof must be sealed in accordance with R.C.M. 1103A and attached to the record of trial as an appellate exhibit. Such material must be made available to reviewing authorities in closed proceedings for the purpose of reviewing the determination of the military judge.

Rule 507. Identity of Informants

(a) General Rule. The United States or a State or subdivision thereof has a privilege to refuse to disclose the identity of an informant. Unless otherwise privileged under these rules, the communications of an informant are not privileged except to the extent necessary to prevent the disclosure of the informant's identity.

(b) Definitions. As used in this rule:

(1) ''Informant'' means a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a person whose official duties include the discovery, investigation, or prosecution of crime.

(2) ''In camera review'' means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(c) Who May Claim the Privilege. The privilege may be claimed by an appropriate representative of the United States, regardless of whether information was furnished to an officer of the United States or a State or subdivision thereof. The privilege may be claimed by an appropriate representative of a State or subdivision if the information was furnished to an officer thereof, except the privilege will not be allowed if the prosecution objects.

(d) Exceptions.

(1) Voluntary Disclosures; Informant as a Prosecution Witness. No privilege exists under this rule:

(A) If the identity of the informant has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informant's own action; or

(B) If the informant appears as a witness for the prosecution.

(2) Informant as a Defense Witness. If a claim of privilege has been made under this rule, the military judge must, upon motion by the accused, determine whether disclosure of the identity of the informant is necessary to the accused's defense on the issue of guilt or innocence. Whether such a necessity exists will depend on the particular circumstances of each case, taking into consideration the offense charged, the possible defense, the possible significance of the informant's testimony, and other relevant factors. If it appears from the evidence in the case or from other showing by a party that an informant may be able to give testimony necessary to the accused's defense on the issue of guilt or innocence, the military judge may make any order required by the interests of justice.

(3) Informant as a Witness regarding a Motion to Suppress Evidence. If a claim of privilege has been made under this rule with respect to a motion under Mil. R. Evid. 311, the military judge must, upon motion of the accused, determine whether disclosure of the identity of the informant is required by the United States Constitution as applied to members of the armed forces. In making this determination, the military judge may make any order required by the interests of justice.

(e) Procedures.

(1) In Camera Review. If the accused has articulated a basis for disclosure under the standards set forth in this rule, the prosecution may ask the military judge to conduct an in camera

review of affidavits or other evidence relevant to disclosure.

(2) Order by the Military Judge. If a claim of privilege has been made under this rule, the military judge may make any order required by the interests of justice.

(3) Action by the Convening Authority. If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this rule, and the prosecution elects not to disclose the identity of the informant, the matter must be reported to the convening authority. The convening authority may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances.

(4) Remedies. If, after a reasonable period of time disclosure is not made, the military judge, sua sponte or upon motion of either counsel and after a hearing if requested by either party, may dismiss the charge or specifications or both to which the information regarding the informant would relate if the military judge determines that further proceedings would materially prejudice a substantial right of the accused.

Rule 508. Political Vote

A person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

Rule 509. Deliberations of Courts and Juries

Except as provided in Mil. R. Evid. 606, the deliberations of courts, courts-martial, military judges, and grand and petit juries are privileged to the extent that such matters are privileged in trial of criminal cases in the United States district courts, but the results of the deliberations are not privileged.

Rule 510. Waiver of Privilege by Voluntary Disclosure

(a) A person upon whom these rules confer a privilege against disclosure of a confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication under such circumstances that it would be inappropriate to allow the claim of privilege. This rule does not apply if the disclosure is itself a privileged communication.

(b) Unless testifying voluntarily concerning a privileged matter or communication, an accused who testifies in his or her own behalf or a person who testifies under a grant or promise of immunity does not, merely by reason of testifying, waive a privilege to which he or she may be entitled pertaining to the confidential matter or communication.

Rule 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege

(a) General Rule. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if disclosure was compelled erroneously or was made without an opportunity for the holder of the privilege to claim the privilege.

(b) Use of Communications Media. The telephonic transmission of information otherwise privileged under these rules does not affect its privileged character. Use of electronic means of communication other than the telephone for transmission of information otherwise privileged under these rules does not affect the privileged character of such information if use of such means of communication is necessary and in furtherance of the communication.

Rule 512. Comment Upon or Inference From Claim of Privilege; Instruction

(a) Comment or Inference Not Permitted.

(1) The claim of a privilege by the accused whether in the present proceeding or upon a prior occasion is not a proper subject of comment by the military judge or counsel for any party. No inference may be drawn therefrom.

(2) The claim of a privilege by a person other than the accused whether in the present proceeding or upon a prior occasion normally is not a proper subject of comment by the military judge or counsel for any party. An adverse inference may not be drawn therefrom except when determined by the military judge to be required by the interests of justice.

(b) Claiming a Privilege Without the Knowledge of the Members. In a trial before a court-martial with members, proceedings must be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the members. This subdivision (b) does not apply to a special court-martial without a military judge.

(c) Instruction. Upon request, any party against whom the members might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom except as provided in subdivision (a)(2).

Rule 513. Psychotherapist—Patient Privilege

(a) General Rule. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition.

(b) Definitions. As used in this rule:

(1) ''Patient'' means a person who consults with or is examined or interviewed by a psychotherapist for purposes of advice, diagnosis, or treatment of a mental or emotional condition.

(2) ''Psychotherapist'' means a psychiatrist, clinical psychologist, or clinical social worker who is licensed in any state, territory, possession, the District of Columbia or Puerto Rico to perform professional services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials.

(3) ''Assistant to a psychotherapist'' means a person directed by or assigned to assist a psychotherapist in providing professional services, or is reasonably believed by the patient to be such.

(4) A communication is ''confidential'' if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for such transmission of the communication.

(5) ''Evidence of a patient's records or communications'' means testimony of a psychotherapist, or assistant to the same, or patient records that pertain to communications by a patient to a psychotherapist, or assistant to the same for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient or the guardian or conservator of the patient. A person who may claim the privilege may authorize trial counsel or defense counsel to claim the privilege on his or her behalf. The psychotherapist or assistant to the psychotherapist who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist, assistant, guardian, or conservator to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) When the patient is dead;

(2) When the communication is evidence of child abuse or of neglect, or in a proceeding in which one spouse is charged with a crime against a child of either spouse;

(3) When federal law, state law, or service regulation imposes a duty to report information contained in a communication;

(4) When a psychotherapist or assistant to a psychotherapist believes that a patient's mental or emotional condition makes the patient a danger to any person, including the patient;

(5) If the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist are sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;

(6) When necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;

(7) When an accused offers statements or other evidence concerning his mental condition in defense, extenuation, or mitigation, under circumstances not covered by R.C.M. 706 or Mil. R. Evid. 302. In such situations, the military judge may, upon motion, order disclosure of any statement made by the accused to a psychotherapist as may be necessary in the interests of justice; or

(8) When admission or disclosure of a communication is constitutionally required.

(e) Procedure to Determine Admissibility of Patient Records or Communications.

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party must:

(A) File a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) Serve the motion on the opposing party, the military judge and, if practical, notify the patient or the patient's guardian, conservator, or representative that the motion has been filed and that the patient has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient must be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1103A and must remain under seal unless the military judge or an appellate court orders otherwise.

Rule 514. Victim Advocate—Victim Privilege

(a) General Rule. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating advice or supportive assistance to the alleged victim.

(b) Definitions. As used in this rule:

(1) ''Victim'' means any person who is alleged to have suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) ''Victim advocate'' means a person who:

(A) Is designated in writing as a victim advocate in accordance with service regulation;

(B) Is authorized to perform victim advocate duties in accordance with service regulation and is acting in the performance of those duties; or

(C) Is certified as a victim advocate pursuant to federal or state requirements.

(3) A communication is ''confidential'' if made in the course of the victim advocate—victim relationship and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of advice or assistance to the alleged victim or those reasonably necessary for such transmission of the communication.

(4) ''Evidence of a victim's records or communications'' means testimony of a victim advocate, or records that pertain to communications by a victim to a victim advocate, for the purposes of advising or providing supportive assistance to the victim.

(c) Who May Claim the Privilege. The privilege may be claimed by the victim or the guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, guardian, conservator, or a defense counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) When the victim is dead;

(2) When federal law, state law, or service regulation imposes a duty to report information contained in a communication;

(3) When a victim advocate believes that a victim's mental or emotional condition makes the victim a danger to any person, including the victim;

(4) If the communication clearly contemplated the future commission of a fraud or crime, or if the services of the victim advocate are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

(5) When necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission; or

(6) When admission or disclosure of a communication is constitutionally required.

(e) Procedure to Determine Admissibility of Victim Records or Communications.

(1) In any case in which the production or admission of records or communications of a victim is a matter in dispute, a party may seek an interlocutory ruling by the military

judge. In order to obtain such a ruling, the party must:

(A) File a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) Serve the motion on the opposing party, the military judge and, if practicable, notify the victim or the victim's guardian, conservator, or representative that the motion has been filed and that the victim has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of a victim's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim must be afforded a reasonable opportunity to attend the hearing and be heard at the victim's own expense unless the victim has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a victim's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1103A and must remain under seal unless the military judge or an appellate court orders otherwise.

Rule 601. Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Mil. R. Evid. 703.

Rule 603. Oath or Affirmation To Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Rule 604. Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Rule 605. Military Judge's Competency as a Witness

(a) The presiding military judge may not testify as a witness at any proceeding of that court-martial. A party need not object to preserve the issue.

(b) This rule does not preclude the military judge from placing on the record matters concerning docketing of the case.

Rule 606. Member's Competency as a Witness

(a) At the Trial by Court-Martial. A member of a court-martial may not testify as a witness before the other members at any proceeding of that court-martial. If a member is called to testify, the military judge must—except in a special court-martial without a military judge—give the opposing party an opportunity to object outside the presence of the members.

(b) During an Inquiry into the Validity of a Finding or Sentence.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a finding or sentence, a member of a court-martial may not testify about any statement made or incident that occurred during the deliberations of that court-martial; the effect of anything on that member's or another member's vote; or any member's mental processes concerning the finding or sentence. The military judge may not receive a member's affidavit or evidence of a member's statement on these matters.

(2) Exceptions. A member may testify about whether:

(A) Extraneous prejudicial information was improperly brought to the members' attention;

(B) Unlawful command influence or any other outside influence was improperly brought to bear on any member; or

(C) A mistake was made in entering the finding or sentence on the finding or sentence forms.

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. Evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Mil. R. Evid. 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. The military judge may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) The witness; or

(2) Another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

(c) Evidence of Bias. Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that, in the convicting jurisdiction, was punishable by death, dishonorable discharge, or by imprisonment for more than one year, the evidence:

(A) Must be admitted, subject to Mil. R. Evid. 403, in a court-martial in which the witness is not the accused; and

(B) Must be admitted in a court-martial in which the witness is the accused, if the probative value of the evidence outweighs its prejudicial effect to that accused; and

(2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the

witness's admitting—a dishonest act or false statement.

(3) In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) Its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) The proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death, dishonorable discharge, or imprisonment for more than one year; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) The adjudication was of a witness other than the accused;

(2) An adult's conviction for that offense would be admissible to attack the adult's credibility; and

(3) Admitting the evidence is necessary to fairly determine guilt or innocence.

(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending, except that a conviction by summary court-martial or special court-martial without a military judge may not be used for purposes of impeachment until review has been completed under Article 64 or Article 66, if applicable. Evidence of the pendency is also admissible.

(f) Definition. For purposes of this rule, there is a ''conviction'' in a court-martial case when a sentence has been adjudged.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) Control by the Military Judge; Purposes. The military judge should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) Make those procedures effective for determining the truth;

(2) Avoid wasting time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The military judge may allow inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the military judge should allow leading questions:

(1) On cross-examination; and

(2) When a party calls a hostile witness or a witness identified with an adverse party.

(d) Remote live testimony of a child.

(1) In a case involving domestic violence or the abuse of a child, the military judge must, subject to the requirements of subdivision (3) of this rule, allow a child victim or witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) Definitions. As used in this rule:

(A) ''Child'' means a person who is under the age of 16 at the time of his or her testimony.

(B) ''Abuse of a child'' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(C) ''Exploitation'' means child pornography or child prostitution.

(D) ''Negligent treatment'' means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to endanger seriously the physical health of the child.

(E) ''Domestic violence'' means an offense that has as an element the use, or attempted or threatened use of physical force against a person by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

(3) Remote live testimony will be used only where the military judge makes the following three findings on the record:

(A) That it is necessary to protect the welfare of the particular child witness;

(B) That the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant; and

(C) That the emotional distress suffered by the child witness in the presence of the defendant is more than de minimis.

(4) Remote live testimony of a child will not be used when the accused elects to absent himself from the courtroom in accordance with R.C.M. 804(d).

(5) In making a determination under subdivision (d)(3), the military judge may question the child in chambers, or at some comfortable place other than the courtroom, on the record for a reasonable period of time, in the presence of the child, a representative of the prosecution, a representative of the defense, and the child's attorney or guardian ad litem.

Rule 612. Writing Used To Refresh a Witness's Memory

(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) While testifying; or

(2) Before testifying, if the military judge decides that justice requires the party to have those options.

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated or privileged matter, the military judge must examine the writing in camera, delete any unrelated or privileged portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the military judge may issue any appropriate order. If the prosecution does not comply, the military judge must strike the witness's testimony or—if justice so requires—declare a mistrial.

(d) No Effect on Other Disclosure Requirements. This rule does not preclude disclosure of information

required to be disclosed under other provisions of these rules or this Manual.

Rule 613. Witness's Prior Statement

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. The party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Mil. R. Evid. 801(d)(2).

Rule 614. Court-Martial's Calling or Examining a Witness

(a) Calling. The military judge may—sua sponte or at the request of the members or the suggestion of a party—call a witness. Each party is entitled to cross-examine the witness. When the members wish to call or recall a witness, the military judge must determine whether the testimony would be relevant and not barred by any rule or provision of this Manual.

(b) Examining. The military judge or members may examine a witness regardless of who calls the witness. Members must submit their questions to the military judge in writing. Following the opportunity for review by both parties, the military judge must rule on the propriety of the questions, and ask the questions in an acceptable form on behalf of the members. When the military judge or the members call a witness who has not previously testified, the military judge may conduct the direct examination or may assign the responsibility to counsel for any party.

(c) Objections. A party may object to the court-martial's calling or examining a witness either at that time or at the next opportunity when the members are not present.

Rule 615. Excluding Witnesses

At a party's request, the military judge must order witnesses excluded so that they cannot hear other witnesses' testimony, or the military judge may do so sua sponte. This rule does not authorize excluding:

(a) The accused;

(b) A member of an armed service or an employee of the United States after being designated as a representative of the United States by the trial counsel;

(c) A person whose presence a party shows to be essential to presenting the party's case;

(d) A person authorized by statute to be present; or

(e) A victim of an offense from the trial of an accused for that offense, when the sole basis for exclusion would be that the victim may testify or present information during the presentencing phase of the trial.

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) Rationally based on the witness's perception;

(b) Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) Not based on scientific, technical, or other specialized knowledge within the scope of Mil. R. Evid. 702.

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case.

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the members of a court-martial only if the military judge finds that their probative value in helping the members evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on an Ultimate Issue

An opinion is not objectionable just because it embraces an ultimate issue.

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion

Unless the military judge orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. The expert may be required to disclose those facts or data on cross-examination.

Rule 706. Court-Appointed Expert Witnesses

(a) Appointment Process. The trial counsel, the defense counsel, and the court-martial have equal opportunity to obtain expert witnesses under Article 46 and R.C.M. 703.

(b) Compensation. The compensation of expert witnesses is governed by R.C.M. 703.

(c) Accused's Choice of Experts. This rule does not limit an accused in calling any expert at the accused's own expense.

Rule 707. Polygraph Examinations

(a) Prohibitions. Notwithstanding any other provision of law, the result of a polygraph examination, the polygraph examiner's opinion, or any reference to an offer to take, failure to take, or taking of a polygraph examination is not admissible.

(b) Statements Made During a Polygraph Examination. This rule does not prohibit admission of an otherwise admissible statement made during a polygraph examination.

Rule 801. Definitions That Apply to This Section; Exclusions From Hearsay

(a) Statement. ''Statement'' means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. ''Declarant'' means the person who made the statement.

(c) Hearsay. ''Hearsay'' means a statement that:

(1) The declarant does not make while testifying at the current trial or hearing; and

(2) A party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements that Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) Is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) Is consistent with the declarant's testimony and is offered to rebut an

express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) Identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

(C) Was made by a person whom the party authorized to make a statement on the subject;

(D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) Was made by the party's co-conspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

(a) A federal statute applicable in trial by courts-martial; or

(b) These rules.

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) Statement Made for Medical Diagnosis or Treatment. A statement that—

(A) Is made for—and is reasonably pertinent to—medical diagnosis or treatment; and

(B) Describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) Recorded Recollection. A record that:

(A) Is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) Was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) Accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) The record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a uniformed service, business, institution, association, profession, organization, occupation, or calling of any kind, whether or not conducted for profit;

(C) Making the record was a regular practice of that activity;

(D) All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Mil. R. Evid. 902(11) or with a statute permitting certification in a criminal proceeding in a court of the United States; and

(E) Neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

Records of regularly conducted activities include, but are not limited to, enlistment papers, physical examination papers, fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) The evidence is admitted to prove that the matter did not occur or exist;

(B) A record was regularly kept for a matter of that kind; and

(C) Neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) It sets out:

(i) The office's activities;

(ii) A matter observed while under a legal duty to report, but not including a matter observed by law-enforcement personnel and other personnel acting in a law enforcement capacity; or

(iii) Against the government, factual findings from a legally authorized investigation; and

(B) Neither the source of information nor other circumstances indicate a lack of trustworthiness.

Notwithstanding (A)(ii), the following are admissible under this paragraph as a record of a fact or event if made by a person within the scope of the person's official duties and those duties included a duty to know or to ascertain through appropriate and trustworthy channels of information the truth of the fact or event and to record such fact or event: enlistment papers, physical examination papers, fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, court-martial conviction records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

(9) Public Records of Vital Statistics. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) Absence of a Public Record. Testimony—or a certification under Mil. R. Evid. 902—that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) The record or statement does not exist; or

(B) A matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) Records of Religious Organizations Concerning Personal or Family History. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of fact contained in a certificate:

(A) Made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) Attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) Purporting to have been issued at the time of the act or within a reasonable time after it.

(13) Family Records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) Records of Documents that Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:

(A) The record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) The record is kept in a public office; and

(C) A statute authorizes recording documents of that kind in that office.

(15) Statements in Documents that Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.

(17) Market Reports and Similar Commercial Publications. Market quotations, lists (including government price lists), directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice. If admitted, the statement may be read into evidence but not received as an exhibit.

(19) Reputation Concerning Personal or Family History. A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) Reputation Concerning Boundaries or General History. A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) Reputation Concerning Character. A reputation among a person's associates or in the community concerning the person's character.

(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:

(A) The judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) The conviction was for a crime punishable by death, dishonorable discharge, or by imprisonment for more than a year;

(C) The evidence is admitted to prove any fact essential to the judgment; and

(D) When offered by the prosecutor for a purpose other than impeachment, the judgment was against the accused.

The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment for more than one year, the maximum punishment prescribed by the President under Article 56 of the Uniform Code of Military Justice at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(23) Judgments Involving Personal, Family, or General History, or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) Was essential to the judgment; and

(B) Could be proved by evidence of reputation.

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) Is exempted from testifying about the subject matter of the declarant's statement because the military judge rules that a privilege applies;

(2) Refuses to testify about the subject matter despite the military judge's order to do so;

(3) Testifies to not remembering the subject matter;

(4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) Is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) The declarant's attendance, in the case of a hearsay exception under subdivision (b)(1) or (b)(5);

(B) The declarant's attendance or testimony, in the case of a hearsay exception under subdivision (b)(2), (b)(3), or (b)(4); or

(6) Is unavailable within the meaning of Article 49(d)(2).

This subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are exceptions to the rule against hearsay, and are not excluded by that rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony that:

(A) Was given by a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) Is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Subject to the limitations in Articles 49 and 50, a record of testimony given before a court-martial, court of inquiry, military commission, other military tribunal, or pretrial investigation under Article 32 is admissible under this subdivision (b)(1) if the record of the testimony is a verbatim record.

(2) Statement under the Belief of Imminent Death. In a prosecution for any offense resulting in the death of the alleged victim, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement against Interest. A statement that:

(A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) Is supported by corroborating circumstances that clearly indicate its trustworthiness, if it tends to expose the declarant to criminal liability and is offered to exculpate the accused.

(4) Statement of Personal or Family History. A statement about:

(A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) Other Exceptions. [Transferred to M.R.E. 807]

(6) Statement Offered against a Party that Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception or exclusion to the rule.

Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement—or a statement described in Mil. R. Evid. 801(d)(2)(C), (D), or (E)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The military judge may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 807. Residual Exception

(a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Mil. R. Evid. 803 or 804:

(1) The statement has equivalent circumstantial guarantees of trustworthiness;

(2) It is offered as evidence of a material fact;

(3) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) Admitting it will best serve the purposes of these rules and the interests of justice.

(b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.

(2) Nonexpert Opinion about Handwriting. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) Opinion about a Voice. An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) Evidence about a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) A particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence about Public Records. Evidence that:

(A) A document was recorded or filed in a public office as authorized by law; or

(B) A purported public record or statement is from the office where items of this kind are kept.

(8) Evidence about Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:

(A) Is in a condition that creates no suspicion about its authenticity;

(B) Was in a place where, if authentic, it would likely be; and

(C) Is at least 20 years old when offered.

(9) Evidence about a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute, a rule prescribed by the Supreme Court, or an applicable regulation prescribed pursuant to statutory authority.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents that are Sealed and Signed. A document that bears:

(A) A seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) A signature purporting to be an execution or attestation.

(2) Domestic Public Documents that are Not Sealed but are Signed and Certified. A document that bears no seal if:

(A) It bears the signature of an officer or employee of an entity named in subdivision (1)(A) above; and

(B) Another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States

embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the military judge may, for good cause, either:

(A) Order that it be treated as presumptively authentic without final certification; or

(B) Allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records. A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) The custodian or another person authorized to make the certification; or

(B) A certificate that complies with subdivision (1), (2), or (3) above, a federal statute, a rule prescribed by the Supreme Court, or an applicable regulation prescribed pursuant to statutory authority.

(4a) Documents or Records of the United States Accompanied by Attesting Certificates. Documents or records kept under the authority of the United States by any department, bureau, agency, office, or court thereof when attached to or accompanied by an attesting certificate of the custodian of the document or record without further authentication.

(5) Official Publications. A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

(7) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) Acknowledged Documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) Presumptions under a Federal Statute or Regulation. A signature, document, or anything else that a federal statute, or an applicable regulation prescribed pursuant to statutory authority, declares to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Mil. R. Evid. 803(6)(A)–(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, or at a later time that the military judge allows for good cause, the proponent must give an adverse party reasonable written notice of the intent to offer the record and must make the record and certification available for inspection so that the party has a fair opportunity to challenge them.

Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

Rule 1001. Definitions That Apply to This Section

In this section:

(a) A ''writing'' consists of letters, words, numbers, or their equivalent set down in any form.

(b) A ''recording'' consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A ''photograph'' means a photographic image or its equivalent stored in any form.

(d) An ''original'' of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, ''original'' means any printout or other output readable by sight if it accurately reflects the information. An ''original'' of a photograph includes the negative or a print from it.

(e) A ''duplicate'' means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules, this Manual, or a federal statute provides otherwise.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Rule 1004. Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) All the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) An original cannot be obtained by any available judicial process;

(c) The party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of Public Records To Prove Content

The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met: The record or document is otherwise admissible; and the copy is certified as correct in accordance with Mil. R. Evid. 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Rule 1006. Summaries To Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. The military judge may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party To Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Military Judge and the Members

Ordinarily, the military judge determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Mil. R. Evid. 1004 or 1005. When

a court-martial is composed of a military judge and members, the members determine—in accordance with Mil. R. Evid. 104(b)—any issue about whether:

(a) An asserted writing, recording, or photograph ever existed;

(b) Another one produced at the trial or hearing is the original; or

(c) Other evidence of content accurately reflects the content.

Rule 1101. Applicability of These Rules

(a) In General. Except as otherwise provided in this Manual, these rules apply generally to all courts-martial, including summary courts-martial, Article 39(a) sessions, limited factfinding proceedings ordered on review, proceedings in revision, and contempt proceedings other than contempt proceedings in which the judge may act summarily.

(b) Rules Relaxed. The application of these rules may be relaxed in presentencing proceedings as provided under R.C.M. 1001 and otherwise as provided in this Manual.

(c) Rules on Privilege. The rules on privilege apply at all stages of a case or proceeding.

(d) Exceptions. These rules—except for Mil. R. Evid. 412 and those on privilege—do not apply to the following:

(1) The military judge's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) Pretrial investigations under Article 32;

(3) Proceedings for vacation of suspension of sentence under Article 72; and

(4) Miscellaneous actions and proceedings related to search authorizations, pretrial restraint, pretrial confinement, or other proceedings authorized under the Uniform Code of Military Justice or this Manual that are not listed in subdivision (a).

Rule 1102. Amendments

(a) General Rule. Amendments to the Federal Rules of Evidence—other than Articles III and V—will amend parallel provisions of the Military Rules of Evidence by operation of law 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

(b) Rules Determined Not to Apply. The President has determined that the following Federal Rules of Evidence do not apply to the Military Rules of Evidence: Rules 301, 302, 415, and 902(12).

Rule 1103. Title

These rules may be cited as the Military Rules of Evidence.

Changes to the Discussion Accompanying the Manual for Courts Martial, United States

(a) A new Discussion is added following Mil. R. Evid. 101(c):

''DISCUSSION

Discussion was added to these Rules in 2012 and is intended to serve as a treatise. The Discussion itself, however, does not have the force of law, even though it may describe legal requirements derived from other sources. It is in the nature of treatise, and may be used as secondary authority. If a matter is included in a rule, it is intended that the matter be binding, unless it is clearly expressed as precatory. The Discussion will be revised from time to time as warranted by changes in applicable law. See Composition of the Manual for Courts-Martial in Appendix 21.

Practitioners should also refer to the Analysis of the Military Rules of Evidence contained in Appendix 22 of this Manual. The Analysis is similar to Committee Notes accompanying the Federal Rules of Evidence and is intended to address the basis of the rule, deviation from the Federal Rules of Evidence, relevant precedent, and drafter's intent.''

(b) A new Discussion is added following Mil. R. Evid. 301(c):

''DISCUSSION

A military judge is not required to provide Article 31 warnings. If a witness who seems uninformed of the privileges under this rule appears likely to incriminate himself or herself, the military judge may advise the witness of the right to decline to make any answer that might tend to incriminate the witness and that any self-incriminating answer the witness might make can later be used as evidence against the witness. Counsel for any party or for the witness may ask the military judge to so advise a witness if such a request is made out of the hearing of the witness and the members, if present. Failure to so advise a witness does not make the testimony of the witness inadmissible.''

(c) A new Discussion is added following Mil. R. Evid. 312(b)(2)(F):

''DISCUSSION

An examination of the unclothed body under this rule should be conducted whenever practicable by a person of the same sex as that of the person being examined; however, failure to comply with this requirement does not make an examination an unlawful search within the meaning of Mil. R. Evid. 311.''

(d) A new Discussion is added following Mil. R. Evid. 312(e):

''DISCUSSION

Compelling a person to ingest substances for the purposes of locating the property described above or to compel the bodily elimination of such property is a search within the meaning of this section.''

(e) A new Discussion is added following Mil. R. Evid. 312(f):

''DISCUSSION

Nothing in this rule will be deemed to interfere with the lawful authority of the armed forces to take whatever action may be necessary to preserve the health of a servicemember.''

(f) A new Discussion is added following Mil. R. Evid. 314(c):

''DISCUSSION

Searches under subdivision (c) may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party; however, failure to comply with a treaty or agreement does not render a search unlawful within the meaning of Mil. R. Evid. 311.''

(g) A new Discussion is added following Mil. R. Evid. 314(f)(2):

''DISCUSSION

Subdivision (f)(2) requires that the official making the stop have a reasonable suspicion based on specific and articulable facts that the person being frisked is armed and dangerous. Officer safety is a factor, and the officer need not be absolutely certain that the individual detained is armed for the purposes of frisking or patting down that person's outer clothing for weapons. The test is whether a reasonably prudent person in similar circumstances would be warranted in a belief that his or her safety was in danger. The purpose of a frisk is to search for weapons or other dangerous items, including but not limited to: Firearms, knives, needles, or razor blades. A limited search of outer clothing for weapons serves to protect both the officer and the public; therefore, a frisk is reasonable under the Fourth Amendment.''

(h) A new Discussion is added following Mil. R. Evid. 314(f)(3):

''DISCUSSION

The official must limit the search to those areas within the passenger compartment in which a weapon may be placed or hidden. The scope of the search is similar to the ''stop and frisk'' defined in subdivision (f)(2) of this rule.

During the search for weapons, the official may seize any item that is immediately apparent as contraband or as evidence related to the offense serving as the basis for the stop. As a matter of safety, the official may, after conducting a lawful stop of a vehicle, order the driver and any passengers out of the car without any additional suspicion or justification.''

(i) A new Discussion is added following Mil. R. Evid. 314(g)(2):

''DISCUSSION

The scope of the search for weapons is limited to that which is necessary to protect the arresting official. The official may not search a vehicle for weapons if there is no possibility that the arrestee could reach into the searched area, for example, after the arrestee is handcuffed and removed from the vehicle. The scope of the search is broader for destructible evidence related to the offense for which the individual is being arrested. Unlike a search for weapons, the search for destructible offense-related evidence may take place after the arrestee is handcuffed and removed from a vehicle. If, however, the official cannot expect to find destructible offense-related evidence, this exception does not apply.''

(j) A new Discussion is added following Mil. R. Evid. 315(a):

''DISCUSSION

Although military personnel should adhere to procedural guidance regarding the conduct of searches, violation of such procedural guidance does not render evidence inadmissible unless the search is unlawful under these rules or the Constitution of the United States as applied to members of the armed forces. For example, if the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should notify him or her of the fact of authorization and the general substance of the authorization. Such notice may be made prior to or contemporaneously with the search. Property seized should be inventoried at the time of a seizure or as soon thereafter as practicable. A copy of the inventory should be given to a person from whose possession or premises the property was taken. Failure to provide notice, make an inventory, furnish a copy thereof, or otherwise comply with this guidance does not render a search or seizure unlawful within the meaning of Mil. R. Evid. 311.''

(k) A new Discussion is added following Mil. R. Evid. 315(c)(4):

''DISCUSSION

If nonmilitary property within a foreign country is owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense, a search should be conducted in coordination with an appropriate representative of the agency concerned, although failure to obtain such coordination would not render a search unlawful within the meaning of Mil. R. Evid. 311. If other nonmilitary property within a foreign country is to be searched, the search should be conducted in accordance with any relevant treaty or agreement or in coordination with an appropriate representative of the foreign country, although failure to obtain such coordination or noncompliance with a treaty or agreement would not render a search unlawful within the meaning of Mil. R. Evid. 311.''

(l) A new Discussion is added following Mil. R. Evid. 317(b):

''DISCUSSION

Pursuant to 18 U.S.C. 2516(1), the Attorney General, or any Assistant Attorney General specially designated by the Attorney General may authorize an application to a federal judge of competent jurisdiction for, and such judge may grant in conformity with 18 U.S.C. 2518, an order authorizing or approving the interception of wire or oral communications by the Department of Defense, the Department of Homeland Security, or any Military Department for purposes of obtaining evidence concerning the offenses enumerated in 18 U.S.C. 2516(1), to the extent such offenses are punishable under the Uniform Code of Military Justice.''

(m) A new Discussion is added following Mil. R. Evid. 412(c)(3):

''DISCUSSION

After hearing all evidence on the motion under subdivision (c) and before making a determination that the evidence is constitutionally required, the military judge should determine precisely what evidence is relevant and material and whether its probative value outweighs the danger of unfair prejudice. See *United States* v. *Ellerbrock,* 70 M.J. 314, 318 (C.A.A.F. 2011). The probative value of the evidence must be balanced against and outweigh the ordinary countervailing interests reviewed in making a determination as to whether evidence is constitutionally required. *United States* v. *Gaddis,* 70 M.J. 248, 255 (C.A.A.F. 2011). Such interests include, but are not limited to, harassment of a victim, prejudice to the integrity of the trial process, confusion of the issues, the victim's safety, or interrogation of a victim that is only marginally relevant. The military judge retains wide latitude to impose reasonable limits on cross-examination regarding the bias of a victim or witness or motive to fabricate based on concerns about, among other things, harassment, prejudice, confusion of the issues, the safety of a victim or witness, or interrogation that is repetitive or only marginally relevant. See *Delaware* v. *Van Arsdall,* 475 U.S. 673, 679 (1986). The Constitution guarantees an opportunity for effective cross-examination, but not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. *Delaware* v. *Fensterer,* 474 U.S. 15, 20 (1985). The military judge should carefully tailor an order that protects the right of the accused to present admissible evidence under this rule but does not allow presentation of evidence that is not admissible under subdivision (b).''

(n) A new Discussion is added following Mil. R. Evid. 505(k)(3):

''DISCUSSION

In addition to the sixth amendment right of an accused to a public trial, the Supreme Court has held that the press and general public have a constitutional right under the first amendment to access to criminal trials. *United States* v. *Hershey,* 20 M.J. 433 (C.M.A. 1985) citing *Richmond Newspapers, Inc.* v. *Virginia,* 448 U.S. 555 (1980). The test that must be met before closure of a criminal trial to the public is set out in *Press-Enterprise Co.* v. *Superior Court,* 464 U.S. 501 (1984), to wit: The party seeking closure must advance an overriding interest that is likely to be prejudiced; the closure must be narrowly tailored to protect that interest; the trial court must consider reasonable alternatives to closure; and it must make adequate findings supporting the closure to aid in review.''

Dated: February 28, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–6166 Filed 3–13–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0026]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Defense Intelligence Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 13, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the individual listed in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 8, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

LDIA 06–0002

SYSTEM NAME:

Department of Defense Intelligence Information Systems Access, Authorization, and Control Records (April 11, 2007, 72 FR 18209).

REASON:

Records have been incorporated into LDIA 07–0003, entitled Department of Defense Intelligence Information System (DoDIIS) Customer Relationship Management System. The records will assume the same retention schedule as listed in LDIA 07–0003.

[FR Doc. 2012–6003 Filed 3–13–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Installation of a Terminal Groin Structure at the Western End of South Beach, Bald Head Island, in Close Proximity to the Federal Wilmington Harbor Channel of the Cape Fear River (Brunswick County, NC)

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from the Village of Bald Head Island (VBHI) to develop and implement a shoreline protection plan that includes the installation of a terminal groin structure on the east side of the Wilmington Harbor Baldhead Shoal Entrance Channel (a federally-maintained navigation channel of the Cape Fear River) at the ''Point'' of Bald Head Island. The structure will be designed to be strategically incorporated into the federal beach disposal operations associated with the Wilmington Harbor Sand Management Plan.

DATES: A public scoping meeting for the DEIS will be held at the ILA Hall, located at 211 West 10th Street in Southport (NC) on March 22, 2012 at 6 p.m. Written comments will be received until April 9, 2012.

ADDRESSES: Copies of comments and questions regarding scoping of the DEIS may be submitted to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number SAW–2012–00040, 69 Darlington Avenue, Wilmington, NC 28403.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. David Timpy, Project Manager, Wilmington Regulatory Field Office, telephone: (910) 251–4634. Additional description of the VBHI's proposal can be found at the following link, *http://www.saw.usace.army.mil/WETLANDS/Projects/index.html,* under the Village of Bald Head Island Terminal Groin Project.

SUPPLEMENTARY INFORMATION:

1. Project Description

The west end of South Beach has experienced both chronic mid-term (decadal) and accelerated short-term erosion losses (with direct impacts to beaches and dunes of this segment of shoreline). A nourishment project has been employed by the VBHI to mitigate the effects of these losses. In addition, several million cubic yards of sand from a Federal navigation project has been disposed on the beach since 1991. Despite this sand placement on the beach, a portion of South Beach continues to experience substantial erosion, potentially impacting public infrastructure and homes. It is the VBHI's desire to implement a long-term beach and dune stabilization strategy. The applicant contends that a necessary component to the success of this strategy is the installation of a terminal groin that would (1) reduce inlet-directed sand losses from beach fill construction projects; and (2) stabilize shoreline alignment along the westernmost segment of South Beach in such a manner that alongshore transport rates are reduced. The VBHI proposal calls for the construction of a single terminal groin designed to compliment future placement of beach fill at South Beach. The structure will serve as a ''template'' for fill material placed eastward of the proposed terminal groin. In that regard, the groin will be designed as a ''leaky'' structure (i.e. semi-permeable) so as to provide for some level of sand transport to West Beach (located northward of the proposed groin).

2. Issues

There are several potential environmental and public interest issues that will be addressed in the DEIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

a. Potential impacts to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat.

b. Potential impacts to threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts to adjacent shoreline changes on West Beach of Bald Head Island and adjacent shorelines.

d. Potential impacts to Navigation, commercial and recreational.

e. Potential impacts to the long-term management of the oceanfront shorelines.

f. Potential effects on regional sand sources and how it relates to sand management practices and North Carolina's Beach Inlet Management Practices.

g. Potential effects of shoreline protection.

h. Potential impacts on public health and safety.

i. Potential impacts to recreational and commercial fishing.

j. Potential impacts to cultural resources.

k. Cumulative impacts of past, present, and foreseeable future dredging and nourishment activities.

3. Alternatives

Several alternatives are being considered for the development of the protection plan. These alternatives will be further formulated and developed during the scoping process and an appropriate range of alternatives, including the no federal action alternative, will be considered in the DEIS.

4. Scoping Process

A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the DEIS. Participation in the public meeting by federal, state, and local agencies and other interested organizations and persons is encouraged.

The USACE will consult with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act; with the National Marine Fisheries Service under the Magnuson-Stevens Fishery Conservation and Management Act and the Endangered Species Act; and with the North Carolina State Historic Preservation Office under the National Historic Preservation Act. Additionally, the USACE will coordinate the DEIS with the North Carolina Division of Water Quality (NCDWQ) to assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and with the North Carolina Division of Coastal Management (NCDCM) to determine the projects consistency with the Coastal Zone Management Act. The USACE will closely work with NCDCM and NCDWQ in the development of the DEIS to ensure the process complies with current State Environmental Policy Act (SEPA) requirements. It is the intention of both the USACE and the State of North Carolina to consolidate the NEPA and SEPA processes thereby eliminating duplication.

6. Availability of the DEIS

The DEIS is expected to be published and circulated by the end of 2012. A public hearing will be held after the publication of the DEIS.

Dated: March 2, 2012.

Scott McLendon,

Assistant Chief, Regulatory Division.

[FR Doc. 2012–6127 Filed 3–13–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Scoping Meeting and Preparation of Environmental Impact Statement for Baryonyx Corporation, Inc.'s Proposed Wind Farm, Offshore, Willacy and Cameron Counties, TX

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

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District, has received a permit application for a Department of the Army (DA) Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) from Baryonyx Corporation, Inc. (SWG–2011–00511) for the proposed approximately 300-turbine offshore wind farm located in the Gulf of Mexico state waters, offshore Willacy and Cameron Counties in state tracts: 1068, 1069, 1085, 1086, 1087, 1088, 1089, 1090, 1126, 1127, 1129, 1130 and 1131. The primary Federal involvement associated with the proposed action is the discharge or dredged or fill material into waters of the United States, and the construction of structures that may affect navigable waters. Federal authorizations for the proposed project would constitute a ''major federal action.'' Based on the potential impacts, both individually and cumulatively, the Corps intends to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act to render a final decision on the permit applications.

The Corps' decision will be to issue, issue with modification or deny DA permits for the proposed action. The EIS will assess the potential social, economic and environmental impacts of the construction and operation of the offshore wind farm, associated facilities, and appurtenances and is intended to be sufficient in scope to address Federal, State and local requirements, environmental and socio-economic issues concerning the proposed action, and permit reviews.

DATES: The agency must receive comments on or before May 14, 2012.

ADDRESSES: You may submit comments by any of the following methods: *Mail:* Jayson M. Hudson, U.S. Army Corps of Engineers, Regulatory Branch, P.O. Box 1229, Galveston, TX 77553–1229; *Fax:* (409) 766–3931 or *Email: SWG2011511@usace.army.mil.* Emailed comments, including attachments, should be provided in .doc, .docx, .pdf or .txt formats. Documents pertinent to the proposed project may be examined at *http://www.swg.usace.army.mil/reg/eis.asp.*

FOR FURTHER INFORMATION CONTACT: Mr. Jayson Hudson, (409) 766–3108.

SUPPLEMENTARY INFORMATION: The Galveston District intends to prepare an EIS on the proposed Baryonyx offshore wind farm which would include the proposed construction of approximately 300 offshore turbines in the Gulf of Mexico offshore Willacy and Cameron Counties, TX. Baryonyx Corporation, Inc. proposed this project and is the applicant for the DA permit SWG–2011–00511.

1. *Project Background:* The applicant proposes to construct an approximately 300-turbine wind farm in two areas referred to as the North Rio Grande Lease and Rio Grande Lease. The project is located in Gulf of Mexico state waters, offshore Willacy and Cameron Counties in state tracts: 1068, 1069, 1085, 1086, 1087, 1088, 1089, 1090, 1126, 1127, 1129, 1130 and 1131. The proposed project consists of the following:

a. *Wind Turbines and Foundations:* Each lease site will be comprised of 100–200 wind turbine generators in a grid pattern (turbine array). The final locations will be determined by consultation with appropriate state and federal agencies and consideration of constraints including: wind resource characteristics; safety and navigation; technical characteristics of the wind turbine generators; electrical collection system characteristics; geophysical site constraints; and environmental and ecological considerations. The specific turbine has not been selected so that Baryonyx may take advantage of the latest technologies in wind generation which may become commercially available at the time of procurement. Turbines will be installed onto individual platform foundations attached to the seabed. Foundation type

and design will be determined based on the technical requirements of the selected turbines, soils profile, depth, and site conditions. Typical foundations may include monopole, gravity based, suction caisson, or jacket structures. Scour protection in the form of prefabricated materials or clean stone may be placed at the base of the foundations.

b. *Transmission Lines:* Installation of up to 4 substations will be required in each lease to reduce the number of transmission lines to shore and reduce electricity loss. Offshore substations gather electricity from the rows of turbines through an inter-array of subsea cables and convert it into a higher voltage. Transforming power into a higher voltage allows for the installation of fewer export cables, more efficient transmission of power and minimizes power loss. The inter-array cables will be buried to a target depth of 3 feet and 18 inches wide, but will be dependent on the nature of the seabed. Connection between turbines and the substation platform is pre-installed j-tubes which protect the cable from the seabed to topside. To transfer the electricity to shore, up to 2 transmission lines per substation will be installed which connect the offshore substation to onshore electrical facilities. The dimension of the cables is in the range of 10 inches. However, for redundancy and safety issues, the transmission lines will be kept separate. Routing will be designed to minimize impacts to natural and cultural resources by following previously disturbed areas and areas devoid of vegetation, reefs, seagrasses, dunes and other valuable habitats. Scheduling of the work will also take into consideration minimization of impacts to marine mammals, sea turtles, birds, fisheries and other natural resources.

c. *Planning and Construction:* Prior to Construction, Baryonyx Corporation will conduct the necessary surveys and studies to describe and quantify natural resources. These studies will include geophysical geotechnical survey, delineation of aquatic habitats, and cultural resource surveys. Onshore construction and assembly will utilize existing port facilities. No new onshore or port facilities are anticipated to be constructed.

d. *Mitigation:* The Applicant proposes to avoid impacts to special aquatic sites and sensitive sea areas where practicable. No surface areas or wetlands are proposed to be filled at this time other than temporary side-cast material from trench construction. Horizontal drilling for burial of cables will be considered under unavoidable wetlands, seagrass beds, reefs and dunes where practicable.

2. *Scoping and Public Involvement Process:* A Public Notice was published on June 15, 2011 to initiate the public scoping process for the proposed project. At that time, based on information provided by the Applicant, a preliminary review indicated that an Environmental Impact Statement (EIS) was not required. However, based on continuing permit assessment and information brought forth during the initial coordination process, areas of potential significant impact on the human environment have been identified. Therefore, the EIS process is being implemented so that the permit application can be fully evaluated and a permit decision can be made. All comments received to date, including those provided for review during the Public Notice comment period, will be considered by the Galveston District during EIS preparation. The purpose of the EIS scoping meeting is to gather information on the subjects to be studied in detail by the EIS. In addition to the EIS, the Applicant has avoided and minimized impacts identified during the public notice comment period by removing the Mustang site, and its alternate, from consideration during this permit application. While the Applicant's minimization effort is designed to avoid potential impacts to the Padre Island National Seashore and Naval Air Station Corpus Christi, it is without prejudice to apply for these sites at another date.

3. *Purpose and Need.* The basic purpose of the proposed action is to construct a power generation facility. The overall purpose is to provide electrical generation capacity for current markets in Texas and potential sale in the wholesale market utilizing wind resources offshore. The Corps recognizes that there is a public and private need for additional power generation.

4. *Alternatives.* An evaluation of alternatives to the Applicant's preferred alternative initially being considered includes a No Action alternative, alternatives that would avoid, minimize and compensate for impacts to the aquatic environment within the project footprint, alternatives that would avoid, minimize and compensate for impacts to the aquatic environment outside of the footprint, alternatives utilizing alternative practices, and other reasonable alternatives that will be developed through the project scoping process which may also meet the identified purpose and need.

5. *Public Involvement.* The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. General concerns in the following categories have been identified to date: potential direct effects to waters of the United States including wetlands; water quality; aquatic species; air quality; environmental justice; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; energy supply and natural resources; hazardous waste and materials; aesthetics; public health and safety; navigation; erosion and accretion; invasive species; cumulative impacts; public benefit and needs of the people along with potential effects on the human environment. All parties who express interest will be given an opportunity to participate in the process.

6. *Coordination.* The proposed action is being coordinated with a number of Federal, State, regional and local agencies including but not limited to the Environmental Protection Agency, the United States (U.S.) Fish and Wildlife Service, U.S. National Marine Fisheries Service, the Texas Commission on Environmental Quality, the Texas General Land Office, and the Texas Parks and Wildlife Department.

7. *Availability of the Draft EIS.* The Corps currently expects the Draft EIS to be made available to the public by December 2014. A State and Federal agency scoping meeting will be held at Holiday Inn Brownsville at 2 p.m. on March 28, 2012. A public scoping meeting will be held at the Holiday Inn Brownsville on March 28, 2012 at 6 p.m. The Holiday Inn Brownsville is located at 3777 North Expressway, Brownsville, TX 78520. The Corps will announce the public scoping meeting through local news media and the Corps' Web page at *http://www.swg.usace.army.mil/reg* at least 15 days prior to the first meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–6128 Filed 3–13–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission Meeting

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Notice of An Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and

Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: March 29, 2012.

Time: 9 a.m. to 4:30 p.m. Eastern Daylight Time.

ADDRESSES: The Commission will meet in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Room 1W105/108.

FOR FURTHER INFORMATION CONTACT: Jim Eichner, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Email: *equitycommission@ed.gov.* Telephone: (202) 453–5945.

SUPPLEMENTARY INFORMATION: On March 29, 2012 from 9 a.m. to 4:30 p.m. Eastern Daylight Time, the Equity and Excellence Commission will hold an open meeting in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Room 1W105/108.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's March 29, 2012 meeting will include reviewing and editing the Commission's final report. The Commission is also expected to discuss what materials will accompany the final report and the timing of the release of the final report. Due to time constraints, there will not be a public comment period, however, individuals wishing to provide comments related to the Commission may contact the Equity Commission via email at *equitycommission@ed.gov.* For comments related to the upcoming meeting, please submit comments no later than March 22, 2012.

Individuals interested in attending the meeting must register in advance, as meeting room seating may be limited. Please contact Jim Eichner at (202) 453–5945 or by email at equitycommission@ed.gov. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Jim Eichner at (202) 245–5945 no later than March 22, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. Eastern Daylight Time.

Russlynn Ali,

Assistant Secretary, Office for Civil Rights.

[FR Doc. 2012–6189 Filed 3–13–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy, DOE.

ACTION: Notice and request for OMB review and comment.

SUMMARY: This notice corrects DOE's notice of January 26th, which incorrectly stated the Internet link for the collection instrument. The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will supersede the existing Form OE–781R, ''Monthly Electricity Imports and Exports Report''. The Form OE–781R is currently suspended and would be terminated with the implementation of the proposed Form EIA–111.

DATES: Comments regarding this collection must be received on or before April 13, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, and to Michelle Bowles. To ensure receipt of the comments by the due date, email (*eia-111@eia.gov*) is recommended. The mailing address is the U.S. Department of Energy, U.S. Energy Information Administration, Mail Stop: EI–23 (Form EIA–111), 1000 Independence Avenue SW., Washington, DC 20585. Alternatively, Ms. Bowles may be contacted by telephone at 202–586–2430 or via fax at (202) 287–1960.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions (the draft proposed collection) should be directed to Michelle Bowles at the address listed above. Forms and instructions are also available on the Internet at: *http://www.eia.gov/survey/#oe-781r.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No.; (2) Information Collection Request Title; (3) Type of Request; (4) Purpose; (5) Annual Estimated Number of Respondents; (6) Annual Estimated Number of Total Responses; (7) Annual Estimated Number of Burden Hours; (8) Annual Estimated Reporting and Recordkeeping Cost Burden.

1. New.

2. Form EIA–111, Quarterly Electricity Imports and Exports Report.

3. Three-year approval.

4. Form EIA–111 collects U. S. electricity import and export data. The data are used to get an accurate measure of the flow of electricity into and out of the United States. The import and export data are reported by U.S. purchasers, sellers and transmitters of wholesale electricity, including persons authorized by Order to export electric energy from the United States to foreign countries, persons authorized by Presidential Permit to construct, operate, maintain, or connect electric power transmission lines that cross the U.S. international border, and U.S. Balancing Authorities that are directly interconnected with foreign Balancing Authorities. Such entities are to report monthly flows of electric energy received or delivered across the border, the cost associated with the transactions, and actual and implemented interchange. The data collected on this form may appear in various EIA publications.

5. 173 respondents surveyed quarterly.

6. 692 responses annually.
7. Annual total of 4,152 hours.
10. Annual total of $0.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2012–6149 Filed 3–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–211–C]

Application To Export Electric Energy; DTE Energy Trading, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: DTE Energy Trading, Inc. (DTE Energy Trading) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before April 13, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On June 24, 1999, DOE issued Order No. EA–211, which authorized DTE Energy Trading to transmit electric energy from the United States to Canada as a power marketer for a two-year term using existing international transmission facilities. DOE subsequently renewed that authority two additional times in Order No. EA–211–A on April 25, 2002 and in Order No. EA–211–B on April 18, 2007. The current authority will expire on April 25, 2012. On January 26, 2012, DTE Energy Trading filed an application with DOE for renewal of the export authority contained in Order No. EA–211–B for an additional five-year term.

The electric energy that DTE Energy Trading proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by DTE Energy Trading have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the DTE Energy Trading application to export electric energy to Canada should be clearly marked with OE Docket No. 211–C. An additional copy is to be filed directly with Brian C. Drumm, DTE Energy Company, One Energy Plaza, Detroit, MI 48226 AND Marcia Hissong, DTE Energy Trading, Inc., 414 S. Main Street, Ann Arbor, MI 48104. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on March 8, 2012.

Brian Mills,

Director, Permitting and Siting Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–6142 Filed 3–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of Solicitation of Nominations for Appointment as a member of the Environmental Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, the U.S. Department of Energy is soliciting nominations for candidates to fill vacancies on the Environmental Management Advisory Board (EMAB).

DATES: The deadline for nominations for members will be accepted on or before April 20, 2012.

ADDRESSES: The nominations must include a resume, a short biography, and are to be submitted to the following address: Environmental Management Advisory Board (EM–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (for additional details, please see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Kristen Ellis, Designated Federal Officer, Environmental Management Advisory Board (EM–3.2), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone (202) 586–5810; fax (202) 586–0293 or email: *kristen.ellis@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The EMAB provides advice and recommendations to the Assistant Secretary for the Office of Environmental Management on a broad range of programmatic issues, including but not limited to the following: Project management and oversight, cost/benefit analyses, program performance, human capital development, and contracts and acquisition strategies. The Board is comprised of up to 15 members who are appointed by the Secretary of Energy as special Government employees or as representatives of entities including, among others, research facilities, academic institutions, regulatory entities, and stakeholder organizations,

should the Board's tasks require such representation.

EMAB meets the criteria for, and is subject to the Federal Advisory Committee Act (FACA). Members are selected in accordance with FACA requirements and serve on an uncompensated, volunteer basis. Members, however, may be reimbursed in accordance with the Federal Travel Regulations for authorized per diem and travel expenses incurred while attending Board meetings.

The Department of Energy's (DOE) Office of Environmental Management is accepting nominations through April 20, 2012, to fill vacancies on its Environmental Management Advisory Board (EMAB or Board). Applicants with expertise in project management, acquisition management, human capital management, environmental management and engineering, or other related fields are preferred. This expertise may be drawn from service in the private sector, academia, research institutions, professional organizations, or local and state governments. The Board requires a balanced membership so that a diversity of perspectives is represented on the issues that come before it. This membership balance is not static, however, and may change depending on the work of the committee.

Any interested person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. Nominations must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current occupation, position, address and daytime telephone number. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Please note, however, that Federally-registered lobbyists and individuals already serving on another Federal advisory committee are ineligible for nomination. All nominees will be vetted before selection.

Nominations can be sent by U.S. Mail or electronically to Ms. Kristen Ellis, Designated Federal Officer, at the address above. For further information on EMAB, please visit the Web site: *www.em.doe.gov/emab* or contact Ms. Ellis directly.

Issued at Washington, DC, on March 7, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–6141 Filed 3–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration; Proposed Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Agency Information Collection Activities: Proposed Collection; Notice and Request for Comments.

SUMMARY: The EIA invites public comment on the proposed collection of information, EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation, and Research'' that EIA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before May 14, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Richard Reeves, Energy Information Administration, 1000 Independence Ave. SW., Washington, DC 20585 or by fax at 202–586–5271 or by email at *richard.reeves@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Reeves, Energy Information Administration, 1000 Independence Ave. SW., Washington DC 20585, phone: 202–586–5856, email: *richard.reeves@eia.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* New;

(2) *Information Collection Request Title:* Generic Clearance for Questionnaire Testing, Evaluation, and Research;

(3) *Type of Request:* Proposed;

(4) *Purpose:* The U.S. Energy Information Administration (EIA) is planning to request a three-year approval from the Office of Management and Budget (OMB) to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of the data that is collected on EIA forms. This authority would allow EIA to conduct pretest surveys, pilot surveys, respondent debriefings, cognitive interviews, usability interviews, and focus groups. Through the use of these methodologies, EIA will improve the quality of data being collected, reduce or minimize respondent burden, increase agency efficiency, and improve responsiveness to the public. This authority would also allow EIA to improve data collection in order to meet the needs of EIA's customers while also staying current in the evolving nature of the energy industries.

The specific methods proposed for the coverage by this clearance are described below. Also outlined is the legal authority for these voluntary information gathering activities.

The methods proposed are the following:

Field Testing. Field testing surveys conducted under this clearance will generally be methodological studies of 500 cases or less. The samples may not be statistically representative because it will be designed to clarify particular issues rather than to be representative of the universe. Collection may be on the basis of convenience, e.g., limited to specific geographic locations, but the selection of sample cases will not be completely arbitrary in any instance. The sample designs will be determined at the time of development and will vary based on the content of the information collection or survey being tested.

Pilot Surveys. Pilot surveys conducted under this clearance will generally be methodological studies of 500 cases or less, but will always employ statistically representative samples. The pilot surveys will replicate all components of the methodological design, sampling procedures (where possible) and questionnaires of the full scale survey. Pilots will normally be utilized when

EIA undertakes a complete redesign of a particular data collection methodology or when EIA undertakes data collection in new areas, such as greenhouse gases or alternative fueled motor vehicle transportation system studies.

Respondent Debriefings. Respondent debriefings conducted under this clearance will generally be methodological studies of 500 cases or less, involving either purposive or statistically representative samples. The debriefing form is administered after a respondent completes a questionnaire either in paper form, electronically, or through in-person interviews. The debriefings contain questions that probe to determine how respondents interpret the questions and whether they have problems in completing the survey/questionnaire. Respondent debriefings also are useful in determining potential issues with data quality and in determining a more accurate respondent burden measure. This structured approach to debriefing enables both quantitative and qualitative analyses of data when administered to a statistically representative sample and allows EIA to improve its understanding of variance for the items in the questionnaire.

Cognitive Interviews. Cognitive interviews are typically one-on-one interviews in which the respondent is usually asked to ''think aloud'' or is asked ''retrospective questions'' as he or she answers survey questions, reads survey materials, or completes other activities as part of a survey process. A number of different techniques may be involved, including asking respondents to paraphrase questions, asking respondents probing questions to determine how they come up with their answers, and so on. The objective is to identify problems of ambiguity or misunderstanding, or other difficulties respondents have answering questions, and reduce measurement error in a survey.

Usability Interviews. Usability interviews are similar to cognitive interviews in which a respondent is typically asked to ''think aloud'' or asked ''retrospective questions'' as he or she reviews an electronic questionnaire, Web site and/or associated materials. The object of a usability interview is to make sure that electronic questionnaires, Web sites and other associated materials are user-friendly, allowing respondents to easily and intuitively navigate the electronic item and find the information that they seek.

Focus Groups. Focus groups involve group sessions guided by a moderator who follows a topic guide containing questions or topics focused on a particular issue, rather than adhering to a standardized questionnaire. Focus groups are useful for identifying and exploring issues with populations of interest, e.g., from a specific group of stakeholders.

(5) *Annual Estimated Number of Respondents:* 1,000;

(6) *Annual Estimated Number of Total Responses:* 1,000;

(7) *Annual Estimated Number of Burden Hours:* 1,000;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There are no costs associated with these survey methods other than the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on March 6, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2012–6154 Filed 3–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2351–017]

Public Service Company of Colorado;

Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2351–017.

c. *Date Filed:* February 27, 2012.

d. *Applicant:* Excel Energy Services, Inc. on behalf of Public Service Company of Colorado.

e. *Name of Project:* Cabin Creek Pumped Storage Project.

f. *Location:* The existing project is located on the South Clear Creek and its tributary Cabin Creek in Clear Creek County, Colorado. The project, as currently licensed, is located on 267 acres of U.S. Forest Service lands within the Arapahoe National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)-825(r).

h. *Applicant Contact:* Christine E. Johnston, Xcel Energy, 4653 Table Mountain Drive, Golden, CO 80403; (720) 497–2156.

i. *FERC Contact:* David Turner, (202) 502–6091.

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing project includes the following facilities: (1) A 210-foot-high, 1,458-foot-long concrete-faced rockfill Upper Dam across Cabin Creek; (2) a 25.4 acre upper reservoir with 1,087 acre-feet of usable storage between the maximum operating elevation of 11,196 feet mean sea level (msl) and the minimum operating elevation of 11,140 feet msl; (3) a 95-foot-high, 1,195-foot-long earthfill and rockfill Lower Dam across South Clear Creek; (4) a 44.8-acre lower reservoir with 1,221 acre-feet of usable storage between the maximum operating elevation of 10,002 feet msl and 9,975 feet msl; (5) a 145-foot-long auxiliary spillway constructed in the embankment of the lower reservoir with a crest elevation of 10,013 feet; (6) an intake structure located near the bottom of the upper reservoir; (7) a 12 to 15-foot-diameter, 4,143-foot-long power tunnel; (8) two 75-foot-long, 8.5-foot-diameter penstocks directing flow from the power tunnel to the powerhouse turbines; (9) a powerhouse installed at the lower reservoir containing two reversible turbine-generator units rated at 150 megawatts (nameplate capacity) each; (10) a switchyard located next to the powerhouse; (11) three miles of gravel access roads; and (12) appurtenant facilities.

Cabin Creek is a pumped storage project. The normal daily operation cycle involves pumping water from the lower reservoir to the upper reservoir during off-peak periods of energy demand and generating electricity with water released from the upper reservoir during the high energy demand part of the day. Under the current license, the applicant is required to provide a continuous release from the lower reservoir of three cubic feet per second or inflow, whichever is less, to South Clear Creek.

The applicant proposes the following changes to the project: (1) Upgrade the pump-generation equipment; (2) raise the usable storage capacity of the upper reservoir 75 acre-feet by raising the height of the dam 4.5 feet; and (3) increase the project boundary by 59 acres.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	April 27, 2012.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	June 26, 2012.
Commission issues Non-Draft EA	October 24, 2012.
Comments on EA	November 23, 2012.
Modified terms and conditions	January 22, 2012.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6107 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9611–013]

Sawatt Hydroelectric, LLC; Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Exemption.

b. *Project No:* 9611–013.

c. *Date Filed:* January 11, 2012.

d. *Applicant:* Sawatt Hydroelectric, LLC.

e. *Name of Project:* Mechanicsville Hydroelectric Project.

f. *Location:* The project is located on French River, near Thompson, in Windham County, Connecticut.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Rolland Zeleny, 18 Washington St. PMB #18, Canton, MA 02021. Tel: (603) 498–8089. Email: *indigoharbor@yahoo.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Kim Carter at (202) 502–6486 or *Kim.Carter@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* March 22, 2012.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. 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 (*http://www.ferc.gov/docs-filing/ecomment.asp)* and must include name and contact information at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–9611–013) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The exemptee proposes to: (1) Change the authorized configuration of the project from one generating unit with an installed capacity of 325 kilowatts (kW) with a maximum hydraulic capacity of 331 cubic feet per second (cfs), to two generating units with a total installed capacity of 321 kW and a maximum hydraulic capacity of 333 cfs. The two units are: One existing unit rated at 225 kW with a maximum hydraulic capacity of 233 cfs and one proposed unit to be installed with a rated capacity of 96 kW and a maximum hydraulic capacity of 100 cfs; (2) amend the Flashboard Operation; and (3) amend the minimum project starting flow due to the lower minimum hydraulic capacity of the proposed generating unit.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the ''eLibrary'' link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp*. Enter the docket number excluding the last three digits (P–9611) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6121 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3253–001; ER10–3237–001; ER10–3240–001; ER10–3230–001; ER10–3239–001.

Applicants: Wheelabrator Portsmouth Inc., Wheelabrator Westchester L.P., Wheelabrator Bridgeport, L.P., Wheelabrator Frackville Energy Co., Inc., Wheelabrator North Andover Inc.

Description: Wheelabrator Bridgeport, L.P. et. al. submits supplemental information to their updated market power analysis for the Northeast region.

Filed Date: 3/6/12.

Accession Number: 20120306–5216.

Comments Due: 5 p.m. ET 3/27/12.

Docket Numbers: ER12–1217–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3253; Queue No. W4–053 to be effective 2/14/2012.

Filed Date: 3/6/12.

Accession Number: 20120306–5180.

Comments Due: 5 p.m. ET 3/27/12.

Docket Numbers: ER12–1218–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3250; Queue No. W2–091 to be effective 2/14/2012.

Filed Date: 3/7/12.

Accession Number: 20120307–5041.

Comments Due: 5 p.m. ET 3/28/12.

Docket Numbers: ER12–1219–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3249; Queue No. W2–088 effective 2/14/2012 [initial submission description misidentified as No. 3250; Queue No. W2–091.

Filed Date: 3/7/12.

Accession Number: 20120307–5051.

Comments Due: 5 p.m. ET 3/28/12.

Docket Numbers: ER12–1220–000.

Applicants: Community Power & Utility, Community Power & Utilities.

Description: Notice of Cancellation of Community Power & Utility.

Filed Date: 3/7/12.

Accession Number: 20120307–5078.

Comments Due: 5 p.m. ET 3/28/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 07, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6131 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–474–000.

Applicants: Caledonia Energy Partners, L.L.C.

Description: Change to FERC Gas Tariff to be effective 3/5/2012.

Filed Date: 3/5/12.

Accession Number: 20120305–5114.

Comments Due: 5 p.m. ET 3/19/12.

Docket Numbers: RP12–475–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Linking/Swing Supplier to be effective 4/6/2012.

Filed Date: 3/6/12.

Accession Number: 20120306–5070.

Comments Due: 5 p.m. ET 3/19/12.

Docket Numbers: RP12–476–000.

Applicants: Texas Eastern Transmission, LP.

Description: Modifications to Gas Quality Phase-In Provisions to be effective 4/7/2012.

Filed Date: 3/7/12.

Accession Number: 20120307–5036.

Comments Due: 5 p.m. ET 3/19/12.

Docket Numbers: RP12–477–000.

Applicants: High Island Offshore System, L.L.C.

Description: Compliance on Reserved Issue to be effective 9/30/2010.

Filed Date: 3/7/12.

Accession Number: 20120307–5050.

Comments Due: 5 p.m. ET 3/19/12.

Docket Numbers: RP12–478–000.

Applicants: Empire Pipeline, Inc.

Description: Deferred State Income Tax Balance (2011) to be effective N/A.

Filed Date: 3/7/12.

Accession Number: 20120307–5077.

Comments Due: 5 p.m. ET 3/19/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2449–003.

Applicants: Portland Natural Gas Transmission System.

Description: Amendment to RP11–2449–002 to be effective 9/30/2010.

Filed Date: 3/5/12.

Accession Number: 20120305–5184.

Comments Due: 5 p.m. ET 3/19/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–6132 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–44–002]

Bonneville Power Administration; Notice of Compliance Filing

Take notice that on March 6, 2012, the Bonneville Power Administration (Bonneville) submitted a compliance filing with Pro Forma sheets in response to the Commission's Order.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 27, 2012.

[1] *Iberdrola Renewables, Inc.* v. *Bonneville Power Admin.,* 137 FERC ¶ 61,185 (2011) (''Order'').

Dated: March 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6109 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6803–000]

Schriver, Darryl; Notice of Filing

Take notice that on March 6, 2012, Darryl Schriver submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2011) and section 45.8 of Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 45.8 (2011).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 27, 2012.

Dated: March 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6111 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1202–000]

Liberty Hill Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Liberty Hill Power LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 28, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public

Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6134 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1198–000]

Solano 3 Wind LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Solano 3 Wind LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 28, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 8, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–6133 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–479–000]

ANR Storage Company; Notice of Petition for Declaratory Order

Take notice that on March 7, 2012, pursuant to Rule 207 of the Federal Energy Regulatory Commission Rules of Practice and Procedure, 18 CFR 385.207, and Part 284.501, *et seq.,* of the Commission's regulations, 18 CFR 284.501, *et seq.,* (2011), ANR Storage Company (ANR Storage) filed a petition for a declaratory order requesting that the Commission issue an order: (1) Granting ANR Storage authorization to charge market-based rates for the natural gas storage services performed using the ANR Storage Facilities; and (2) approving certain waivers referenced in Part VII of its petition. ANR Storage also requests that the Commission act on an expedited basis and seeks a final order on the petition no later than November 15, 2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, April 9, 2012.

Dated: March 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6119 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Working Group and Stakeholders Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Working Group and Stakeholders Meeting

March 14, 2012 (9 a.m.–3 p.m.).

This meeting will be held at the Pan American Life Center, 601 Poydras Street, New Orleans, LA 70130. The Center's phone number is 504–561–1245.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32 Entergy Services, Inc.

Docket No. EL00–66 Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88 Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL07–52 Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51 Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–60 *Ameren Services Co.* v. *Entergy Services, Inc.*
Docket No. EL09–43 Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–50 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–61 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL10–55 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL10–65 *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL11–34 Midwest Independent System Transmission Operator, Inc.
Docket No. ER05–1065 Entergy Services, Inc.
Docket No. ER07–682 Entergy Services, Inc.
Docket No. ER07–956 Entergy Services, Inc.
Docket No. ER08–1056 Entergy Services, Inc.
Docket No. ER09–833 Entergy Services, Inc.
Docket No. ER09–1224 Entergy Services, Inc.
Docket No. ER10–794 Entergy Services, Inc.
Docket No. ER10–1350 Entergy Services, Inc.
Docket No. ER10–1676 Entergy Services, Inc.
Docket No. ER10–2001 Entergy Arkansas, Inc.
Docket No. ER10–3357 Entergy Arkansas, Inc.
Docket No. ER11–2131 Entergy Arkansas, Inc.
Docket No. ER11–2132 Entergy Gulf States, Louisiana, LLC.
Docket No. ER11–2133 Entergy Gulf States, Louisiana, LLC.
Docket No. ER11–2134 Entergy Mississippi, Inc.
Docket No. ER11–2135 Entergy New Orleans, Inc.
Docket No. ER11–2136 Entergy Texas, Inc.
Docket No. ER11–3156 Entergy Arkansas, Inc.
Docket No. ER11–3657 Entergy Arkansas, Inc.
Docket No. ER12–480 Midwest Independent Transmission System Operator, Inc.

These meetings are open to the public.

For more information, contact Peter Nagler, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6083 or *peter.nagler@ferc.gov*.

Dated: March 8, 2012 .

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6120 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–8–000]

Enbridge Energy, Limited Partnership; Notice of Filing of Supplement to Facilities Surcharge Settlement

Take notice that on March 2, 2012, Enbridge Energy, Limited Partnership (Enbridge Energy) with the support of the Canadian Association of Petroleum Producers (CAPP), tendered for filing a Supplement to the Facilities Surcharge Settlement approved by the Commission on June 30, 2004, in Docket No. OR04–2–000, at 107 FERC ¶ 61,336 (2004).

Any person desiring to comment on this Supplement to the Settlement should file its intervention or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Initial comments must be filed no later than 5 p.m. Eastern Time on Wednesday, March 14, 2012. Reply comments will be due on or before 5 p.m. Eastern time on Monday, March 19, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6112 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL12–44–000; QF87–483–004]

AES Hawaii, Inc.; Notice of Petition for Temporary Waiver

Take notice that on March 5, 2012, pursuant to section 292.205(c) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 292.205(c), AES Hawaii, Inc. (AES Hawaii) filed a Request for Temporary Waiver, for calendar year 2011, of the five percent operating standard set forth in 18 CFR 292–205(a)(1) of the Commission's Regulations for the topping-cycle cogeneration facility located on the island of Oauh, Hawaii. AES Hawaii makes such a request because of a forced boiler outage in the fourth quarter of 2011.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 26, 2012.

Dated: March 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–6110 Filed 3–13–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9341–4]

Exposure Modeling Public Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Exposure Modeling Public Meeting (EMPM) will be held for one day on March 20, 2012. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on March 20, 2012, from 9 a.m. to 4 p.m. Requests to participate in the meeting must be received on or before March 19, 2012.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 5 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Building), Fourth Floor Conference Center (S–4370–80), 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Katrina White, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–4536; fax number: (703) 305–6309; email address: *white.katrina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act, the Federal Food, Drug, and Cosmetic Act, or the Federal Insecticide, Fungicide, and Rodenticide Act. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0879. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

On a biannual interval, an EMPM will be held for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure of risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the ''empmlist'' forum on the LYRIS list server at: *https://lists.epa.gov/read/all_forums/*.

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered Confidential Business Information. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2009–0879, must be received on or before March 19, 2012.

IV. Tentative Topics for the Meeting

- North American Free Trade Agreement Guidance for Calculating Degradation Kinetics in Environmental Media
- Pesticide Root Zone Model—Ground Water (PRZM–GW) Update
- Measuring and Estimating Concentrations in Drinking Water: A Historical Perspective
- Improved Characterization of the Temporal and Spatial Variability of Potential Surface Water Drinking Water Exposure by Using Environmental and Historic Monitoring Databases
- Estimating Upper Centrile Pesticide Concentrations and Sample Size Requirement
- Estimation of Upper Percentiles of Chlorpyrifos Surface Water Concentration from Yearly Monitoring Program Data
- Sampling Plans for Water Quality Assessment
- Update on Development of Drinking Water Intake Watershed PCAs
- Exposure Assessment for Pronamide Drinking Water Residues in California Central Coast Lettuce Production Areas
- Hybrid PRZM: ''Filling in the Gaps'' in Field Sampling Data Using Realistic Simulation Modeling

List of Subjects

Environmental protection, Degradation kinetics, Exposure assessment, Pesticide models, Pronamide, PRZM, Watershed PCAs.

Dated: March 7, 2012.

D.J. Brady,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2012–6051 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2012–0175; FRL–9647–2]

Human Studies Review Board; Notification of a Public Webinar/Teleconference

AGENCY: U. S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The EPA Office of the Science Advisor announces a public Webinar/teleconference of the HSRB to discuss its draft report from the HSRB meeting held January 26, 2012.

DATES: The Webinar/teleconference will be held on Wednesday, March 28, 2012,

from approximately 2 p.m. to approximately 4 p.m. Eastern Time. Comments may be submitted on or before Wednesday, March 21, 2012.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2012–0175, by one of the following methods:

Internet: http://www.regulations.gov: Follow the Web site instructions for submitting comments.

Email: ORD.Docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center EPA/DC, ORD Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460. The Reading Room's hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available online at *http://www.epa.gov/epahome/dockets.htm.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0175. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Any members of the public who wish to receive further information about this Webinar/Teleconference should contact Jim Downing at telephone number (202) 564–2468; fax (202) 564–2070; email address *downing.jim@epa.gov* or Lu-Ann Kleibacker on telephone number (202) 564–7189; fax: (202) 564–2070; email address *kleibacker.lu-ann@epa.gov;* mailing address Environmental Protection Agency, Office of the Science Advisor, Mail Code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb.*

SUPPLEMENTARY INFORMATION:

Location: The meeting will take place via the Internet and telephone only. Access information can be found on the HSRB Web site: *http://www.epa.gov/osa/hsrb/* or by contacting the persons listed under the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

Meeting access: For detailed information on access or services for individuals with disabilities, please contact Lu-Ann Kleibacker at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT,** so that appropriate arrangements can be made.

Procedures for providing public input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, ''Public Meeting,'' under subsection D, ''How May I Participate in this Meeting?'' of this notice.

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act. Since other entities may also be interested, the EPA has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

You may use *http://www.regulations.gov,* or you may access this **Federal Register** document via the EPA's Internet site under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460; its hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744, or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates regarding the Public Reading Room access are available at *http://www.epa.gov/epahome/dockets.htm.*

C. What should I consider as I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data used that support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate by providing comments in this meeting by following the instructions in this section. To ensure proper receipt of your comments by the EPA, it is imperative that you identify Docket ID No. EPA–HQ–ORD–2012–0175 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to and including Wednesday, March 21, 2012. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments during the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing or Lu-Ann Kleibacker under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Wednesday, March 21, 2012, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Please submit written comments prior to the meeting. For the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, Wednesday, March 21, 2012. You should submit your comments using the instructions in Section I, under subsection C, ''What Should I Consider as I Prepare My Comments for the EPA?'' In addition, the EPA also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2 Section 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen the EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the EPA Science Advisor.

1. *Topics for Discussion.* The HSRB will be reviewing its draft report from the January 26, 2012, HSRB meeting. The HSRB may also discuss planning for future HSRB meetings. Background on the January 26, 2012 HSRB meeting can be found at the HSRB Web site: *http://www.epa.gov/osa/hsrb.* The January 26, 2012 meeting draft report is now available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from regulations.gov and the HSRB Web site at *http://www.epa.gov/osa/hsrb.* For questions on document availability or if you do not have Internet access, consult the persons listed under **FOR FURTHER INFORMATION.**

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information regarding the HSRB final meeting report will be found at *http://www.epa.gov/osa/hsrb* or from the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 7, 2012.

Lek Kadeli,

Acting Assistant Administrator.

[FR Doc. 2012–6202 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0961; FRL–9332–2]

Results From Inert Ingredient Test Orders Issued Under EPA's Endocrine Disruptor Screening Program: New Data Compensation Claims; Potential Disapproval of Inert Uses Pending Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In January and February of 2010, EPA issued test orders (Data Call-Ins) to companies that manufacture or import any of the following nine chemicals currently used as inert ingredients in pesticide products: Acetone, isophorone, di-sec-octyl phthalate, toluene, methyl ethyl ketone, butyl benzyl phthalate, dibutyl phthalate, diethyl phthalate, and dimethyl phthalate. The test orders required recipients to submit specific screening data on hormonal effects under EPA's Endocrine Disruptor Screening Program (EDSP) and the Federal Food, Drug, and Cosmetic Act (FFDCA). In response to the test orders, companies have agreed to develop data and have asserted data compensation rights for two inert ingredients, acetone and isophorone. No companies are developing data for the remaining seven inert ingredients. For di-sec-octyl phthalate and toluene, EPA plans to issue new test orders as both chemicals meet the selection criteria for endocrine testing under the Safe Drinking Water Act (SDWA). EPA has no plans to issue further test orders for methyl ethyl ketone, butyl benzyl phthalate, dibutyl phthalate, diethyl phthalate, and dimethyl phthalate, but plans to no longer approve their use as inert ingredients in pesticide products. EPA is, however, offering an opportunity for interested parties to comment or commit to submitting the required data.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0961, by one of the following methods:

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

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0961. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Anthony Britten, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8179; fax number: (703) 605–0781; email address: *Britten.Anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer; or if you manufacture or import chemical substances that are used in pesticides. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).
- Chemical manufacturers, importers and processors (NAICS code 325).
- Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253).
- Scientific research and development services (NAICS code 5417), e.g., persons who conduct testing of chemical substances for endocrine effects.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA began issuing test orders (Data Call-Ins) on January 14, 2010, to companies that manufacture or import the following pesticide inert ingredients: Acetone, isophorone, di-sec-octyl phthalate, toluene, methyl ethyl ketone, butyl benzyl phthalate, dibutyl phthalate, diethyl phthalate, and dimethyl phthalate. These inert ingredients were selected for initial testing based solely on their potential for broad public exposure. The test

orders required recipients to generate data that would allow the Agency to screen these chemicals for their potential to interact with the estrogen, androgen or thyroid hormonal systems. Extensive background on the Agency's endocrine program is available at *http://www.epa.gov/endo*.

Based on responses to the test orders, EPA is announcing that consortia are developing data for two of these inert ingredients, acetone and isophorone, and have asserted data compensation rights. EPA has determined that the data protection rights as given in FIFRA section 3(c)(1)(F) and FFDCA 408(i) apply for all data submitted in support of the EDSP test orders. The other inert ingredients that were subject to EDSP test orders are unsupported; no one is developing required data. EPA plans to issue new test orders for di-sec-octyl phthalate and toluene under the Safe Drinking Water Act (SDWA) because the chemicals meet the selection criteria. EPA has no plans to issue further test orders for the remaining five inert ingredients (methyl ethyl ketone, butyl benzyl phthalate, dibutyl phthalate, diethyl phthalate, and dimethyl phthalate), but plans to stop approving their use in pesticide products as inert ingredients on a timeline described later in this notice. EPA is, however, offering an opportunity for interested parties to comment or commit to submitting the required data.

The following table lists the inert ingredients subject to EDSP test orders by chemical name and Chemical Abstract Service Registry Number (CAS Reg. No.), and identifies whether consortia are generating data or EPA is issuing new test orders. For information on which companies received test orders and their individual responses, see *http://www.epa.gov/scipoly/oscpendo/pubs/edsp_orders_status.pdf*.

TABLE OF INERT INGREDIENTS SUBJECT TO EDSP TEST ORDERS FOR TIER 1 SCREENING DATA

Inert ingredients subject to test orders: chemical name and CAS Reg. No.	Date test orders issued	Are consortia generating data, or will EPA issue new test orders under SDWA?
Acetone (67–64–1)	2/4/2010	Consortium is developing data.
Butyl benzyl phthalate (85–68–7)	1/21/2010	No.
Dibutyl phthalate (84–74–2)	1/21/2010	No.
Diethyl phthalate (84–66–2)	1/21/2010	No.
Dimethyl phthalate (131–11–3)	1/21/2010	No.
Di-sec-octyl phthalate (117–81–7)	1/21/2010	New test orders planned.
Isophorone (78–59–1)	1/14/2010	Consortium is developing data.
Methyl ethyl ketone (78–93–3)	1/28/2010	No.
Toluene (108–88–3)	2/25/2010	New test orders planned.

The following list identifies the screening data that EPA required in the test orders for potential effects on the thyroid, estrogen and androgen systems, and the estimated number of months needed to develop the data. If screening data were to identify endocrine activity, additional testing might be required to establish dose-levels for adverse effects.

Required Tier 1 endocrine screening data and estimated time (months) to develop

Amphibian Metamorphosis (Frog): 15.
Androgen Receptor Binding (Rat Prostate): 6.
Aromatase (Human Recombinant): 6.
Estrogen Receptor Binding: 6.
Estrogen Receptor Transcriptional Activation (Human Cell Line (HeLa-9903)): 6.
Fish Short-term Reproduction: 12.
Hershberger (Rat): 9.
Female Pubertal (Rat): 15.
Male Pubertal (Rat): 15.
Steroidogenesis (Human Cell Line—H295R): 6.
Uterotrophic (Rat): 9.

EPA has included a sample test order in the docket for reference. If after reading this notice and the test order requirements, you intend to submit data, indicate this clearly in your comments.

1. *Supported inert ingredients subject to data compensation.* Company consortia for isophorone (CAS Reg. No. 78–59–1) and acetone (CAS Reg. No. 67–64–1) are conducting all eleven Tier 1 endocrine assays to screen for potential effects on the thyroid, estrogen and androgen systems. These data are due January 21, 2012, for isophorone and February 7, 2013, for acetone. Data protection rights as given in FIFRA section 3(c)(1)(F) and FFDCA 408(i) apply for all data submitted in support of the EDSP test orders. Registrants of products containing acetone or isophorone must identify the source of these chemicals on their Confidential Statements of Formula (CSF). If a CSF lists a source of isophorone or acetone other than a consortia member, EPA intends to take appropriate action to ensure that the registrant takes one of the following actions: (i) Changes the source to a consortia member; (ii) submits proof of an offer to pay the consortia to use their data; (iii) submits a commitment to generate the required data; (iv) reformulates; or (v) cancels. If necessary, EPA will issue a Data Call-In or a product-specific test order to ensure one of these actions is taken. A **Federal Register** notice, ''Endocrine Disruptor Screening Program; Policies and Procedures for Initial Screening,'' (April 15, 2009, 74 FR 17559) (FRL–8399–9), addresses data compensation in more detail. *http://www.gpo.gov/fdsys/pkg/FR-2009-04-15/pdf/E9-8706.pdf*. The acetone and isophorone consortia are managed by and reachable through the American Chemistry Council (*http://www.americanchemistry.com*).

2. *Unsupported inert ingredients subject to new test orders.* EPA plans to issue new test orders for di-sec-octyl phthalate (CAS Reg. No. 117–81–7) and toluene (CAS Reg. No. 108–88–3) to require Tier 1 endocrine screening data because these chemicals also meet the criteria under SDWA. EPA plans to wait until the SDWA test orders are issued and the responses are received before taking further action on these two chemicals. For more information about SDWA test orders, see the **Federal Register** notice, ''Endocrine Disruptor Screening Program; Draft Policies and Procedures for Screening Safe Drinking Water Act Chemicals'' (November 17, 2010; 75 FR 70558) (FRL–8848–9). *http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-28812.pdf#page=1*.

3. *Unsupported inert ingredients subject to disapproval pending public comment.* Importers and manufacturers of the following chemicals declined to develop data in response to test orders: Methyl ethyl ketone (CAS Reg. No. 78–93–3); butyl benzyl phthalate (CAS Reg. No. 85–68–7); dibutyl phthalate (CAS Reg. No. 84–74–2); diethyl phthalate (CAS Reg. No. 84–66–2); and dimethyl phthalate (CAS Reg. No. 131–11–3). Rather, all elected to ''opt out'' of the

pesticide market rather than conduct testing, and, under the ''opt-out'' provision, were required to cease, within 6 months of EPA issuing the test order, all sales and distribution of their chemical for use in pesticide formulations.

EPA is not pursuing further test orders at this time for these chemicals. None meet the criteria for new test orders under SDWA, and dialogue with pesticide trade associations indicates that member companies are unlikely to develop data in response to further FFDCA test orders. Instead, EPA intends to no longer approve the use of these inert ingredients in pesticide registration applications or reformulations unless a commenter commits to submitting required data. The effective date for this action would be the same effective date that EPA has proposed for revoking the tolerance exemptions for methyl ethyl ketone and diethyl phthalate; that is, 6 months after the date EPA publishes the tolerance revocation final rule. You can find the proposed rule in this issue of the **Federal Register**. For products already in the marketplace, EPA intends to take appropriate action to ensure registrants either reformulate or cancel those products. If necessary, EPA will issue test orders (product-specific Data Call-Ins). EPA also is reminding registrants that current regulations require them to amend any pesticide product registrations before selling a pesticide product with a composition different from that listed on the approved Confidential Statement of Formula.

EPA believes its proposed timeline for no longer approving use of these chemicals as inert ingredients gives registrants sufficient time to take appropriate action. Under the EDSP test orders, the manufacturers and importers that ''opted out'' of testing had to cease all sales and distribution to the pesticide market within 6 months of EPA issuing the test order. EPA issued the last test orders for these chemicals on January 28, 2010, so all sales and distribution of methyl ethyl ketone, butyl benzyl phthalate, dibutyl phthalate, diethyl phthalate, and dimethyl phthalate for use in pesticide formulations were to have ceased as of July 28, 2010. EPA has also been performing outreach to trade groups to inform them about the potential loss of these chemicals as inert ingredients. This **Federal Register** document provides further notice.

To help companies avoid formulating new product with methyl ethyl ketone, butyl benzyl phthalate, dibutyl phthalate, diethyl phthalate, and dimethyl phthalate, EPA plans to remove them from its lists of approved inert ingredients. These lists, now consolidated in a web-searchable database called ''InertFinder'' (*http://www.epa.gov/pesticides/inertfinder*), are informational only. Adding or removing a chemical from these lists is not a regulatory action. InertFinder points users to the Code of Federal Regulations as the legal record for uses that require a tolerance or tolerance exemption for residues on raw agricultural commodities or processed food. For inert ingredient uses that do not require a tolerance or exemption (such as nonfood- only uses), InertFinder helps formulators find chemicals that EPA has previously approved for use as inert ingredients in pesticide products.

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

The statutory authority for the Endocrine Disruptor Screening Program is described in detail in a companion document in this issue of the **Federal Register** which proposes to revoke the tolerance exemptions for methyl ethyl ketone and diethyl phthalate, and in a **Federal Register** notice titled, ''Endocrine Disruptor Screening Program; Policies and Procedures for Initial Screening,'' (74 FR 17560), *http://www.gpo.gov/fdsys/pkg/FR-2009-04-15/pdf/E9-8706.pdf*.

List of Subjects

Environmental protection, Endocrine disruptors, Pesticides and pests.

Dated: February 17, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–6164 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2012–0175; FRL–9647–1]

Environmental Laboratory Advisory Board Membership

AGENCY: U. S. Environmental Protection Agency.

ACTION: Notice Soliciting Nominations for Membership.

SUMMARY: The EPA invites nominations from a diverse range of qualified candidates to be considered for appointment to the Environmental Laboratory Advisory Board (ELAB). The ELAB is a multi-stakeholder federal advisory committee that provides independent advice and recommendations to the EPA Administrator, Science Advisor, and Forum on Environmental Measurements about cross-cutting issues related to enhancing measurement programs in the EPA, and facilitating the operation and expansion of national environmental accreditation.

This notice solicits nominations to fill six new vacancies. To maintain diverse representation, nominees will be selected from the following stakeholder work force sectors:

- Academia.
- Business and industry.
- Environmental laboratory commercial, municipal, small, other.
- Environmental laboratory suppliers of services.
- State and local government agencies.
- Tribal governments and indigenous groups.
- Trade associations.

Within these sectors, the EPA is seeking nominees with knowledge in methods development; measurements; monitoring and regulatory programs; quality systems; and environmental accreditation. In an effort to obtain nominations of diverse candidates, the EPA encourages nominations of women and men of all racial and ethnic groups. All nominations will be fully considered.

Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominees should possess the following qualifications:

- Demonstrated experience with environmental measurement programs and environmental accreditation;
- Willingness to commit time to the committee, and demonstrated ability to work constructively and effectively on committees;
- Excellent interpersonal, oral, and written communication and consensus-building skills; and
- Ability to serve a two-year appointment and volunteer approximately five to seven hours per month to support the activities of the ELAB.

How to Submit Nominations: Nominations can be submitted in electronic format (preferred) to Lara P. Autry, Designated Federal Officer, US EPA, MC E243–05, 109 T. W. Alexander Drive, Research Triangle Park, NC 27709, or emailed to *autry.lara@epa.gov* and should be received by April 13, 2012 for October 2012 appointment. To be considered, all nomination packages should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business

address, email address, and daytime telephone number.

• A brief statement describing the nominee's interest in serving on the ELAB.

• A resume describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees.

• Letter(s) of recommendation from a third party supporting the nomination.

For further questions regarding this notice, please contact Lara P. Autry on (919) 541–5544 or *autry.lara@epa.gov.*

Dated: March 7, 2012.

Lek Kadeli,

Acting Assistant Administrator.

[FR Doc. 2012–6178 Filed 3–13–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency 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 control number. Comments are requested concerning (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 estimate; (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.

The FCC 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.

DATES: Written comments should be submitted on or before April 13, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <mailto:PRA@fcc.gov> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the 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, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not for profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 4,604 respondents and 8,040 responses.

Estimated Time per Response: 1–6.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 20,497 hours.

Total Annual Costs: $90,659,382.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (''First R&O'') in MB Docket No. 09–52, FCC 10–24. To enhance the ability of federally recognized Native American Tribes to provide vital radio services to their citizens on Tribal lands, in the First R&O the Commission established a Tribal Priority for use in its radio licensing procedures. On March 3, 2011, the Commission adopted a Second Report and Order (''Second R&O''), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09–52, FCC 11–28. On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09–52, FCC 11–190 (''Third R&O''). In the Third R&O the Commission further refined the use of the Tribal Priority in the commercial FM context, specifically adopting a ''threshold qualifications'' approach to commercial FM application processing.

In the commercial FM context, the Tribal Priority is applied at the allotment stage of the licensing process. A Tribe or Tribal entity initiates the process by petitioning that a new Tribal Allotment be added to the FM Table of Allotments using the Tribal Priority. A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments, like all other FM allotment proponents, must file FCC Form 301 when submitting its Petition for Rule Making. Under the new ''threshold qualification'' procedures adopted in the Third R&O, once a Tribal Allotment has been successfully added to the FM Table of Allotments using the Tribal Priority through an FM allocations rulemaking, the Commission will announce by Public Notice a Threshold Qualifications Window (''TQ Window''). During the TQ Window, any Tribe or Tribal entity that could qualify to add that particular Tribal Allotment may file an FCC Form 301 application for that Tribal Allotment. Such an

applicant must demonstrate that it meets all of the eligibility criteria for the Tribal Priority, just as the original Tribal Allotment proponent did at the allotment stage. If it wishes its previously filed Form 301 application to be considered at this stage, then during the TQ Window the original Tribal Allotment proponent must submit notice to process its pending Form 301 application immediately.

If only one acceptable application is filed during the TQ Window, whether by the original Tribal allotment proponent submitting notification to process its previously filed Form 301, or by another qualified applicant, that application will be promptly processed and the Tribal Allotment will not be auctioned. In the event that two or more acceptable applications are filed during the TQ Window, the Commission will announce a limited period in which the parties may negotiate a settlement or bona fide merger, as a way of resolving the mutual exclusivity between their applications. If a settlement or merger is reached, the parties must notify the Commission and the staff will process the surviving application pursuant to the settlement or merger. If a settlement cannot be reached among the mutually exclusive applicants, the Tribal Allotment will be auctioned during the next scheduled FM auction. At that time, only the applicants whose applications were accepted for filing during the TQ Window, as well as the original Tribal Allotment proponent, will be permitted to bid on that particular Tribal Allotment. This closed group of mutually exclusive TQ Window applicants must comply with applicable established auction procedures.

In the event that no qualifying party applies during the TQ Window, and the original Tribal allotment proponent requests that its pending Form 301 application not be immediately processed, the Tribal Allotment will be placed in a queue to be auctioned in the normal course for vacant FM allotments. When the Tribal Allotment is offered at auction for the first time, only applicants meeting the ''threshold qualifications'' may specify that particular Tribal Allotment on FCC Form 175, Application to Participate in an FCC Auction (OMB Control No. 3060–0600). Should no qualifying party apply to bid or qualify to bid on a Tribal Allotment in the first auction in which it is offered, then the Tribal allotment will be offered in a subsequent auction and any applicant, whether or not a Tribal entity, may apply for the Tribal Allotment.

Consistent with actions taken by the Commission in the Third R&O, Form 301 has been revised to accommodate applicants applying in a TQ Window for a Tribal Allotment. As noted above, an applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add the particular Tribal Allotment for which it is applying. Form 301 contains a new question in Section II–Legal titled ''Tribal Priority-Threshold Qualifications.'' An applicant answering ''yes'' to the question must provide an Exhibit demonstrating that it meets all of the Tribal Priority eligibility criteria. The Instructions for the Form 301 have been revised to assist applicants with completing the responsive Exhibit.

In addition, Form 301 contains a new option under Section I–General Information-Application Purpose, titled ''New Station with Petition for Rulemaking to Amend FM Table of Allotments using Tribal Priority.'' A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments must file Form 301 when submitting its Petition for Rule Making. This new Application Purpose field will assist the staff in quickly identifying Form 301 applications filed in connection with a petition to add a Tribal Allotment and initiating the ''threshold qualification'' procedures.

This information collection is being revised to accommodate applicants applying in a Threshold Qualifications Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the new ''threshold qualifications'' procedures adopted in the Third R&O.

OMB Control Number: 3060–0249.

Title: Sections 74.781, 74.1281 and 78.69, Station Records.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions; State, Federal or Tribal Governments.

Number of Respondents and Responses: 13,811 respondents; 20,724 responses.

Estimated Time per Response: .375 hour–1 hour.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 11,726 hours.

Total Annual Costs: $8,295,600.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 74.781 requires the following:

(a) The licensee of a low power TV, TV translator, or TV booster station shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by § 17.49 of this Chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(1) The nature of such extinguishment or improper functioning.

(2) The date and time the extinguishment or improper operation was observed or otherwise noted.

(3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(c) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 74.1281 requires the following:

(a) The licensee of a station authorized under this Subpart shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by § 17.49 of this chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(1) The nature of such extinguishment or improper functioning.

(2) The date and time the extinguishment of improper operation was observed or otherwise noted.

(3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.1265(b) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 78.69 requires each licensee of a CARS station shall maintain records showing the following:

(a) For all attended or remotely controlled stations, the date and time of the beginning and end of each period of transmission of each channel;

(b) For all stations, the date and time of any unscheduled interruptions to the transmissions of the station, the duration of such interruptions, and the causes thereof;

(c) For all stations, the results and dates of the frequency measurements made pursuant to § 78.113 and the name of the person or persons making the measurements;

(d) For all stations, when service or maintenance duties are performed, which may affect a station's proper operation, the responsible operator shall sign and date an entry in the station's records, giving:

(1) Pertinent details of all transmitter adjustments performed by the operator or under the operator's supervision.

(e) When a station in this service has an antenna structure which is required to be illuminated, appropriate entries shall be made as follows:

(1) The time the tower lights are turned on and off each day, if manually controlled.

(2) The time the daily check of proper operation of the tower lights was made, if an automatic alarm system is not employed.

(3) In the event of any observed or otherwise known failure of a tower light:

(i) Nature of such failure.

(ii) Date and time the failure was observed or otherwise noted.

(iii) Date, time, and nature of the adjustments, repairs, or replacements made.

(iv) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given.

(v) Date and time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(4) Upon completion of the 3-month periodic inspection required by § 78.63(c):

(i) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems.

(ii) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

(f) For all stations, station record entries shall be made in an orderly and legible manner by the person or persons competent to do so, having actual knowledge of the facts required, who shall sign the station record when starting duty and again when going off duty.

(g) For all stations, no station record or portion thereof shall be erased, obliterated, or willfully destroyed within the period of retention required by rule. Any necessary correction may be made only by the person who made the original entry who shall strike out the erroneous portion, initial the correction made, and show the date the correction was made.

(h) For all stations, station records shall be retained for a period of not less than 2 years. The Commission reserves the right to order retention of station records for a longer period of time. In cases where the licensee or permittee has notice of any claim or complaint, the station record shall be retained until such claim or complaint has been fully satisfied or until the same has been barred by statute limiting the time for filing of suits upon such claims.

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318, 73.685 and 73.1630, Blanketing Interference.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents and Responses: 21,000 respondents; 21,000 responses.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 41,000 hours.

Total Annual Costs: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.88 states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour.

47 CFR 73.318(b) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88, and 73.685(d), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference. The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, ''Blanketing Interference.'' This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–6063 Filed 3–13–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (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 estimate; (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 burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 14, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

OMB Approval Number: 3060–0387.

Title: Sections 15.201(d), 15.211, 15.213 and 15.221, On-Site Verification of Field Disturbance Sensors.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time Per Response: 18 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 301, 302, 303(e), 303(f), 303(r) and 303(s), and 304 and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,800 hours.

Total Annual Cost: $20,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Applicants may request that information be withheld from public inspection pursuant to 47 CFR 0.457(d) for trade secrets which may be submitted to the Commission as part of the documentation of test results. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) during this comment period to obtain the full three-year-clearance from them. However, we are reporting an adjustment in the reporting/recordkeeping burdens to reflect a decrease in the number of equipments authorized for this type of equipment, which reduces the burden hours and annual costs.

Section 15.201(d) of the Commission rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. In order to monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorized/issued by the Commission and made available only at the request of the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–6158 Filed 3–13–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011075–074.

Title: Central America Discussion Agreement.

Parties: APL Co. PTE Ltd.; Crowley Latin America Services, LLC.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment reflects a change in the name of Great White Fleet.

Dated: March 9, 2012.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–6195 Filed 3–13–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR

1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 14, 2012.

ADDRESSES: You may submit comments, identified by *FR 2064 or Reg W* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include OMB number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection 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.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Recordkeeping Requirements Associated with Changes in Foreign Investments (Made Pursuant to Regulation K).

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: On-occasion.

Reporters: State member banks, Edge and agreement corporations, and bank holding companies.

Annual reporting hours: 320 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 40.

General description of report: The recordkeeping requirements of this information collection are mandatory (Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); Sections 7 and 13 of the International Banking Act of 1978 (12 U.S.C. 3105 and 3108(a)); Section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and Regulation K (12 CFR 211.8(c)-211.10(a)). Since the Federal Reserve does not collect any records, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. FOIA will only be implicated if the Board's examiners retain a copy of the records in their examination or supervision of the institution, and would be exempt from disclosure pursuant to FOIA (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: Internationally active U.S. banking organizations are required to maintain adequate internal records to allow examiners to review for compliance with the investment provisions of Regulation K. For each investment made under Subpart A of Regulation K, records should be maintained regarding the type of investment, for example, equity (voting shares, nonvoting shares, partnerships, interests conferring ownership rights, participating loans), binding commitments, capital contributions, and subordinated debt; the amount of the investment; the percentage ownership; activities conducted by the company and the legal authority for such activities; and whether the investment was made under general consent, prior notice, or specific consent authority. With respect to investments made under general consent authority, information also must be maintained that demonstrates compliance with the various limits set out in Section 211.9 of Regulation K.

2. *Report title:* Notice Requirements in Connection with Regulation W (12 CFR Part 223 Transactions Between Member Banks and Their Affiliates).

Agency form number: Reg W.

OMB control number: 7100–0304.

Frequency: Event-generated.

Reporters: Insured depository institutions and uninsured member banks.

Estimated Annual reporting hours: 100 hours.

Estimated average hours per response: Loan participation renewal notice, 2 hours; Acquisition notice, 6 hours; Internal corporate reorganization transactions notice, 6 hours; and Section 23A additional exemption notice, 10 hours.

Number of respondents: Loan participation renewal notice, 1; Acquisition notice, 1; Internal corporate reorganization transactions notice, 12; and Section 23A additional exemption notice, 2.

General description of report: This information collection is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1). Confidential and proprietary information collected for the purposes of the Loan Participation Renewal notice (12 CFR 223.15(b)(4)) may be protected under the authority of section (b)(4) of FOIA [5 U.S.C. 552(b)(4)]. That section of FOIA exempts commercial or financial information deemed competitively sensitive from disclosure. Respondents who desire that the information on this notice be kept confidential in accordance with section (b)(4) can request confidential treatment under the Board's rules at 12 CFR 261.15. In addition, information that is obtained as part of an examination of a financial institution is exempt from disclosure under exemption (b)(8) of FOIA. 5 U.S.C. 552(b)(8).

Abstract: On December 12, 2002, the Federal Reserve published a **Federal Register** notice [1] adopting Regulation W (Reg W) to implement sections 23A and 23B. Reg W was effective April 1, 2003. The Board issued Reg W for several reasons. First, the regulatory framework established by the Gramm-Leach-Bliley Act [2] emphasized the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. Second, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, ensured that the statute is consistently interpreted and applied, and minimized burden on banking organizations to the extent consistent with the statute's goals. Third, issuing a comprehensive rule allowed the public an opportunity to comment on Federal Reserve interpretations of sections 23A and 23B.

The information collection requirements associated with Regulation W comprise four notices: (1) The Loan Participation Renewal notice (12 CFR 223.15(b)(4)), which is a condition to an exemption for renewals of loan participations involving problem loans; (2) the Acquisition notice (12 CFR 223.31(d)(4)), which is a condition to an exemption for a depository institution's acquisition of an affiliate that becomes an operating subsidiary of the institution after the acquisition; (3) the Internal Corporate Reorganization Transactions notice (12 CFR 223.41(d)(2)),which is a condition to an exemption for internal corporate reorganization transactions; and (4) the Section 23A Additional Exemption notice (12 CFR 223.43(b)),which provides procedures for requesting additional exemptions from the requirements of section 23A. These notifications are event-generated and must be provided to the appropriate federal banking agency and, if applicable, the Federal Reserve Board within the time periods established by the law and regulation.

Board of Governors of the Federal Reserve System, March 8, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–6074 Filed 3–13–12; 8:45 am]

BILLING CODE 6210–01–P

[1] (67 FR 76603).

[2] Public Law 106–102, 113 Stat. 1338 (1999).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *First Carolina Financial Services, Inc.,* Durham, North Carolina; to become a bank holding company by acquiring at least 95 percent of the voting shares of First Carolina State Bank, Rocky Mount, North Carolina, and Pisgah Community Bank, Asheville, North Carolina.

Board of Governors of the Federal Reserve System, March 9, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–6147 Filed 3–13–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0218]

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

DATES: *Date and Time:* The meeting will be held on May 10, 2012, from 8 a.m. to 5:30 p.m.

ADDRESSES: FDA is opening a docket for public comment on this meeting. The docket number is FDA–2012–N–0218. The docket will open for public comment on March 14, 2012. The docket will close on May 17, 2012. Interested persons may submit either electronic or written comments regarding this meeting. 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. All

comments received will be posted without change, including any personal information provided. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments received on or before April 26, 2012, will be provided to the committee before the meeting.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AVAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss an efficacy supplement for new drug application (NDA) 21–572, TRUVADA (emtricitabine/tenofovir disoproxil fumarate) Tablet, submitted by Gilead Sciences, Inc. The supplemental application proposes an indication for Pre-Exposure Prophylaxis (PrEP) to reduce the risk of sexually acquired HIV–1 infection.

FDA intends to make background materials available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section of this document) on or before April 26, 2012, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 18, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 19, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–6115 Filed 3–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (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.

Proposed Project: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration—(OMB No. 0915–0212)—[Revision]

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its partners to assess strengths and weaknesses in program services and processes. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers. HRSA is requesting a generic approval from OMB to conduct the partner surveys.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with grant processes or technical assistance provided by a contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve services and processes. Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups, in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred data collection methods.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the **Federal Register**.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
In-class evaluations	40,000	1	40,000	.05	2,000
Mail/Telephone surveys	12,000	1	12,000	.25	3,000
Focus groups	250	1	250	1.5	375
Total	52,250	.....	.....	.....	5,375

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 7, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–6135 Filed 3–13–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Special Emphasis Panel, Neurosurgeon Scientific Training.

Date: March 30, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Phillip F. Wiethorn, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–5388, *wiethorp@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Udall Center Review.

Date: April 18–19, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6160 Filed 3–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Loan Repayment Program Review.

Date: April 30, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: JoAnn McConnell, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–5324, *mcconnej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the

Neurosciences, National Institutes of Health, HHS)

Dated: March 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6161 Filed 3–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business Grant Applications: Immunology.

Date: March 23, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Global Health: Innovative Training Programs.

Date: April 2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Malgorzata Klosek, Ph.D., 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.*

(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: March 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6162 Filed 3–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: March 26, 2012.

Time: 9 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: Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: March 28, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral and Social HIV/AIDS.

Date: March 28, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Language and Communication.

Date: April 2, 2012.

Time: 5 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: AIDS Predoctoral and Postdoctoral.

Date: April 3, 2012.

Time: 11:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Regulation, Learning and Ethology.

Date: April 4, 2012.

Time: 9 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@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: March 7, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–6159 Filed 3–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Transportation Security Officer (TSO) Medical Questionnaire

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0032, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 30, 2011, 76 FR 82313. The collection involves using a questionnaire to collect medical information from candidates for the job of Transportation Security Officer (TSO) to ensure their qualifications to perform TSO duties pursuant to sec. 111 of the Aviation and Transportation Security Act (ATSA).

DATES: Send your comments by April 13, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6040; telephone (571) 227–3651; email *TSAPRA@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Transportation Security Officer (TSO) Medical Questionnaire.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0032.

Forms(s): Transportation Security Officer Medical Questionnaire, Cancer Further Evaluation, Cardiac Surgery Further Evaluation, Cardiac Further Evaluation, Diabetes Further Evaluation, Drug or Alcohol Use Further Evaluation, General Medical Further Evaluation, Hearing Further Evaluation, Hepatitis Further Evaluation, Hernia Further Evaluation, HIV Further Evaluation, Orthopedic Further Evaluation, Pacemaker Further Evaluation, Palmar Sensation Further Evaluation, Respiratory Further Evaluation, Seizure Further Evaluation, Tuberculosis Further Evaluation, Vision Further Evaluation, Vital Signs Further Evaluation, and Mental Health Further Evaluation.

Affected Public: Applicants for employment as a Transportation Security Officer with TSA.

Abstract: TSA currently collects relevant medical information from Transportation Security Officer (TSO) candidates for the purpose of assessing whether the candidates meet the medical qualification standards the agency has established pursuant to the Aviation and Transportation Security Act (ATSA) (49 U.S.C. 44935). TSA collects this information through a medical questionnaire completed by TSO candidates and, in certain cases, further evaluation forms completed by TSO candidates' health care providers. The medical questionnaire and further evaluation forms evaluate a candidate's physical and medical qualifications to be a TSO, including visual and aural acuity, physical coordination, and motor skills. Only TSO candidates who successfully complete the hiring process up to the medical evaluation are required to complete the medical questionnaire. Candidates who disclose certain medical conditions on the medical questionnaire may be asked to have their health care provider complete one or more further evaluation forms. Historical data indicate that approximately 30 percent of candidates reaching the medical evaluation will be required to complete one or more further evaluation forms.

TSA has a variety of further evaluation forms, each of which pertain to particular body systems and medical conditions, including cardiac, orthopedic, endocrine, vitals, and others. The type of further evaluation form(s) completed by a candidate's health care provider depend(s) on the condition(s) revealed during a candidate's initial medical evaluation and disclosed on the initial medical questionnaire. For example, a candidate who discloses a previous back injury may be required to have his/her health care provider complete a further evaluation form to enable the agency to better evaluate whether the candidate can perform the TSO job safely and efficiently without excessive risk of accident or injury to himself/herself or others. A TSA contractor facilitates receipt and processing of all forms.

Number of Respondents: There are an estimated total of 26,565 TSO candidates and their respective health care providers, nationwide. This number includes an estimated 14,750 candidates completing the TSO medical questionnaire and an estimated 4,425 candidates (30% of 14,750) required to complete at least one further evaluation form. TSA has estimated that these estimated 4,425 applicants will visit approximately 1.67 health care providers. As such, the 26,565 figure also includes an estimated 7,390 health care providers ($4{,}425 \times 1.67$) completing further evaluation form(s).

Estimated Annual Burden Hours: After further evaluation, TSA has increased the annual burden estimate published in the notice published on October 26, 2009. The estimated total annual burden for applicants, including applicants required to complete further evaluation forms, and health care providers is 12,912 hours.

Issued in Arlington, Virginia, on March 7, 2012.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–6199 Filed 3–13–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, without Change, of an Existing Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review; No form, Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 21, 2011, Vol. 76 No. 245, pg. 79204, allowing for a 60 day comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until April 13, 2012.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: John Ramsay, Forms Program Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Room 3138, Washington, DC 20024; (202) 732–4356.

Dated: March 8, 2012.

John Ramsay,

Forms Program Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–6144 Filed 3–13–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–08]

Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/ Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 14, 2012,

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FHA–Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation.

OMB Control Number, if applicable: 2502–0429.

Description of the need for the information and proposed use: FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and their neighborhoods. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged the borrower by FHA along with Federal budget receipts generated from those premiums to support HUD's goals. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund.

Agency form numbers, if applicable: HUD–9519–A, Property Inspection Report, HUD–9539, Request for Occupied Conveyance, HUD–27011, Parts A, B, C, D, E, Single Family Application for Insurance Benefits, HUD–50002, Request to Exceed Cost Limits for Preservation and Protection, HUD–50012, Mortgagees Request for Extension of Time Requirements, HUD–91022, Mortgagee Notice of Foreclosure Sale.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,347,549, the number of respondents is 324, the number of responses is 1,087,913, the frequency of response is on occasion, and the burden hour per response is from less than a minute to 4 hours depending upon the activity.

Status of the proposed information collection: This is an extension of a currently approved collection OMB 2502–0429 that will be extended for another three years.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 9, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–6179 Filed 3–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–06]

Notice of Proposed Information Collection: Comment Request; FHA–Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans.

OMB Control Number, if applicable: 2502–0583.

Description of the need for the information and proposed use: FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and neighborhoods. Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums. This information collection request for OMB review is an extension of a currently approved collection.

Agency form numbers, if applicable: HUD–93100 Application for Homeownership Assistance, HUD–93101 Recertification of Family Income and Composition, HUD–93101–A Recertification of Family Income and Statistical Report, HUD–93102 Mortgagees Certification and Application for Assistance of Interest Reduction Payments, HUD–93114 Notice of Termination, Suspension or Reinstatement, HUD–300 Monthly Summary of Assistance Payments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 2,644,446, the number of respondents is 11,940, the number of responses is 74,726,967, the frequency of response is on occasion, and the burden hour per response is from less than a minute to 1 hour depending upon the activity.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 9, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–6181 Filed 3–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–07]

Notice of Proposed Information Collection: Comment Request; Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: May 14, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Director, Office of Single Family Program Support Division, Department of Housing and Urban Development, 451 7th Street SW., Room B–133—Plaza 2206 Washington, DC 20410, telephone (202) 708–0317 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster.

OMB Control Number, if applicable: 2502–0586.

Description of the need for the information and proposed use: This PRA package provides reporting burden for individuals to apply to be placed on the HECM counselor roster and to maintain their name on the HECM counseling roster. For initial application, individuals are required to successfully pass a standardized HECM exam, have received HECM-related education within the past two years and provide information collected on form HUD 92904. HUD uses the information provided to determine the applicants' eligibility to be placed on the HECM counselor roster. To remain on the HECM counselor roster, a counselor must complete continuing education on a HECM related topic every two years and pass the HECM exam every three years.

Agency form numbers, if applicable: HUD 92904.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 851. The number of respondents is 205, the number of responses is 605, the frequency of response is on occasion, and the burden hour per response is 1.4.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 9, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–6180 Filed 3–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–04]

Notice of Proposed Information Collection: Comment Request; Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Departmental Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; Room 9120 or number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Theodore Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0001 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies.

OMB Control Number, if applicable: 2502–0563.

Description of the need for the information and proposed use: Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage debt.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of burden hours is 3,680. The number of respondents is 368, the number of responses is 368, the frequency of response is on occasion, and the burden hour per response is 10.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 9, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–6191 Filed 3–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–36]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Public Law 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Housing Authority of the City of Vancouver for the purchase and installation of ductless split heat pumps for the Skyline Crest Sustainability Upgrade project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4112, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on February 10, 2012, upon request of the Housing Authority of the City of Vancouver, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Skyline Crest Sustainability Upgrade project. The exception was granted by HUD on the basis that the relevant manufactured goods (ductless split heat pumps) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: March 2, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–6192 Filed 3–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID No. BSEE–2011–0005; OMB Number 1014–NEW]

Information Collection Activities: Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for approval of the paperwork requirements in the regulations under Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulphur. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATES: You must submit comments by April 13, 2012.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–NEW). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BSEE–2011–0005 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the

Interior; Bureau of Safety and Environmental Enforcement; Attention: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014—NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations Development Branch, (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 282, Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulphur.

OMB Control Number: 1014–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1334 and 43 U.S.C. 1337(k)), authorizes the Secretary of the Interior to implement regulations to grant leases of any mineral other than oil, gas, and sulphur to qualified parties. This regulation governs mining operations within the OCS and establishes a comprehensive leasing and regulatory program for such minerals. This regulation has been designed to (1) recognize the differences between the OCS activities associated with oil, gas, and sulphur discovery and development and those associated with the discovery and development of other minerals; (2) facilitate participation by States directly affected by OCS mining activities; (3) provide opportunities for consultation and coordination with other OCS users and uses; (4) balance development with environmental protection; (5) insure a fair return to the public; (6) preserve and maintain free enterprise competition; and (7) encourage the development of new technology.

The authorities and responsibilities described above are among those delegated BSEE. Therefore, this ICR addresses the regulations at 30 CFR 282, Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulphur. It should be noted that there has been no activity in the OCS for minerals other than oil, gas and sulphur for many years and no information collected. However, because these are regulatory requirements, the potential exists for information to be collected; therefore, we are requesting this collection of information be approved by OMB.

To accommodate the split of regulations from the Bureau of Ocean Energy Management, Regulation and Enforcement to BSEE, BSEE is requesting OMB approval of the already approved burden hours under 1010–0081 to reflect BSEE's new 1014 numbering system.

Responses are mandatory. No questions of a sensitive nature are asked. BSEE protects proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), and 30 CFR 282.5, 282.6, and 282.7.

BSEE collects information required under part 282 to determine if lessees are complying with the regulations that implement the mining operations program for minerals other than oil, gas, and sulphur. Specifically, BSEE will use the information:

- To ensure that operations for the production of minerals other than oil, gas, and sulphur in the OCS are conducted in a manner that will result in orderly resource recovery, development, and the protection of the human, marine, and coastal environments.
- To ensure that adequate measures will be taken during operations to prevent waste, conserve the natural resources of the OCS, and to protect the environment, human life, and correlative rights.
- To determine if suspensions of activities are in the national interest, to facilitate proper development of a lease including reasonable time to develop a mine and construct its supporting facilities, and to allow for the construction or negotiation for use of transportation facilities.
- To identify and evaluate the cause(s) of a hazard(s) generating a suspension, the potential damage from a hazard(s) and the measures available to mitigate the potential for damage.
- For technical evaluations that provide a basis for BSEE to make informed decisions to approve, disapprove, or require modification of the proposed activities.

Frequency: On occasion, and as a result of situations encountered.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 56 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 282	Reporting or recordkeeping requirement	Hour burden	Average Number of annual responses	Annual burden hours
		Non-hour cost burden		
	Subpart A—General			
5	Request non-disclosure of data and information	10	1 request	10
6	Governor(s) of adjacent State(s) request for proprietary data, information, samples, etc., and disclosure agreement with BSEE.	1	1 submission	1
7	Governor of affected State requests negotiation to settle jurisdictional controversy, etc; enters into an agreement with BSEE.	1	1 request	1
Subtotal			3 Responses	12

Citation 30 CFR 282	Reporting or recordkeeping requirement	Hour burden	Average Number of annual responses	Annual burden hours
		Non-hour cost burden		
Subpart B—Jurisdiction and Responsibilities of Director				
11(d)(1)	Request consolidation/unitization of two or more leases or lease portions into a single mining unit.	1	1 request	1
11(d)(4)	State requests different method of allocating production.	1	1 Request	1
12(f)(l), (h); 13(d)	Request approval(s) of applicable applications and permits before commencing a mining operation under an approved plan(s).	20	1 request	20
13(b), (f)(2); 31	Request suspension or temporary prohibition or production or operations.	2	1 request	2
13(e)	Submit site-specific study plan and results	8	1 study	8
			1 study × $100,000 = $100,000	
14	Submit "green" response copy of Form BSEE–1832 indicating date violations (INCs) corrected, etc.	2	1 response	2
Subtotal			6 Responses	34
			$100,000 Non-hour cost burden	
Subpart C—Obligations and Responsibilities of Lessees				
27(b)	Request use of new or alternative technologies, techniques, etc..	1	1 request	1
27(c)	Notify BSEE of death or serious injury; fire, exploration, or other hazardous event; submit report.	1	1 notification	1
27(d)(2)	Request reimbursement for furnishing food, quarters, and transportation for BSEE representatives (no requests received in many years; minimal burden).	2	1 request	2
27(e)	Identify vessels, platforms, structures, etc. with signs.	1	1 sign	1
27(f)(2)	Log all drill holes susceptible to logging; submit copies of logs to BSEE.	3	1 log	3
27(h)(3), (4)	Mark equipment; record items lost overboard; notify BSEE.	1	1 notification	1
28(d)	Demonstrate effectiveness procedure(s) for mitigating environmental impacts.	1	1 demonstration	1
Subtotal			7 Responses	10
Subpart E—Appeals				
50	File an appeal	Burden exempt under 5 CFR 1320.4(a)(2), (c).		0
Total burden			16 Responses	56
			$100,000 non-hour cost burden	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one paperwork non-hour cost burden associated with the collection of information. Under § 282.13(e)(1), a site-specific study would be required to determine and evaluate hazards that results in a suspension of operation. Since this has not been done to date, BSEE estimated that this study would cost approximately $100,000. There are no other non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it

displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, et seq.) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on December 22, 2011, we published a **Federal Register** notice (76 FR 79705) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 282.0 provides the OMB control number for the information collection requirements imposed by the 30 CFR 282 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 2, 2012.

Douglas W. Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–6155 Filed 3–13–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N262; FXRS12650400000S3–123–FF04R02000]

Final Land Protection Plan and Final Environmental Assessment for Everglades Headwaters National Wildlife Refuge and Conservation Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our Final Land Protection Plan (LPP) and Final Environmental Assessment (EA) for the recently established Everglades Headwaters National Wildlife Refuge (NWR) and Conservation Area in Polk, Osceola, Highlands, and Okeechobee Counties, in central and south Florida. The LPP and EA were prepared with input from Federal, State, and local agencies; Native American tribal nations; various non-governmental organizations; and the public. We established the refuge and conservation area to support a connected conservation landscape; to provide quality habitats for native wildlife diversity and at-risk species; to enhance water quality, quantity, and storage; and to provide opportunities for wildlife-dependent recreation.

ADDRESSES: Copies of the LPP and EA are available on CD or in hard copy, and you may obtain a copy by writing to: Mr. Charlie Pelizza, Refuge Manager, Pelican Island National Wildlife Refuge, 4055 Wildlife Way, Vero Beach, FL 32963. Alternatively, you may download the document from our Internet Site: *http://www.fws.gov/southeast/evergladesheadwaters.*

FOR FURTHER INFORMATION CONTACT: Ms. Cheri M. Ehrhardt, Natural Resource Planner, at 321/861–2368 (telephone), or Mr. Charlie Pelizza, Refuge Manager, at 772/581–5557, extension 1 (telephone).

SUPPLEMENTARY INFORMATION: In developing the LPP for the Everglades Headwaters NWR and Conservation Area, we evaluated three alternatives with different approaches to conservation within the Kissimmee River Basin landscape.

Alternative A—No Refuge and No Conservation Area (No Action Alternative)

Alternative A would represent no change from current conservation in this landscape. In this alternative we would not create a new refuge, no designated acquisition boundary would be developed, and no conservation area would be created. Habitat protection and management would continue by existing organizations and government programs. The landscape within the Study Area boundary contains approximately 421,000 acres of conservation lands protected by agricultural easements; private conservation organizations; and State, Federal, and municipal ownership and management. We would not pursue new opportunities for refuge-based wildlife-dependent public uses, partnerships, or scientific research.

Alternative B—Refuge Only Approach

This alternative would propose an acquisition boundary of up to 50,000 acres containing portions of identified priority habitats; would focus the bulk of the refuge within mostly contiguous areas; and would complement existing State, Federal, and municipal conservation within this landscape. We would use a suite of conservation tools to protect land, including fee-title acquisitions and conservation easements. This alternative would protect important wildlife habitat within the landscape, serving both common and rare wildlife species. It would offer opportunities for wildlife management, compatible wildlife-dependent public uses, and new refuge-based partnerships and scientific research. Public use opportunities would include hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Alternative C—Conservation Partnership Approach (Preferred Alternative)

Alternative C is our Preferred Action; the alternative to be used for implementation. Alternative C protects 150,000 acres, with up to 100,000 acres conserved through conservation easements or other less-than-fee-title methods and up to 50,000 acres conserved through fee-title and less-than-fee-title means. This alternative is considered to be the most effective management action for serving the outlined vision, purposes, and goals to enhance conservation in this Kissimmee River Basin landscape. It will conserve up to 150,000 acres containing portions of priority habitats. To best complement existing State, Federal, and municipal conservation within this landscape, we identified: (1) A Conservation Focal Area of approximately 130,000 acres, within which we will have the authority to acquire up to 50,000 acres for the refuge, and (2) a Conservation

Partnership Area, within which we will have the authority to acquire less-than-fee-title interest of up to 100,000 acres as a Conservation Area.

The Everglades Headwaters NWR and Conservation Area will help to protect and restore one of the great grassland and savanna landscapes of eastern North America, conserving one of the nation's prime areas of biological diversity. It will also help to address the threats from habitat fragmentation and urban development, altered ecological processes, and impacts from global climate change. We will work with willing landowners to create a 100,000-acre Conservation Area through conservation easements or other less-than-fee-title means, and a 50,000-acre national wildlife refuge.

The authorities which established the Everglades Headwaters NWR and Conservation Area are the National Wildlife Refuge System Administration Act [16 U.S.C. 668dd(a)(2)], Endangered Species Act (16 U.S.C. 1534), Emergency Wetlands Resources Act [16 U.S.C. 3901(b), 100 Stat. 3583], Migratory Bird Conservation Act (16 U.S.C. 715d), Fish and Wildlife Act [16 U.S.C. 742f(a)(4)], and Refuge Recreation Act [16 U.S.C. 460k–460k–4].

Working with conservation land managers across this landscape, we will: (1) Manage the refuge and work with the landowners participating in the conservation area to support a more connected and functional conservation landscape that will provide effective habitat connections between existing conservation areas and allow habitats and species to shift in response to urban development pressures and global climate change; (2) provide a wide range of quality Kissimmee River Basin habitats to support migratory birds, Federal- and State-listed species, State-designated species of special concern, and native wildlife diversity; (3) contribute to water quality, water quantity, and water storage capacity of the upper Everglades watershed, to complement Everglades restoration goals and objectives and water quality and supply for central and south Florida; and (4) provide opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while increasing knowledge of and support for conservation of the important grassland and savanna landscape of the headwaters of the Everglades.

Several uses were evaluated in the interim compatibility determinations and determined to be compatible for the refuge. These uses include hunting, fishing, environmental education and interpretation, wildlife observation and photography, research, off-road vehicle use (on designated roads and trails in support of hunting and research), camping, hiking, horseback riding, bicycling, and grazing. We are working with the Florida Fish and Wildlife Conservation Commission to establish a memorandum of understanding to create a State wildlife management area for hunting on properties acquired for the refuge.

On September 8, 2011, we published a **Federal Register** notice (76 FR 55699) announcing the proposed establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area, and the release for public review and comment of the Draft Land Protection Plan and Draft Environmental Assessment in accordance with National Environmental Policy Act (40 CFR 1506.6 (b)) requirements. On October 26, 2011, we published a **Federal Register** notice (76 FR 66321) announcing the extension of the comment deadline to November 25, 2011.

Based on the documentation in the LPP and EA, we signed a Finding of No Significant Impact and subsequently approved the establishment of the Everglades Headwaters NWR and Conservation Area. Interim compatibility determinations and a Conceptual Management Plan were released with both the draft and final documents. The Conceptual Management Plan will serve as an interim management plan until a Comprehensive Conservation Plan and/or appropriate step-down management plans have been developed.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 10, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–6124 Filed 3–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Te-Moak Tribe of Western Shoshone—Ordinance Pursuant to United States Code, Legalizing and Regulating the Introduction, Possession, Use and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Amendment to the Te-Moak Tribe of Western Shoshone Indians Ordinance Pursuant to Section 1161, Title 18 United States Code, Legalizing and Regulating the Introduction, Possession, Use and Consumption of Alcoholic Beverages. This Ordinance regulates and controls the possession, sale and consumption of liquor within the jurisdiction of Te-Moak Western Shoshone Tribe's Colonies and Reservation, will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective 30 days after publication March 14, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Peterson, Acting Tribal Government Services Officer, Western Regional Office, Bureau of Indian Affairs, P.O. Box 10, Phoenix, Arizona 85001, Telephone: (602) 379–6786; Fax: (602) 379–4100; or, De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4513–MIB, Washington, DC 20240; Telephone: (202) 513–7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Te-Moak Western Shoshone Tribal Colonies/Lands and Reservation. On May 7, 1982, the Te-Moak Tribal Council duly adopted Ordinance 82–ORD–TM–01 which was readopted and amended by Ordinance 82–ORD–TM–03 on July 9, 1982. Ordinance 82–ORD–TM–03 and Ordinance 82–ORD–TM–01 were approved and published in the **Federal Register** on January 6, 1983. The Te-Moak Tribal Council adopted Amendment #(05–ORD–TM–05) to its Ordinance on October 5, 2005. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Te-Moak Tribe of Western Shoshone—Ordinance Pursuant to

Section 1161, Title 18 United States Code, Legalizing and Regulating the Introduction, Possession, Use and Consumption of Alcoholic Beverages, the Amended Liquor Ordinance of the Te-Moak Tribe of Western Shoshone Indians, was duly adopted by the Te-Moak Tribal Council on October 5, 2005.

Dated: February 24, 2012.

Jodi Gillette,

Deputy Assistant Secretary—Indian Affairs.

Amendment #(05–ORD–TM–05) to the Te-Moak Liquor Ordinance reads as follows:

Ordinance pursuant to Section 1161, Title 18 United States Code, Legalizing and Regulating the Introduction, Possession, Use and Consumption of Alcoholic Beverages

Now, therefore, be enacted by the Te-Moak Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, that pursuant to the authority vested in it by Article VII, Section 1(f) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and Article II, Section 1 of the By-Laws of the Te-Moak Tribe of Western Shoshone Indians of Nevada, that the introduction, possession, use and consumption of alcoholic beverages shall be lawful within the exterior boundaries of those lands in the State of Nevada under the territorial jurisdiction of the Te-Moak Tribe of Western Shoshone Indians of Nevada. Provided that such introduction, possession, use and consumption shall be in accordance with the following:

SECTION 1:

(a) It shall be unlawful to sell alcoholic beverages by the bottle, drink, can, or other package within the exterior boundaries of those lands of the State of Nevada under the territorial jurisdiction of the Te-Moak Tribe of Western Shoshone Indians of Nevada, without first obtaining a valid license issued by the Te-Moak Tribal Council.

(b) Such tribal license will authorize the holder thereof to sell alcoholic beverages at retail in cans, bottles or other packages, or by the drink for consumption on the premises or within a defined area.

(c) Such tribal license shall set forth the location and description of the building and premises or defined area where such sales may be made and for which said license is issued.

(d) No such license shall be issued without the approval of the local governing body of the Colony or Reservation of the Te-Moak Tribe of Western Shoshone Indians of Nevada, upon the territory of which the proposed alcoholic beverage business is seeking to be licensed.

(e) No such license shall be transferred without the prior consent of the Te-Moak Tribal Council.

(f) Te-Moak Tribal Council shall establish the different categories of licenses and the license fee schedules annually by a duly passed resolution.

(g) Any such license fee collected by the Te-Moak Tribal Council shall remain within the Te-Moak Tribe of Western Shoshone Indians of Nevada upon receipt of fees collected from the local governing body of the Colony or Reservation of the Te-Moak Tribe of Western Shoshone Indians of Nevada upon the territory of which the alcoholic beverage business has been licensed.

SECTION 2:

It shall be unlawful to use or consume any alcoholic beverages in a motor vehicle while such vehicle is being driven.

SECTION 3:

It shall be unlawful to possess any open bottle, can package or container of alcoholic beverage in the passenger compartment of a motor vehicle when such vehicle is being driven.

SECTION 4:

It shall be unlawful for any person actually under the influence of alcoholic beverages to possess, use or consume alcoholic beverages.

SECTION 5:

It shall be unlawful for any person to furnish any alcoholic beverage to any person under the age of twenty-one (21) years to leave or to deposit any alcoholic beverages with the intent that the alcoholic beverages shall be procured by any person under the age of twenty-one (21) years.

SECTION 6:

It shall be unlawful for any person under the age of twenty-one (21) years of age to introduce, possess, use or consume alcoholic beverages.

SECTION 7:

Any Indian who violates any of the provisions of this ordinance shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more that $300.00 or by imprisonment of not more than sixty (60) days or both such fine and imprisonment: Provided, however, that any person under the age of eighteen (18) years may, in the discretion of the Judge, be treated as a juvenile and have the charge(s) disposed of pursuant to applicable juvenile law and procedures.

SECTION 8:

When a non-Indian violates any provision of this ordinance, he or she shall be referred to the State and/or Federal authorities for prosecution under applicable law.

SECTION 9:

Any licensee violating any provision of this ordinance may have said licensee's license suspended or revoked by the Te-Moak Tribal Council provided that the licensee is given a written notice of the proposed suspension or revocation and afforded an opportunity of a hearing.

SECTION 10:

All ordinances, resolutions or acts that have previously been enacted by the Te-Moak Tribal Council, which are in conflict with any provision of this ordinance are hereby repealed.

CERTIFICATION

I, the undersigned, as Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada do hereby certify that the Te-Moak Western Shoshone Council is composed of *10* members of whom *9* constituting a quorum were present at a duly held meeting on October 5, 2005, and that the foregoing ordinance was duly adopted at such meeting by an affirmative vote of *4* For, *3* Against, and *2* Abstention, pursuant to the authority contained under Article 4, Section 3(n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada and that said ordinance has not been rescinded in any form.

/s/ Hugh Stevens, Chairman,

Te-Moak Tribe of Western Shoshone

ATTEST:

/s/ Vera Johnny, Acting Recording Secretary

Te-Moak Tribal Council

[FR Doc. 2012–6129 Filed 3–13–12; 8:45 am]

BILLING CODE 4310–4J–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Second Review)]

Foundry Coke From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on foundry coke from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Angela M.W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its Internet server *(http://www.usitc.gov)*. The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 5, 2012, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 74810, December 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on April 2, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before April 5, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by April 5, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 Fed. Reg. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 8, 2012.

James R. Holbein,

Secretary to the Commission.

WORK SCHEDULE

Investigation No. 731–TA–891 (Second Review)

FOUNDRY COKE FROM CHINA

Staff Assigned

Investigator	Angela Newell (708–5409).
Commodity-Industry Analyst	Cynthia Foreso (205–3348).
Attorney	Charles St. Charles (205–2782).
Supervisory Investigator	Elizabeth Haines (205–3200).

	DATE
Institution	December 1, 2011.
Report to the Commission:	
Draft to Supervisory Investigator	March 16, 2012.
Draft to Senior Review	March 26.
To the Commission	April 2.
Comments of Parties due[1]:	April 5.
Legal issues memorandum to the Commission	May 10.
Briefing and vote (suggested date)	May 16.
Determination and views to Commerce	May 29, 2012.

[1] If comments contain business proprietary information, a nonbusiness proprietary version is due the following business day.

[FR Doc. 2012–6065 Filed 3–13–12; 8:45 am]

BILLING CODE 7020–02–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 February 21, 2012, a proposed Consent Decree in *United States* v. *FMC Corporation,* Civil Action No. 2:11-cv-00699 (''*FMC*'') was lodged with the United States District Court for the Middle District of Alabama.

In *FMC,* the United States of America (''United States''), on behalf of the Administrator of the United States Environmental Protection Agency (''EPA''), filed a complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, seeking reimbursement of response costs incurred between 2005 and 2007 stemming from an EPA emergency removal action cleaning up hazardous substances at the Performance Advantage Superfund Site in Coosa County, Alabama. In response, FMC filed a counterclaim against the United States.

The proposed Consent Decree resolves all claims and counterclaims in this action. Under the Consent Decree, Defendant FMC will pay a total of $300,000, plus interest, to the EPA's Hazardous Substance Superfund, and

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by ABC Coke, Erie Coke, Tonawanda Coke Corporation, and Walter Coke Co. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

the United States will cause to be transferred a total of $71,000 from the Judgment Fund at the United States Treasury to the EPA Hazardous Substance Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to this case: *United States* v. *FMC Corporation,* Civil Action No. 2:11–cv–00699, D.J. Ref. 90–11–2–09066/1.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check payable to the ''U.S. Treasury'' or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address, in the following amount (25 cents per page reproduction cost): $6.50 for the Consent Decree (with Exhibit A—Site Map).

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–6066 Filed 3–13–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Consent Decree Under the Clean Air Act

Notice is hereby given that on March 6, 2012, a proposed Second Consent Decree in *United States and the State of Kansas* v. *Coffeyville Resources Refining & Marketing, LLC et. al.,* 04-cv-01064 (D. Kan. 2004), was lodged with the United States Court for the District of Kansas.

On June 13, 2004, the Court entered a Consent Decree in this action (Docket No. 8) that required Defendant Coffeyville Resources Refining & Marketing, L.L.C. (''CRRM'') to install certain air pollution controls to reduce emissions of oxides, sulfur dioxide and particulate matter at its oil refinery located in Coffeyville, Kansas. Under the proposed Second Consent Decree the United States and State grant CRRM an extension on installation of some of these controls. And CRRM has agreed to implement new and upgraded pollution controls; to comply with more stringent emission limits, and to follow more aggressive leak-detection and repair practices. These measures will reduce CRRM's emission of various nitrogen oxides (NOx), sulfur dioxide (SO_2), volatile organic compounds, particulate matter, carbon monoxide, and other pollutants that affect air quality. CRRM will also pay approximately $970,000 in civil penalties under the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and Community Right-to-Know Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Kansas* v. *Coffeyville Resources Refining & Marketing, LLC et. al.,* 04-cv-01064 (D. Kan. 2004), D.J. Ref. 90–5–1–2–07459/1.

During the public comment period, the Second Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Second Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $52.25 (25 cents per page reproduction cost) 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 E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–6044 Filed 3–13–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Morgan Stanley; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Morgan Stanley,* Civil Action No. 1:11–CV–06875–WHP, which were filed in the United States District Court for the Southern District of New York on March 6, 2012, together with the response of the United States to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. MORGAN STANLEY, *Defendant.*

Civil Action No.: 11–civ–6875 WHP

Hon. William Pauley III

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''Tunney Act''), the United States files the public comments concerning the proposed Final Judgment in this case and the United States' response to those comments. After careful consideration, the United States continues to believe that the relief sought in the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

The United States brought this lawsuit against Defendant Morgan Stanley on September 30, 2011, to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. In January 2006, Morgan Stanley Capital Group Inc. (''MSCG''), a subsidiary of defendant Morgan Stanley,[1] executed agreements with KeySpan Corporation (''KeySpan'') and Astoria Generating Company Acquisitions, L.L.C. (''Astoria'') that would effectively combine the economic interests of the two largest competitors in the New York City electric capacity market. The likely effect of this combination was to increase capacity prices for the retail electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the United States and Morgan consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on September 30, 2011; published the proposed Final Judgment and CIS in the **Federal Register** on October 11, 2011, see United States v. Morgan Stanley, Proposed Final Judgment and Competitive Impact Statement, 76 Fed. Reg. 62843 (Oct. 11, 2011); and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment (''PFJ''), in The Washington Times for seven days (October 10 through October 14 and October 17 and 18, 2011) and in The New York Post for seven days (October 25 through October 31, 2011). The 60-day period for public comments ended on December 30, 2011. The United States received two comments, as described below, which are attached hereto.

II. THE COMPLAINT AND THE PROPOSED FINAL JUDGMENT

A. Background

As alleged in the Complaint and as discussed more fully in the CIS [Dkt. #2] at 2–7, this case involves Morgan's participation in an agreement with KeySpan that caused an anticompetitive effect in the New York City Capacity Market.[2]

In 2005, KeySpan, a pivotal capacity supplier, anticipated that tight supply and demand conditions in the New York City capacity market would ease due to entry of new generation. Concerned that market entry would lead to lower prices and revenues, KeySpan studied various options, including the direct purchase of Astoria. Such an acquisition, however, would have raised significant market power concerns. KeySpan decided instead to approach Morgan to arrange a financial transaction that would provide KeySpan an indirect financial interest in Astoria's capacity sales. Morgan informed KeySpan that such an agreement between Morgan and KeySpan would be contingent on Morgan also entering into an agreement with Astoria, the only other generator with sufficient capacity to offset Morgan's payments to KeySpan.

In January 2006, Morgan entered into a financial derivative agreement with KeySpan (the ''Morgan/KeySpan Swap''), and, at the same time, an offsetting agreement with Astoria (the ''Morgan/Astoria Hedge''). Under the terms of the Morgan/KeySpan Swap, when the market clearing price for capacity was above a certain amount, Morgan essentially was required to pay KeySpan a multiple of the difference between the clearing price and the strike price.[3] The terms of both the Morgan/KeySpan Swap and the Morgan/Astoria Hedge ran from May 2006 through April 2009. Morgan earned approximately $21.6 million in net revenues from the two agreements.

The revenues from Astoria's capacity sales that KeySpan obtained through the Morgan/KeySpan Swap effectively eliminated KeySpan's incentive to compete for sales in the same way a purchase of Astoria or a direct agreement between KeySpan and Astoria would have done. As a result, KeySpan consistently bid its capacity into the capacity auctions at the highest allowed price and, despite the addition of significant new generating capacity in New York City, the market price of capacity did not decline.[4] This result would not have been achieved without Morgan's participation.

B. United States v. KeySpan

On February 22, 2010, the United States filed suit against KeySpan for its role in the Morgan/KeySpan Swap. Simultaneous with the filing of its Complaint, the United States filed a proposed Final Judgment requiring KeySpan to pay to the United States $12 million as disgorgement of ill-gotten gains. See Complaint, United States v. KeySpan Corp., No. 10–1415 (S.D.N.Y. Feb. 22, 2010). On February 2, 2011, after completion of the Tunney Act procedures, the Court entered the KeySpan Final Judgment, and, in making its public interest determination, found that disgorgement is available to remedy violations of the Sherman Act. See United States v. KeySpan Corp., 763 F. Supp. 2d 633, 638–41 (S.D.N.Y. 2011) (WHP).

C. The Morgan Complaint and Proposed Final Judgment

On September 30, 2011, the United States filed the current suit against Morgan for its role in the Morgan/KeySpan Swap. The United States alleges that Morgan entered into an agreement (the Morgan/KeySpan Swap), the likely effect of which was to increase prices in the New York City Capacity Market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Simultaneous with the filing of its Complaint, the United States filed a proposed Final Judgment requiring Morgan to pay to the Treasury of the United States $4.8 million as disgorgement of ill-gotten gains. The proposed Final Judgment requires Morgan to disgorge profits gained as a result of its unlawful agreement in restraint of trade. As stated in the CIS, the proposed relief serves the public interest by depriving Morgan of ill-gotten gains, thereby deterring Morgan and others from engaging in similar anticompetitive conduct in the future.

[1] MSCG and Morgan Stanley are collectively referred to hereinafter as ''Morgan.''

[2] In the state of New York, sellers of retail electricity must purchase a product from generators known as installed capacity (''capacity'').

[3] Under the Morgan/KeySpan Swap, if the market price for capacity was above the strike price ($7.57 per kW-month), Morgan would pay KeySpan the difference between the market price and $7.57 times 1800 MW; if the market price was below $7.57, KeySpan would pay Morgan the difference times 1800 MW. Under the Morgan/Astoria Hedge, if the market price for capacity was above $7.07 per kW-month, Astoria would pay Morgan the difference times 1800 MW; if the market price was below $7.07, Astoria would be paid the difference times 1800 MW. Morgan retained the differential (e.g., $7.57–$7.07 times 1800 MW) as revenues.

[4] The effects of the Morgan/KeySpan Swap continued until March 2008, at which time changes in regulatory conditions eliminated KeySpan's ability to affect the market price. KeySpan was sold to another company in August 2007. The State of New York conditioned its approval of the acquisition on the divestiture of KeySpan's Ravenswood generating assets and required KeySpan to bid its New York capacity at zero from March 2008 until the divestiture was completed. Since then, the market price for capacity has declined.

II. STANDARDS GOVERNING THE COURT'S PUBLIC INTEREST DETERMINATION UNDER THE TUNNEY ACT

The Tunney Act calls for the Court, in making its public interest determination, to consider certain factors relating to the competitive impact of the judgment and whether it adequately remedies the harm alleged in the complaint. See 15 U.S.C. § 16(e)(1)(A) and (B) (listing factors to be considered).

This public interest inquiry is necessarily a limited one, as the United States is entitled to deference in crafting its antitrust settlements, especially with respect to the scope of its complaint and the adequacy of its remedy. See generally United States v. Microsoft Corp., 56 F.3d 1448, 1458–62 (DC Cir. 1995); United States v. SBC Commc'ns, 489 F. Supp. 2d 1, 12–17 (D.D.C. 2007). Under the Tunney Act, the ''Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will best serve society, but only to ensure that the resulting settlement is within the reaches of the public interest.'' KeySpan, 763 F. Supp. 2d at 637 (quoting United States v. Alex Brown & Sons, 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (quoting Microsoft, 56 F.3d at 1460) (emphasis in original), aff'd sub nom, United States v. Bleznak, 153 F.3d 16 (2d Cir. 1998)).

With respect to the scope of the complaint, the Tunney Act review does not provide for an examination of possible competitive harms the United States did not allege. See, e.g., Microsoft, 56 F.3d at 1459 (holding that it is improper to reach beyond the complaint to evaluate claims that the government did not make).

With respect to the sufficiency of the proposed remedy, the United States is entitled to deference as to its views of the nature of the case, its perception of the market structure, and its predictions as to the effect of proposed remedies. See, e.g., KeySpan, 763 F. Supp. 2d at 642; SBC Commc'ns, 489 F. Supp. 2d at 17 (holding that the United States is entitled to deference as to predictions about the efficacy of its remedies). Under this standard, the United States need not show that a settlement will perfectly remedy the alleged antitrust harm; rather, it need only provide a factual basis for concluding that the settlement is a reasonably adequate remedy for the alleged harm. SBC Commc'ns, 489 F. Supp. 2d at 17. A court should not reject the United States' proposed remedies merely because other remedies may be preferable. KeySpan, 763 F. Supp. 2d at 637–38.

III. SUMMARY OF COMMENTS

The United States received formal comments from the Public Service Commission of the State of New York (''PSC'') and from AARP, a nonprofit organization that helps people over the age of fifty.[5] At the outset, both comments commend the United States for enforcing the antitrust laws to protect the integrity of New York capacity markets.

The comments raise three central objections: (1) that the proposed $4.8 million dollar disgorgement is inadequate to deter similar anticompetitive conduct or otherwise serve its remedial purpose, especially given the likely magnitude of the injury to consumers from any increase in New York City capacity prices (PSC Cmts at 7–14; AARP Cmts at 11–16 and 19–25); (2) that the decree does not contain an admission of wrongdoing by Morgan (AARP Cmts at 16–18); and (3) that the disgorged proceeds, rather than being remitted to the Treasury, should directly or indirectly benefit electricity consumers who paid higher electricity rates as a result of the illegal agreement (AARP Cmts at 10–16).

AARP recommends that the United States withdraw from the proposed settlement and proceed in the litigation or renegotiate a settlement with Morgan that would provide equitable relief to electric utility customers, an admission by Morgan of its violation of the Sherman Act, a quantification of the total harm to consumers, and a disgorgement of all profits Morgan realized from the transaction at issue. AARP Cmts at 28. The PSC asks the Court to order the United States to supplement the record. PSC Cmts at 16.

IV. RESPONSE TO THE COMMENTS

The United States has carefully considered these objections but finds that they do not warrant modification of the proposed Final Judgment.

A. The Proposed Remedy Is Appropriate and Deters Anticompetitive Conduct

The commenters argue that disgorgement of $4.8 million is an inadequate remedy that will not serve as an effective deterrent, especially when compared to Morgan's approximately $21.6 million net revenues earned under the Swap and the increased prices paid by electricity consumers. Such concerns are misplaced.[6]

The proposed remedy constitutes significant and meaningful relief. In its action against KeySpan, the United States sought disgorgement under the Sherman Act for the first time. In approving that settlement, this Court recognized that the disgorgement by a power generator engaged in an alleged anticompetitive scheme would become ''an important marker for enforcement agencies and utility regulators alike.'' KeySpan, 763 F. Supp. 2d at 642. In this case, the United States seeks disgorgement from the financial services firm that facilitated the transaction. Just as the KeySpan remedy created an important marker for disgorgement from the principal competitor in an anticompetitive scheme, the proposed remedy in this unprecedented case demonstrates the United States' resolve to pursue financial services firms that leverage derivative agreements for anticompetitive ends, and the antitrust liability that may result from such enforcement actions. Financial services firms contemplating the use of such anticompetitive agreements will now recognize the prospect of Sherman Act liability and disgorgement, thereby diminishing their appetite for and deterring this illegal conduct. Indeed, the filing of the proposed settlement has already prompted legal commentators to warn about the enforcement issues raised by this case, including the duty of financial services firms to consider the implications of their agreements on competition in the underlying markets.[7]

[5] On January 13, 2012, State Senator Michael Gianaris and New York City Council Member Peter Vallone sent a joint letter to the Court asking the Court to re-evaluate the proposed settlement. The letter was placed in the case docket [Dkt. #9]. The letter raises issues similar to those raised by the PSC and AARP; accordingly, these issues will be fully addressed in this response of the United States to the formal comments submitted by the PSC and AARP.

[6] AARP requests access to the derivative agreements. AARP Cmts at 21. The agreement that the United States alleged violated the Sherman Act—the Morgan/KeySpan Swap—is publicly available as an attachment to KeySpan's January 18, 2006 Form 8–K filing with the SEC in which KeySpan announced that it had entered into the transaction, available at *http://www.sec.gov/Archivesiedgar/data/10623791000106237906000004/ex101-8kjan2406.txt.*

[7] See, e.g., Mary Arm Mason & William Monts III, Morgan Stanley to Disgorge Profits Earned from Anticompetitive Derivative Agreements, Hogan Lovells (Dec. 9, 2011) (reporting that ''[Ole key points from the Morgan Stanley case for financial services clients are: (1) the DOJ is prepared to use Section 1 to outlaw financial arrangements aimed at producing anticompetitive effects, (2) the DOJ will take enforcement action against the financial services companies that facilitate these arrangements, even though they do not participate in the underlying physical commodity market, and (3) pure financial players may have a duty to examine the competitive effects of their arrangements on the underlying markets''), available at *http://emailcc.com/rv/ff000213bdac60e42b089aa3f84a8b12fdc2a196;* Barry Nigro & Maria Cirincione, DOJ Orders Financial Services

Continued

The PSC and AARP nevertheless argue that disgorgement of anything short of the $21.6 million in net revenues earned by Morgan under the Swap [8] will not strip Morgan of the entirety of its ill-gotten gains and therefore will not deter the conduct at issue. This position ignores the deterrent value of the proposed settlement described above. It also ignores the disputes that would likely arise in calculating Morgan's ill-gotten gains for the purpose of determining disgorgement. The theory of the United States' case rests on the illegality of the Morgan/KeySpan Swap but not the Astoria Hedge. As such, were this matter to proceed to trial, Morgan would likely contend that but for the Morgan/KeySpan Swap, it would have entered into a legitimate transaction with someone other than KeySpan to offset the Astoria Hedge, and that any disgorgement remedy should be adjusted downward to account for a legitimate retum.[9] Although the United States would have contested these arguments and sought disgorgement of the full $21.6 million in net revenues had this action proceeded to trial, the settlement reflects, among other things, the fact that there is a dispute about the amount of Morgan's net revenues that were ill-gotten.

The United States recognizes that it has not proved its case at trial and that ''a court considering a proposed settlement does not have actual findings that the defendant[] engaged in illegal practices, as would exist after a trial.'' SBC Commc'ns, 489 F. Supp. 2d at 15 (citing Microsoft, 56 F.3d at 1461). The $4.8 million disgorgement amount is the product of settlement negotiations and accounts for litigation risks and costs. It is appropriate to consider litigation risk and the context of a settlement when evaluating whether a proposed remedy is in the public interest.[10] As this Court has recognized ''Mlle adequacy of the disgorgement amount must be evaluated in view of the Government's decision to settle its claims and seek entry of the consent decree. When a litigant chooses to forgo discovery and trial in favor of settlement, full damages cannot be expected.'' [11]

Here, the litigation costs and risks are not insignificant. The United States would have had to establish at trial that the KeySpan Swap caused anticompetitive effects in the New York capacity market, a complex endeavor that would have required substantial fact and expert testimony and evidence. And, in the present case against Morgan Stanley, the United States would have had the additional burden of establishing the liability of a financial services firm for using a derivative agreement to facilitate an anticompetitive effect even though the company itself was not a participant in the underlying market. Assuming the United States prevailed on liability, there would be additional risk, as discussed above, in establishing the proper disgorgement amount. While the United States is confident that it could prevail on these issues at trial, the settlement obviates the risk—and significant cost—of litigation.

The PSC and AARP also argue that the reasonableness of the proposed remedy should be evaluated in light of the ratepayer harm caused by Morgan. PSC Cmts at 13–15; AARP Cmts at 5, 11, 16. In essence, they seek a disgorgement amount that takes into account the losses suffered by retail electricity consumers. As this Court recognized in KeySpan, such comments ''fail to comprehend the nature of the disgorgement remedy. The 'primary purpose of disgorgement is not to compensate investors,' but rather to divest a wrongdoer of the proceeds of their misconduct.'' KeySpan, 763 F. Supp. 2d at 642 (quoting SEC v. Cavanaugh, 445 F. 3d 105, 117 (2d Cir. 2006)). Indeed, the extent of market harm is not relevant to the disgorgement calculation; once a violation has been established, a district court ''possesses the equitable power to grant disgorgement without inquiring whether, or to what extent, identifiable private parties have been damaged by [the violation].'' [12]

In this case, the source of Morgan's ill-gotten gains is the revenues it earned under the derivative agreements. Indeed, the derivative agreements represent Morgan's only source of revenue in this case. Morgan did not participate in the actual capacity market and thus it did not earn any auction revenues, much less pocket consumer overpayments. Moreover, as the United States explained in the KeySpan proceedings,[13] an inquiry into consumer harm would require the Court to assess the price of capacity that would have prevailed absent the Swap, a problematic exercise given the uncertainty of determining market outcomes absent the Swap. Accordingly, given the difficulty of definitively estimating the harm to the market and its irrelevance to the questions relating to the adequacy of the disgorgement remedy, AARP's assertion that the United States is obligated to provide estimates of total economic harm and profits received by all market participants resulting from the alleged violation should be rejected.

B. Public Policy Rejects the Contention That a Settlement of a Government Antitrust Case Should Contain an Admission of Wrongdoing

AARP argues that the proposed final judgment is not in the public interest because it does not contain an admission or finding that Morgan violated the law. Similarly, the PSC quotes language from SEC v. Citigroup challenging the sufficiency of a consent judgment ''that does not involve any admissions'' by the defendant.[14]

Government antitrust suits are governed by a specialized statutory regime that provides no basis to require that consent decrees include either a finding or an admission of liability.[15] Congress has designed the remedial

Firm to Disgorge Profits from Derivative Contract, Fried Frank Antitrust & Comp. L. (Oct. 17, 2011) (reporting that this case ''puts firms on notice that any type of agreement facilitating anticompetitive conduct is subject to scrutiny and that the DOJ may seek penalties against indirect third party participants, as well as direct competitors''), available at *http://www.friedfrank.com/siteFiles/Publications/Final%2010-17-11%20D0J%200rders%20Financial%20Services%20Firm%20to%20Disgorge%20Profits%20from%20Derivative%20Contract.pdf*.

[8] There is no dispute that Morgan earned $21.6 million under the two derivative agreements.

[9] Though a legitimate off-setting counter-party would likely not have agreed to the strike price as high as the $7.57 per kW-month found in the Morgan/KeySpan Swap, Morgan would nonetheless have earned revenues from a legitimate off-setting transaction so long as it exceeded the $7.07 per KW-month price in the Astoria Hedge. In the alternative, Morgan would also dispute that the entire $21.6 million earned under both agreements is cognizable as ill-gotten gains. See CIS at note 4.

[10] Indeed, ''room must be made for the government to grant concessions in the negotiation process for settlements.'' SBC, 489 F. Supp. 2d at 15.

[11] KeySpan, 763 F. Supp. 2d at 642 (citing In re Linerboard Antitrust Litig., 321 F. Supp. 2d 619, 633 (E.D. Pa 2004) (collecting cases) & In re Milken & Assocs. Sec Litig., 150 F.R.D. 46, 54 (S.D.N.Y 1993) (''The Second Circuit has held that a settlement can be approved even though the benefits amount to a small percentage of the recovery sought.'')).

[12] SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985). See also SEC v. Tome, 833 F.2d 1086, 1096 (2d Cir. 1987) (''Whether or not [any victims] may be entitled to money damages is immaterial [to disgorgement].'').

[13] See October 12, 2010 Transcript of Hearing in United States v. KeySpan, 1:10-cv-01415–WHP, at 10–14. In addition, in this case as in KeySpan, commenters' estimates of consumer harm may be significantly overstated. Id. at 14–15.

[14] AARP Cmts at 16–18 & 28 (recommending that the PFJ be amended to include an ''admission by Morgan of its violation''); PSC Cmts at 10 (quoting SEC v. Citigroup Global Markets, Inc., Slip Op. at 10, 2011 WL 5903733 at *5 (S.D.N.Y. 2011)).

[15] The district court proceedings in the Citigroup case have been temporarily stayed by the Court of Appeals (pending a panel ruling on a motion to stay pending appeal). SEC v. Citigroup Global Markets Inc., 2011 WL 6937373 (2nd Cir. Dec. 27, 2011).

provisions of the antitrust laws to encourage consent judgments, which allow the government to obtain relief without the ''time, expense and inevitable risk of litigation.'' United States v. Armour and Co., 402 U.S. 673, 681 (1971). Thus, for nearly a century, the antitrust laws have expressly limited the ability of private plaintiffs seeking treble damages to rely on consent decrees entered in government cases. Section 5 of the Clayton Act, originally enacted in 1914,[16] provides that litigated final judgments establishing a violation in civil or criminal cases ''brought by or on behalf of the United States under the antitrust laws'' shall be ''prima facie evidence'' against the defendant in subsequent private litigation, but the statute specifies that this provision does not apply to ''consent judgments or decrees entered before any testimony has been taken.'' 15 U.S.C. § 16(a). Under this regime, a defendant can elect to accept a consent decree and avoid the risk of a litigated judgment that would seriously weaken its position in follow-on private litigation. Congress provided this exception to the Clayton Act's prima facie evidence provision ''in order to encourage defendants to settle promptly government-initiated antitrust claims and thereby to save the government the time and expense of further litigation.'' United States v. National Ass'n of Broadcasters, 553 F. Supp. 621, 623 (D.D.C. 1982) (collecting cases). Requiring admissions or findings of liability as a prerequisite to entering a consent decree would undercut Congress's purpose and contravene the public interest in allowing the government to obtain relief without the risk and delay of litigation.

Congress confirmed its continuing recognition of the importance of consent decrees when it amended the Clayton Act in 1974 to specify procedural requirements governing a district court's determination of whether entry of a proposed consent decree in a government antitrust case is in the public interest. Antitrust Procedures and Penalties Act, § 2, Pub. L. No. 93–528, 88 Stat 1706 (1974), codified at 15 U.S.C. § 16(b)–(h) (''Tunney Act''). The repeated references to the ''alleged'' violation in the language of the Tunney Act strongly suggest that Congress did not expect decrees arising under the antitrust laws to contain admissions of liability.[17] And the legislative history unambiguously demonstrates Congress' understanding that government antitrust settlements typically occur without an admission or finding of liability. The Senate Report accompanying S. 782, the bill that became the Tunney Act, explains:

The entry of a consent decree is a judicial act which requires the approval of a United States district court. Once entered the consent decree represents a contract between the government and the respondent upon which the parties agree to terminate the litigation. Pursuant to the terms of the decree, the defendant agrees to abide by certain conditions in the future. However the defendant does not admit to having violated the law as alleged in the complaint. Obviously, the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere.[18]

The corresponding House Report is equally clear on the point: ''Ordinarily, defendants do not admit to having violated the antitrust or other laws alleged as violated in complaints that are settled.'' [19] Moreover, both reports plainly reveal that Congress not only understood the practice of entering into such consent decrees, but encouraged it, considering them a ''legitimate and integral part of antitrust enforcement'' and urging that they be retained ''as a substantial antitrust enforcement tool.'' [20]

Accordingly, the government routinely enters into antitrust consent decrees explicitly disclaiming admissions or findings of liability.[21] The Supreme Court has long endorsed the entry of consent judgments in which there is no finding of liability,[22] and it has done so even when the defendant has affirmatively denied the alleged violation.[23]

Following enactment of the Tunney Act, courts have expressly recognized the Congressional intent to preserve the policy of encouraging antitrust consent decree expressed in that legislation.[24] Only once, to our knowledge, has a district court objected to a proposed consent decree on the basis that a defendant had not admitted liability or wrongdoing, but this objection was specifically rejected on appeal. In United States v. Microsoft, the district court refused to enter the proposed consent decree in part because the defendant denied ''that the conduct charged in the Government's complaint to which it has consented, violates the antitrust laws.'' [25] The DC Circuit reversed, expressly holding ''unjustified'' the district court's criticism of the defendant ''for declining to admit that the practices charged in the complaint actually violated the antitrust laws.'' [26] The Court of Appeals emphasized that the ''important question is whether [the defendant] will abide by the terms of the consent decree regardless of whether it is willing to admit wrongdoing.'' [27] We are aware of no government antitrust case in which a court refused to enter a consent decree because a defendant had failed to admit liability.

AARP's contention that absent an admission of wrongdoing or an

[16] 63 Cong. Ch. 323, 38 Stat. 730, 731, codified as amended at 15 U.S.C. § 16(a).

[17] With one exception, every reference to ''violation'' or ''violations'' in the Tunney Act is immediately preceded by ''alleged.'' The only exception is a reference to ''the violations set forth in the complaint.'' 15 U.S.C. § 16(e)(2) as enacted, currently 16 U.S.C. § 16(e)(1)(B). The Tunney Act contains no reference to admissions or findings of violations or of liability. Congress amended the Tunney Act in 2004, but those amendments do not affect the analysis here.

[18] S. Rep. No. 298, 93d Cong., 1st Sess. (1973) (''S. Rep.'') at 5 (emphasis added). See also 119 Cong. Rec. 3449, 3451 (Feb. 6, 1973 floor statement of Senator Tunney: ''Essentially the decree is a device by which the defendant, while refusing to admit guilt, agrees to modify its conduct and in some cases to accept certain remedies designed to correct the violation asserted by the Government.''). (The legislative history of the Tunney Act, including the House and Senate Reports and the statement of Senator Tunney cited herein, is available at *http://www.justice.gov/jmd/ls/legislative_histories/pl93-528/pl93-528.html).*

[19] H. Rep. No. 1463, 93rd Cong., 2d Sess. (1974) (''H. Rep.'') at 6, reprinted at 1974 U.S. Code Cong. & Admin. News 6535, 6536–37. See also id. (''Present law, 15 U.S.C. § 16(a), encourages settlement by consent decree as part of the legal policies expressed in the antitrust laws. * * * The bill preserves these legal and enforcement policies. * * *'').

[20] S. Rep. at 3 & 7; see also H. Rep. at 8, 1974 U.S.C.C.A.N. at 6539 (also describing consent decrees as a ''viable settlement option'').

[21] The proposed Final Judgment in this case states that the United States and defendant Morgan have ''consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by Morgan for any purpose with respect to any claim or allegation contained in the Complaint.'' PFJ at 1. Equivalent statements are conventional in government antitrust consent decrees negotiated pre-trial.

[22] Cf: Armour, 402 U.S. at 681 (interpreting consent decree in which defendants had denied liability for the allegations raised in the complaint); see also 18A Wright and Miller, Federal Practice and Procedure § 4443, at 256–57 (2d ed. 2002) (''central characteristic of a consent judgment is that the court has not actually resolved the substance of the issues presented'').

[23] See Swift & Co. v. United States, 276 U.S. 311, 327 (1928) (refusing to vacate injunctive relief in consent judgment that contained recitals in which defendants asserted their innocence).

[24] E.g., United States v. Alex. Brown & Sons, Inc., 963 F. Supp. 235, 238–39 (S.D.N.Y. 1997) (''In enacting the Tunney Act, Congress recognized the high rate of settlement in public antitrust cases and wished to encourage settlement by consent decrees as part of the legal policies expressed in the antitrust laws.'') (internal quotations omitted).

[25] United States v. Microsoft, 159 F.R.D. 318, 337 (D.D.C. 1995), rev 'd 56 F.3d 1448 (D.C. Cir. 1995).

[26] United States v. Microsoft, 56 F.3d at 1448, 1461 (D.C. Cir. 1995).

[27] Id.

adjudication of the facts entry of the decree would not be in the public interest is unwarranted. The relief that would be afforded by the proposed decree is appropriate to the violation alleged. The Tunney Act and the public interest require no more. To insist on more is to impose substantial resource costs on government antitrust enforcement; to risk the possibility of litigation resulting in no relief at all; to contravene a century of congressional and judicial policy; and to establish a precedent that could impede enforcement of the antitrust laws in the future.

C. Disgorgement of Proceeds to the U.S. Treasury Is Appropriate

AARP argues that Morgan's $4.8 million disgorgement payment should be made to entities other than the U.S. Treasury in order to benefit the electricity customers in New York City who paid higher prices as a result of Morgan's conduct. The United States shares AARP's concern for the New York City ratepayers and, indeed, brought this case and sought disgorgement in order to deter financial services firms from entering into financial arrangements that cause anticompetitive effects. The United States has carefully considered the suggested alternative uses for the disgorgement proceeds but has determined that payment to the U.S. Treasury is the most appropriate result in this circumstance.

The alternative distribution plan proposed by AARP seeks, in effect, to restore funds to ratepayers. As this Court recognized in KeySpan, 763 F. Supp. 2d at 643. A remedy that seeks to reimburse funds to New York City ratepayers would raise questions relating to the filed rate doctrine, which bars remedies (such as damages) that result, in effect, in payment by customers and receipt by sellers of a rate different from that on file for the regulated service. See generally Square D Co. v. Niagara Frontier, 476 U.S. 409, 423 (1986). Indeed, a lawsuit filed by private plaintiffs seeking damages from KeySpan and Morgan based on the Swap has been dismissed on the ground that the action is barred as a matter of law under the filed rate doctrine.[28]

In this case, the United States specifically chose to seek disgorgement, rather than restitution, as a remedy for this violation. As discussed in the CIS, disgorgement is particularly appropriate on the facts of this case to fulfill the remedial goals of the Sherman Act. CIS at 9–10. Disgorgement also provides finality, certainty, avoidance of transaction costs, and potential to do the most good for the most people. As in KeySpan, the proposed remedy here is well within the reaches of the public interest.[29]

VI. CONCLUSION

After careful consideration of the public comments, the United States remains of the view that the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violation alleged in the Complaint and that its entry would therefore be in the public interest.

The United States is submitting this Response and the public comments to the **Federal Register** for publication pursuant to 15 U.S.C. § 16(d). After publication occurs, the United States will move this Court to enter the proposed Final Judgment.

Dated: March 6, 2012

Respectfully submitted, /s/ Jade Alice Eaton, *jade.eaton@usdoj.gov*, Trial Attorney, U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street, NW, Suite 8000, Washington, DC 20004, Telephone: (202) 307–6316, Facsimile: (202) 307–2784.

AARP COMMENTS IN OPPOSITION TO PROPOSED SETTLEMENT AND IN SUPPORT OF FURTHER PROCEEDINGS

Preliminary Statement

On September 30, 2011, the United States Department of Justice Antitrust Division (''DOT'') filed a Complaint commencing this civil antitrust action against defendant Morgan Stanley. On the same day, DOJ filed a proposed Final Judgment, agreed to by Morgan Stanley, which would settle the case subject to court review and approval, along with a Competition Impact Statement (''CIS'') in support of the proposed settlement.[1] A notice inviting public comment [2] on the proposed settlement of this action has been issued, as is required by the Tunney Act.[3] AARP submits these comments to DOJ in response to the notice.

AARP is a nonpartisan, nonprofit organization that helps people over the age of 50 to exercise independence, choice, and control in ways beneficial to them and to society as a whole.[4] AARP has millions of members, including more than 2,500,000 members who reside in New York state. AARP is greatly concerned about the threats to health and safety of vulnerable citizens caused by New York's high electricity costs.[5] Because the cost of utilities has skyrocketed, many low and middle-income families and older people must now choose between paying utility bills and paying for other essentials such as food and medicine. AARP works to protect consumers from excessive utility rates and charges.

Many AARP members were adversely affected by the antitrust violations alleged in this action, which artificially increased prices in the electric capacity markets of the New York Independent System Operator (''NYISO''). Although the excessive charges were paid in the first instance by load-serving utilities such as Con Edison, they were directly passed on to utility customers. Utility customers had no way to escape payment of the inflated charges when their monthly electric bills were adjusted to include the costs.[6]

As consumers, AARP members depend upon the protection of the antitrust laws against the unlawful exercise of monopoly or market power, such as occurred in this case. They must also rely upon the vigorous enforcement of the antitrust laws by DOJ and the courts.

AARP commends DOJ for challenging Morgan Stanley's use of financial derivatives to facilitate gaming by

[28] See Simon v. KeySpan, 785 F. Supp. 2d at 138–39 (dismissing actions based on filed rate doctrine and other grounds). Plaintiffs have appealed this decision to the Second Circuit, but a decision has not yet been rendered.

[29] KeySpan, 763 F. Supp. 2d at 643. Moreover, the Miscellaneous Receipts Act (''MRA'') provides that members of the Executive Branch (including employees of the Department of Justice) who receive money for the United States are to remit such funds directly to the Treasury. 31 U.S.C. § 3302(b) (2006). A purpose of the statute is to protect Congress' appropriations authority by ensuring that money collected from various sources cannot be used for programs not authorized by law. The proposed remedy avoids any issues of compliance with the MRA.

[1] The court papers are available at *http://www.justice.gov/atr/cases/morgan.html.*

[2] 76 **Federal Register**, No. 196 (Tuesday, October 11, 2011).

[3] The Antitrust Procedures and Penalties Act (the ''Tunney Act''), 15 U.S.C. § 16(e)–(f), requires an opportunity for public comment prior to a court's review of any proposed settlement between the government and an alleged antitrust law violator.

[4] For more information about AARP see *http://www.aarp.org/.*

[5] New York residential electric rates are the highest in the continental United States. Energy Information Agency, Electric Power Monthly for August, 2011, Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State, table 5.6.A, (Nov. 2011). Available at *http://www.eia.gov/electricity/monthly/index.cfm.*

[6] ''Every Con Ed customer in the five boroughs overpaid an average total of at least $40 over two years during a price-fixing scheme set up by the owners of a giant Queens power plant, the feds charge in a court case that would let the alleged gougers get away with most of the gains.'' Bill Sanderson, $157 M Power Abuse, N.Y. Post, March 9, 2010, available at *http://www.nypost.com/f/print/news/local/power_abuse_SgLN9psbhjopRMEGU68fgK.*

Keyspan and Astoria in the NYISO electricity auctions. AARP urges, however, that the proposed settlement be withdrawn and revised, and that further proceedings be held.

The Complaint and the Proposed Settlement

The Complaint alleges that Morgan Stanley violated Section 1 of the Sherman Act [7] by entering into separate financial derivative contracts with two major competing sellers in the NYISO electric capacity market, effectively combining their economic interests. The Morgan Stanley derivatives reduced the utilities' risk of bidding strategically to raise the clearing price in the NYISO market, which is paid to all sellers. As a consequence, higher prices were paid for capacity by retail utilities, and the costs were passed through to consumers.

Under Morgan Stanley's derivative contract with the largest seller in the relevant market, Keyspan Corporation (''Keyspan''), Morgan Stanley paid Keyspan whenever NYISO auction prices exceeded a fixed level ($7.57/MW). This rewarded Keyspan when it set the NYISO clearing price at the maximum. Even if all of its capacity was not sold at its high price, Keyspan was assured of benefitting from it through the derivative contract. Under Morgan Stanley's parallel derivative contract with Astoria, Morgan Stanley guaranteed Astoria a fixed floor price for all its capacity sales, regardless of the prices established in the NYISO auctions, and Astoria agreed to pay Morgan Stanley whenever the NYISO auction price exceeded the floor price in the derivative contract. Morgan Stanley could take profits reaped by Astoria due to the artificially high price, and give them to Keyspan. The derivatives thus worked to insure Keyspan against lost profits if it lost some sales by bidding high, at the market rate cap. They assured Astoria that it would receive a known fixed price for all of its capacity, regardless of the outcome of the NYISO auctions.[8] Morgan Stanley's net profit from the derivatives was $21.6 million.[9]

The NYISO pays the market clearing price to all sellers, including those who offered capacity at a lower price. As a result, the total economic damage to electric customers exceeds the ill-gotten gains of Morgan Stanley and the two utilities. There is no quantification or estimate of this damage to the public and to customers in the Complaint or other papers in the record. One major capacity buyer, Consolidated Edison Company of New York, Inc. (''Con Edison''), estimated the inflated capacity costs to be approximately $159 Million in 2006.[10]

Simultaneously with the filing of the complaint, and without further proceedings, DOJ and Morgan Stanley filed a proposed Final Judgment, which embodies their agreement to settle the case. Key provisions of the Final Judgment are:

- Morgan Stanley admits no wrongdoing and the lawsuit is terminated,
- Morgan Stanley agrees to disgorge to the government only $4.8 million of its $21.6 million profit from its derivative contracts.

Standard of Review

The Tunney Act establishes the procedure and standard of review applicable to the proposed settlement of an antitrust case brought by DOJ:

(1) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court shall consider—

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest, and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1). (Emphasis added). The Tunney Act standard was recently applied in the context of the DOJ settlement with Keyspan, involving the same derivative contract:

[T]he Tunney Act allows courts to weigh, among other things, the relationship between the allegations set forth in the government's complaint and the remedy imposed by the proposed final judgment, whether the proposed final judgment is overly ambiguous, whether the enforcement mechanisms it employs are adequate, and whether the proposed final judgment may affirmatively prejudice third parties. See United States v. Microsoft Corp., 56 F.3d 1448, 1461–62 (DCCir. 1995) (per curiam). The court may not, however, ''make a de novo determination of facts and issues'' in conducting its public interest inquiry. United States v. Western Elec. Co., 993 F.2d 1572, 1577 (DCCir.), cert. denied, 510 U.S. 984, 114 S.Ct. 487, 126 L.Ed.2d 438 (1993) (internal quotation and citation omitted). Rather, ''jtjhe balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' Id. (internal quotation and citation omitted). The court should therefore reject the proposed final judgment only if ''it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'' Microsoft, 56 F.3d at 1460 (internal quotations and citation omitted).

In conducting its inquiry, the court is not required to hold a hearing or conduct a trial. See 119 Cong. Rec. 24,598 (1973); *United States* v. *Airline Tariff Pub. Co.,* 836 F.Supp. 9, 11 n. 2 (D.D.C. 1993). The Tunney Act expressly allows the court to make its

[7] The Sherman Act provides that Ielvery contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.'' 15 U.S.C. § 1.

[8] There was little risk of low prices that would require Keyspan to pay Morgan Stanley and Morgan Stanley to pay Astoria under the derivatives. Keyspan was able to set the clearing price because at least some of its capacity would be needed, and so it could confidently demand the ceiling price for all or most of it, confident that when some of its expensively priced capacity went unsold, it would receive payments from Morgan Stanley in accordance their derivative agreement. Keyspan ''consistently bid its capacity at its cap even though a significant portion of its capacity went unsold.'' Complaint, p. 9, ¶ 32.

[9] Complaint, p. 9, ¶ 35.

[10] Of that amount, approximately $119 million was paid by New York City area utilities, and $39 million was paid by utilities in the rest of the state. See Motion to Continent of Consolidated Edison Company of New York, Inc., etc., Re New York Independent System Operator, FERC Docket No. ER07–360 (Jan. 27, 2009), P. 2 and Affidavit of Stuart Nachmias, ¶¶ 13–14, available at *http://elibrary.ferc.gov/idmws/common/opennatasp?filelD=11236060.* The amount of capacity overcharges in 2007 and until NYISO capacity market rules were changed in early 2008 were not estimated.

public interest determination on the basis of the competitive impact statement and response to comments alone. A court may, in its discretion, invoke additional procedures when it determines such proceedings may assist in the resolution of issues raised by the comments. See H.R. Rep. No. 93–1463, at 8–9 (1974), reprinted in U.S.S.C.A.N. 6535, 6539.

United States v. *Keyspan,* 763 F.Supp.2d 633, 637–638 (S.D.N.Y. 2011) (''Keyspan''), quoting *United States* v. *Enova Corp.,* 107 F.Supp.2d 10, 17 (D.D.C. 2000) (emphasis added). It is not necessary for the relief proposed in a settlement to be a perfect remedy for the alleged antitrust violation, but there must be a factual basis to support any DOJ conclusions that the remedies proposed are reasonably adequate.[11]

The Keyspan decision, quoted above, misapprehends the standard of review. The Tunney Act not only ''allows'' courts to consider the listed factors in its review. It requires such consideration. The Tunney Act was amended in the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 specifically to clarify that reviewing courts ''shall'' (instead of ''may'') take each of the *enumerated factors into account in their review of a proposed antitrust case settlement. 15 U.S.C. §§ 16(e)(1)(A) and (B).

AARP demonstrates below that the proposed settlement fails to pass muster under the standards for approval of DOJ antitrust settlements. DOJ should withdraw its consent to the settlement, and conduct further proceedings to develop the record and proceed to trial, if a renegotiated agreement which addresses the concerns in these comments cannot be made.

Argument

1. The Proposed Settlement Is Not in the Public Interest Because It Provides No Benefit to Customers Harmed.

The Morgan Stanley/Keyspan/Astoria derivatives supported gaming of the NYISO market, causing very serious financial harm to customers by artificially inflating the NYISO market prices for electric capacity. The DOJ Complaint and Competitive Impact Statement (''CIS'') very prominently state that the ''likely effect'' of the alleged antitrust violation ''was to increase capacity prices for the retail electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity.'' Complaint, pp. 1–2, CIS 1–2 (emphasis added). The prayer for relief in the DOJ Complaint includes a request for equitable relief to ''dissipate the anticompetitive effects of the violation.'' Complaint If 40. The only ''anticompetitive effects'' identified in the record are the artificial increase in NYISO prices and the higher prices paid by consumers.

The record at this stage contains no evidence of the magnitude of the injury to consumers, including many AARP members living in the New York City area. As previously discussed, there are indications outside the record that the price of capacity was artificially raised by approximately $157 million in 2006 by the gambit supported by the Morgan Stanley derivatives, and the term of the agreements went beyond 2006. The New York State Public Service Commission stated in its comments on the settlement of the Keyspan case arising from the same transactions that the harm to consumers ''could have totaled hundreds of millions of dollars.* * *'' [12] The CIS does not attempt to address the magnitude of this harm to customers, which far exceeded the total profits of the participants in the scheme to raise NYISO prices.[13] As a consequence, the record is insufficiently developed for a reviewing court to test whether the remedy proposed is appropriate.

Under the proposed settlement there is not one penny for the injured consumers. Instead, the entire $4.8 million of monetary relief is to be paid to the United States Treasury. This does nothing to address the injury to those most directly harmed, the electric customers whose bills were artificially increased. There is no explanation in the CIS of why this is so.

The Tunney Act requires DOJ, in its CIS, to provide ''a description and evaluation of alternatives to such proposal actually considered by the United States.'' 15 U.S.C. § 16(b)(6). The CIS, however, contains no description or evaluation of alternative relief that would provide at least some benefit to the injured customers. Any claim by DOJ that equitable relief for the benefit of injured consumers was never ''actually considered'' would not be credible. In the Keyspan case, involving the same derivative agreement, the settlement also provided no relief to consumers. The absence of any equitable relief for consumers drew vigorous protest in that case, in the comments of the New York State Public Service Commission, the New York State Consumer Protection Board, the City of New York, Con Edison, and AARP. Surely DOJ would at least have considered, however briefly, whether to seek some measure of relief for electric customers who suffered from the wrong.

AARP expects that DOJ, in its response to these comments, will cite the recent court approval of the Keyspan settlement, which lacked any relief to customers. That, however, does not bar inclusion of such relief in the settlement of this case.

In rejecting requests for equitable relief to consumers the court in the Keyspan case relied upon a perceived ''filed rate'' barrier and potential ''transaction costs'' of administering monetary relief to customers, stating:

Finally, this Court rejects the notion that the Consent Decree should only be approved if the disgorged proceeds are returned to New York City consumers. While such relief might be optimal, payment of the disgorged proceeds to the Treasury is nevertheless ''within the reaches of the public interest.'' Alex. Brown, 963 F. Supp. at 238 (quotations omitted). It can be effectuated without incurring transaction costs and inures to the public benefit. See *Sec. & Exchange Commin* v. *Bear, Steams & Co. Inc:,* 626 F. Supp. 2d 402,419 (S.D.N.Y. 2009) (answering ''the question of how [disgorged money] can be used to do 'the greatest good for the greatest number of people' by ordering its transfer to the ''Treasury to be used by the Government for its operations'').

Moreover, the Government raises valid concerns regarding potential violation of the filed-rate doctrine.

''The filed rate doctrine bars suits against regulated utilities grounded on the allegation that the rates charged by the utility are unreasonable. Simply stated, the doctrine holds that any 'filed rate'—that is, one approved by the governing regulatory agency is per se reasonable and unassailable in judicial proceedings brought by ratepayers.'' *Wegoland Ltd.* v. *NYNEX Corp.,* 27 F.3d 17, 18–19 (2d Cir. 1994); see also *Keogh* v. *Chi. & Northwestern Ry. Co.,* 260 U.S. 156, 163 (1922) (holding that the filed rate doctrine bars recovery for antitrust damages against carriers colluding to set artificially high shipment rates). In view of that prohibition, return of the disgorged proceeds to New York City electricity customers could circumvent the filed-rate doctrine. A court must extend ''deference to the Government's

[11] There must be ''a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable.'' *United States* v. *Keyspan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (quoting *United States* v. *Abitibi-Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008).

[12] NYPSC Comments in *United States* v. *Keyspan,* available at *http://www.justice_gov/atr/cases/f259700/259704-5.htm.*

[13] The total harm is greater than the profits because under NYISO market rules, artificially high prices achieved by participants in the scheme were paid to all sellers.

evaluation of the case and the remedies available to it.'' Alex. Brown, 963 F. Supp. at 239.

United States v. *Keyspan Corp.,* 763 F. Supp. 2d 633, 643 (S.D.N.Y. 2011) (S.D.N.Y 2011) (emphasis added).

This case does not involve any utility rate filed by Morgan Stanley. It involves profits extracted from large numbers of customers by sellers using Morgan Stanley's services and derivative instruments as tools. Thus the ''filed rate'' rationale for not providing any relief to customers, perceived by the court to be a barrier in Keyspan,[14] clearly is not applicable here.

The transaction cost issue perceived to be a barrier to customer relief in Keyspan is also easily hurdled. Just as utilities paid artificially inflated NYISO charges for capacity and passed those charges on to their customers, utilities can pass on equitable monetary relief intended for the benefit of their customers in the normal course of business without excessive transaction costs. For example, Con Edison passes on variations in capacity costs to its customers every month, in monthly rate adjustments, through its ''Market Adjustment Clause.'' The Market Adjustment Clause takes into account 36 variable factors every month, including ''(8) certain NYISO-related charges and credits * * *.'' [15] is Equitable monetary relief from the inflated NYISO charges could be provided as a credit to customers in the normal course of making rate adjustments. Refunds to utility customers relating to past overcharges are also a well-established remedy. Section 113 of the New York Public Service Law provides:

2. Whenever any public utility company or municipality, whose rates are subject to the jurisdiction of the commission, shall receive any refund of amounts charged and collected from it by any source, the commission shall have power after a hearing, upon its own motion, upon complaint or upon the application of such public utility company or municipality, to determine whether or not such refund should be passed on, in whole or in part, to the consumers of such public utility company or municipality and to order such public utility company or municipality to pass such refunds on to its consumers, in the manner and to the extent determined just and reasonable by the commission.

The New York State Public Service Commission supported the return of overcharges as equitable relief to customers in Keyspan. Surely the Public Service Commission would cooperate, if necessary in the oversight of monetary relief intended for utility customers when a provision for such relief is contained in an antitrust case settlement.

In sum, unlike Keyspan, there is no ''filed rate'' barrier in this case, and AARP has demonstrated that consumer benefits could be efficiently administered without the speculative transaction costs feared in Keyspan. The proposed remedy allowing the government to receive all the profits that Morgan Stanley agrees to cede, without consideration of the amount of harm suffered by customers and without any equitable relief to the customers, is not equitable and is not in the public interest.

2. The CIS Should Be Withdrawn or Amended by DOJ To Support Its Reasons for Termination of the Action With No Finding of Wrongdoing by Morgan Stanley.

As required by the Tunney Act, DOJ filed a Competitive Impact Statement (''CIS'') [16] in which it sets out the facts of the case, its reasoning and its conclusions in support of the settlement. The DOJ Antitrust Division Manual, 4th Ed., states that in a CIS, ''[a]ll material provisions of the proposed judgment should be discussed.'' Id., at IV–57. Notably missing from the CIS in this case, however, is any discussion by DOJ of the critical provision which allows termination of the case with no admission of any wrongdoing by Morgan Stanley. The proposed final judgment states that Morgan Stanley: consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by Morgan for any purpose with respect to any claim or allegation contained in the Complaint * * *.

Proposed Final Judgment, p. 1. The importance of this provision letting Morgan Stanley off the hook is underscored by the Complaint, in which DOJ demands ''What the Court adjudge and decree that the Morgan/Keyspan Swap constitutes an illegal restraint in the sale of installed capacity in the New York City market in violation of Section 1 of the Sherman Act.'' Complaint, ¶ 39. Also, DOJ makes numerous references in the CIS to Morgan Stanley's conduct as having constituted a violation of the Sherman Act:

The United States brought this lawsuit against Defendant Morgan Stanley * * * to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. [CIS 1]

The proposed Final Judgment remedies this violation * * * [CIS 2].

Disgorgement will deter Morgan and others from future violations of the antitrust laws. [CIS 2]

[D]isgorgement will effectively fulfill the remedial goals of the Sherman Act to ''prevent and restrain'' antitrust violations as it will send a message of deterrence to those in the financial services community considering the use of derivatives for anticompetitive ends. [CIS 9]

Despite these assertions by DOJ in its CIS that there were violations of the law, it is the Final Judgment that counts most. The Final Judgment affirmatively disavows any finding or admission that the law was violated by Morgan Stanley. There is no explanation or factual basis in the CIS to support DOJ's abandonment in the Final Judgment of the primary object of the action. It is incumbent upon DOJ to withdraw and amend its CIS to include its rationale for ending the case with no finding or admission that Morgan Stanley violated the antitrust laws, and with no commitment by Morgan Stanley that it will not engage in similar conduct in the future. The public should then be allowed an additional opportunity to respond to any amended or new CIS.

With no finding that Section 1 of the Sherman Act is violated by the use of financial derivatives to backstop risks when sellers game electricity markets, no one, including Morgan Stanley, really knows whether this gambit is actually illegal. As a result, Morgan Stanley and any other future wrongdoers will still lack scienter, an essential element for criminal sanctions under Section 2 of the Sherman Act. Thus, future wrongdoers can try the gambit again and need be concerned only about trivial civil sanctions.

3. DOJ Should Withdraw its Consent to the Settlement or Amend its CIS to Provide Support for its Conclusion that the Disgorgement Proposed in this Case will be a Deterrent.

Disgorgement of profits is one of the equitable remedies available to address violations of the Sherman Act. United States v. Keyspan Corp., 763 F. Supp. 2d 633, 638–641 (SDNY 2011). DOJ repeatedly emphasizes the settlement's

[14] At issue was Keyspan's $48 million profit from its derivative contract with Morgan Stanley. As the contract was neither filed nor part of Keyspan's rates, which are set by the NYISO in its auctions, applicability of the ''filed rate'' doctrine to customer relief in that case is questionable.

[15] Con Edison Electric Service Tariff, General Information, Part VII, A(1)(a)(8), available at *http://www.coned.com/documents/elec/159-164a.pdf.*

[16] The CIS is available at *http://www.justice.gov/atr/cases/f275800/275857.pdf.*

requirement that Morgan Stanley disgorge $4.8 million of its profits from the derivatives, claiming this payment to the government would serve as a deterrent:

Disgorgement will deter Morgan and others from future violations of the antitrust laws. [CIS 2]

The proposed Final Judgment requires Morgan to disgorge profits gained as a result of its unlawful agreement restraining trade. Morgan is to surrender $4.8 million to the Treasury of the United States. [CIS 8]

* * * * *

Requiring disgorgement in these circumstances will thus protect the public interest by deterring Morgan and other parties from entering into similar financial agreements that result in anticompetitive effects in the underlying markets, or from otherwise engaging in similar anticompetitive conduct in the future. [CIS 8]

A disgorgement remedy should deter Morgan and others from engaging in similar conduct and thus achieves a significant portion of the relief the United States would have obtained through litigation * * * [CIS 11]

There is no evidence in the record, however, to support these broad claims that the settlement crafted by Morgan Stanley and DOJ would have any deterrent effect on anyone.

According to the CIS, ''Morgan earned approximately $21.6 million in net revenues from the Morgan/Keyspan Swap and the Morgan/Astoria Hedge.'' CIS 6 DOJ acknowledges that only a portion of Morgan Stanley's profits would be disgorged if the proposed settlement is approved, attempting to put the best light on a small recovery:

While the disgorged sum represents less than all of Morgan's net transaction revenues under the two agreements, [fn. omitted] disgorgement will effectively fulfill the remedial goals of the Sherman Act to ''prevent and restrain'' antitrust violations as it will send a message of deterrence to those in the financial services community considering the use of derivatives for anticompetitive ends. [CIS 9] (emphasis added).

If the 21% to be disgorged under the proposed settlement is ''less than all'' of the $21.6 million profit, as DOJ puts it, perhaps the amount of ill-gotten gains retained by Morgan Stanley—$16.8 million, or 79%—might be said to be ''nearly all'' of the net profit.

The CIS fails to explain how disgorgement of only $4.8 million, and allowing Morgan Stanley to keep $16.8 million of its profits from the scheme would deter similar future conduct by Morgan Stanley or anyone. There is simply no evidence in the record to support DOJ's conclusion that the proposed settlement ''will send a message of deterrence to those in the financial services community considering the use of derivatives for anticompetitive ends.'' Id. Given the minimal development of the record, no one can see the derivative instruments used by Morgan Stanley. If the offending derivative agreements are not disclosed, there is even less likelihood of deterring similar transactions by others. These should have been provided by DOJ with the CIS as ''determinative documents.[17]

DOJ is ordinarily entitled to deference in assessing the effectiveness of a remedy it agrees to, but here its conclusion that disgorgement of only $4.8 million is sufficient is refuted by every day common sense and arithmetic. The CIS does not explain in plain language how allowing a wrongdoer to keep 79% of its ill-gotten gains can be seen as any kind of ''message of deterrent.'' Rather, the ''message'' to some may really be that large profits can still be made from gaming electricity markets using financial derivative agreements to support bidding strategies. If found out, there will probably be no criminal antitrust sanction, and at worst one may keep the majority of the profit in a settlement with DOJ. The real lesson taught by the proposed settlement to potential manipulators could actually encourage similar conduct and further harm competition. This is not a remote or speculative concern. ''Manipulation is a potentially serious problem in all derivatives markets, energy included.'' [18] The CIS does not consider this possibility and therefore does not sufficiently address the impact on competition as required by the Tunney Act. 15 U.S.C. § 16(e)(1)(A).

The $4.8 million disgorgement is probably well within the range of what Morgan Stanley's litigation expenses might be if the case is litigated. The real lesson of the disclaimer and the small disgorgement is that this is merely a nuisance settlement. As recently stated by Judge Rakoff in the course of rejecting a settlement proposed of the SEC:

[A] consent judgment that does not involve any admissions and that results in only very modest penalties is just as frequently viewed, particularly in the business community, as a cost of doing business imposed by having to maintain a working relationship with a regulatory agency, rather than as any indication of where the real truth lies.

SEC v Citigroup Global Markets, Inc., 11 Civ. 7387 (Nov. 28, 2011).

4. The CIS Fails to Support the Claim that the Settlement is Reasonable Because it Avoids Litigation Risk.

DOJ attempts to justify the proposed settlement by invoking its risk of litigation, i.e., that it might lose the case if it goes to trial:

The $4.8 million disgorgement amount is the product of settlement and accounts for litigation risks and costs. [CIS 9]

Had the case against Morgan proceeded to trial, the United States would have sought disgorgement of the $21.6 million in net transaction revenues Morgan earned under both the Morgan/Keyspan Swap and the Morgan/Astoria Hedge. At trial, Morgan—in addition to raising arguments as to its lack of liability in general—would have disputed that the entire $21.6 million earned under both agreements would be cognizable as ill-gotten gains. [CIS 9, fn 4].

While DOJ is ordinarily given considerable deference to its assessment of the merits of its case, it does not cite any authority or facts to show that this case is difficult. Based on the CIS and the record, there are written derivative contracts evidencing the profit-sharing arrangement of the utility counterparties, facilitated by Morgan Stanley as middleman. The utilities' bidding records should be readily available from the NYISO. What is the problem with the case? DOJ gives no hint that its case is in any way doubtful.

This case is only a variation on classic bid-rigging and price fixing. Here, Keyspan bid high, in order to elevate the auction price paid to all sellers, Astoria paid Morgan Stanley some of the extra profits it made due to the elevated price, and Morgan Stanley paid Keyspan, keeping a net $21.6 million profit for its services in facilitating the price raising game. Had the utility sellers made an agreement bilaterally with the same results, it would be seen as a crystal clear antitrust violation. See Addyston Pipe & Steel Co. v. United States, 175 US 211, 243 (1899) (''the defendants enter, not in truth as competitors, but under an agreement or combination among themselves which eliminates all competition between them for the contract, and permits one of their number to make his own bid and requires the others to bid over him''). It should be equally clear that a middleman like Morgan Stanley, who

[17] The DOJ Competitive Impact Statement asserts there are no ''determinative'' documents required to be submitted under the Tunney Act. See United States v. Central Contracting Co., Inc., 537 F. Supp. 571 (E.D. Va. 1982).

[18] Craig Pirrong, Energy Market Manipulation: Definition, Diagnosis, and Deterrence, 31 Energy Law Journal 1–2 (2010) (emphasis added).

effectuates the economic alignment of the sellers with its derivative agreements, is part of the ''combination'' and is also a Sherman Act violator.

The CIS makes an exaggerated claim that DOJ has won victory in the proposed settlement, stating:

A disgorgement remedy should deter Morgan and others from engaging in similar conduct and thus achieves a significant portion of the relief the United States would have obtained through litigation. * * * [CIS 11] (emphasis added).

If the $4.8 million to be disgorged is ''a significant portion'' of the relief sought in the complaint, then the $16.8 million retained by Morgan Stanley could be said to be three times as ''significant'' because Morgan Stanley keeps the bulk of its profit from facilitating the scheme.

5. The Keyspan Case Is Not A Barrier to a Consumer Remedy in This Case.

DOJ relies heavily on the prior decision approving the settlement of its antitrust case against Keyspan, involving the same derivative contract, where $12 million of Keyspan's $48 million profit was disgorged, with no equitable relief for consumers:

Keyspan, pursuant to a Final Judgment sought by the United States, has surrendered $12 million as a result of its role in the Morgan/Keyspan Swap.3 See United States v. Keyspan Corp., 763 T. Supp. 2d 633,637–38 (S.D.N.Y. 2011). Securing similar disgorgement from the other responsible party to the anticompetitive agreement will protect the public interest by depriving Morgan of a substantial portion of the fruits of the agreement. The effect of the swap agreement was to effectively combine the economic interests of Keyspan and Astoria, thereby permitting Keyspan to increase prices above competitive rates, and this result could not have been achieved without Morgan's participation in the swap agreement. Requiring disgorgement in these circumstances will thus protect the public interest by deterring Morgan and other parties from entering into similar financial agreements that result in anticompetitive effects in the underlying markets, or from otherwise engaging in similar anticompetitive conduct in the future.

CIS 8, (emphasis added). If disgorgement of $4.8 million constitutes a ''substantial portion of the fruits of the agreement,'' then the amount of ill-gotten profits retained by Morgan Stanley is three times as ''substantial.''

As the emphasized language in the quotation above shows, the successful gaming of the NYISO market could not have been achieved by the utilities without Morgan Stanley acting as middleman. It was not something Keyspan and Astoria could have accomplished themselves in a bilateral agreement without flagrant and knowing violation of antitrust law, which might expose them to possible criminal charges and large fines under Section 2 of the Sherman Act. Because its role as middleman was crucial to the scheme, it is appropriate to require Morgan Stanley to disgorge proportionately more than Keyspan, not less.

The proposed settlement not only fails to ''deprive the antitrust defendants of the benefits of their conspiracy.'' Intl Boxing Club v. United States, 358 U.S. 242 at 253 (1959). (quotation omitted), it does not even come close to that goal. Instead, it allows Morgan Stanley to retain the lion's share, 79%, of the benefits. ''[A]dequate relief in a monopolization case should * * * deprive the defendants of any of the benefits of the illegal conduct * * *'' United States v. Grinnell Corp., 384 U.S. 563, 577 (1966). Accord, United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 368 (1961) (''Those who violate the Act may not reap the benefits of their violations * * *'' (quotations omitted)). In any settlement parties may obtain something less in the compromise than they initially sought when commencing the litigation, but the woefully trivial disgorgement by Morgan Stanley of only $4.8 million of its profits cannot possibly be an adequate equitable remedy or in the public interest.

AARP Recommendations

AARP recommends that DOJ withdraw from the proposed settlement and proceed in the litigation, or renegotiate with Morgan Stanley to include the following in any new or revised settlement agreement:

A. Allocation of profits made by Morgan Stanley to provide equitable relief to electric utility consumers harmed by the violation,

B. Admission by Morgan Stanley of its violation of the Sherman Act as described in the Complaint,

C. Quantification of the total harm to consumers and markets, and

D. Disgorgement by Morgan Stanley of all profits it realized from the derivatives used to implement the price raising scheme.

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December 30, 2011
VIA E-MAIL
William H. Stallings, Chief,
Transportation Energy & Agriculture Section, Antitrust Division, United States Department of Justice, Washington, DC 20530, E-Mail: *william.stallings@usdoj.gov*.
Re: United States of America v. Morgan Stanley, Civil Case No. 11–civ–6875 Comments of the Public Service Commission of the State of New York

Dear Chief Stallings:

Pursuant to the Tunney Act, 15 U.S.C. § 16(e)(1), enclosed please find comments of the Public Service Commission of the State of New York in response to the notice published in the **Federal Register** on October 11, 2011. See U.S. Dep't of Justice, Antitrust Div., United States v. Morgan Stanley, Proposed Final Judgment and Competitive Impact Statement, 76 **Federal Register** 62843 (October 11, 2011).

Please contact me at (518) 474–7663, if you have any questions. Thank you.

Very truly yours,
Sean Mullany
Assistant Counsel

Enclosure

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Case No. 11–civ–6875, United States of America, *Plaintiff* v. Morgan Stanley, *Defendant*.

COMMENTS OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, PURSUANT TO THE ANTITRUST PROCEDURES AND PENALTIES ACT, ON THE PROPOSED FINAL JUDGMENT

SUMMARY

The Public Service Commission of the State of New York (''PSC'') submits

these comments pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(h), in response to the notice published in the **Federal Register** on October 11, 2011, in this matter. U.S. Dep't of Justice, Antitrust Div., United States v. Morgan Stanley, Proposed Final Judgment and Competitive Impact Statement, 76 **Federal Register** 62843 (October 11, 2011).

The Department of Justice (''DOJ'') is to be commended for its faithful enforcement of the antitrust law to protect the integrity of electricity markets in New York City. The electric capacity market for New York City is highly concentrated. The antitrust law is properly applied in this case to address wrongful anti-competitive practices of Morgan Stanley. DOJ's enforcement of the antitrust law is critical to protect consumers against the harmful effects of Morgan Stanley's anti-competitive conduct in this case and, more generally, to protect the public interest in the integrity of the newly-created competitive electricity markets.

DOJ proposes to settle this litigation by having Morgan Stanley pay the United States government $4.8 million. DOJ asserts such a settlement will be in the public interest because Morgan Stanley's payment of this amount into the U.S. Treasury will deprive Morgan Stanley of ''a substantial portion'' of its unjust enrichment. Competitive Impact Statement, at 8. DOJ admits it seeks only partial disgorgement of Morgan Stanley's ill-gotten gains, saying that, if it proceeded to trial, it would have sought disgorgement of all of Morgan Stanley's net transaction revenues, which DOJ asserts were $21.6 million. Competitive Impact Statement, at 9 & n. 4. DOJ nonetheless claims the lesser amount of $4.8 million ''will effectively fulfill the remedial goals of the Sherman Act'' to ''prevent and restrain'' antitrust violations because the settlement will ''send a message of deterrence'' to the financial services community. Competitive Impact Statement, at 9. According to DOJ, the lesser amount of $4.8 million will still prevent market participants from using such financial agreements to manipulate the capacity markets in the future. Competitive Impact Statement, at 8–9.

These claims are central to DOJ's assertion that the settlement is in the public interest, a finding that the Court must make in order to approve DOJ's proposal. DOJ, however, has offered nothing to support its claims that this settlement, which would allow Morgan Stanley to retain almost 80 percent of its ill-gotten gains, will deter such anticompetitive conduct. Because of this, DOJ has not demonstrated that this settlement will achieve a central purpose of the Sherman Antitrust Act, namely preventing anticompetitive arrangements such as those facilitated by Morgan Stanley in this case. POINT I, below.

To remedy this, the Court should, under the authority of the Tunney Act, direct DOJ to supplement the record to show how and why the settlement will prevent such violations from recurring. POINT II, below.

DOJ has not shown that a settlement for $4.8 million would be reasonable. DOT alleges Morgan Stanley's net revenues were $21.6 million. It asserts that $4.8 million is reasonable given the risks and costs of fully litigating the case. However, DOJ has offered only a summary statement of Morgan Stanley's anticipated position at trial. Competitive Impact Statement, at 9 & n. 4. This statement does not shed light on the actual risks and costs of litigation. Moreover, in considering whether a $4.8 million settlement would be reasonable, the Court should weigh the nature of Morgan Stanley's wrongdoing, the impact of such a settlement on DOJ's enforcement role, and the overall efficacy of antitrust law as a mechanism for preventing such harmful market manipulation.

DOJ has already settled with KeySpan for $12 million, an amount equal to 24.5 percent of KeySpan's alleged wrongful gain. That settlement was approved by the court on February 2, 2011. United States v. KeySpan Corporation, 10 Civ. 1415 (WHP) Memorandum and Order, (S.D.N.Y. Feb. 2, 2011). Now DOJ proposes to settle with Morgan Stanley, the financial institution that allegedly actively facilitated KeySpan's wrongful manipulation of the capacity market. DOJ alleges that KeySpan, knowing it could not directly buy an interest in Astoria (its largest competitor), enlisted Morgan Stanley to act as an intermediary. Thus, Morgan Stanley's involvement was designed to allow KeySpan to do indirectly what it could not do directly. In effect, DOJ alleges that Morgan Stanley actively facilitated KeySpan's attempt to evade the law. Despite allegations of such egregious conduct, DOJ proposes to settle with Morgan Stanley for only 22.2 percent of Morgan Stanley's wrongful gain. Such an arrangement, however, is more akin to a tax than a penalty.

The settlement amount is particularly unreasonable given the fact that Morgan Stanley's illegal conduct had a much larger harmful impact. As the PSC noted in its comments on DOJ's earlier settlement with KeySpan, the illegal market manipulation that KeySpan and Morgan Stanley orchestrated imposed unnecessary costs on consumers which may have totaled tens of millions of dollars. Even if DOJ could not recover all those damages under the Sherman Antitrust Act, the reasonableness of seeking only 22.2 percent of what DOJ can recover should be measured, in part at least, by the larger consumer harm KeySpan and Morgan Stanley caused. United States v. KeySpan Corporation, 10 Civ. 1415 (S.D.N.Y.) (WHP), Comments of the Public Service Commission of the State of New York, Pursuant To the Antitrust Procedures and Penalties Act, On the Proposed Finaljudgment, (Apr. 30, 2010). POINT III, below.

BACKGROUND

In this civil antitrust action, brought DOJ under Section 1 of the Sherman Act, 15 U.S.C. § 1, the government seeks equitable and other relief against Morgan Stanley for violating the antitrust law. According to DOJ, in late 2005 and early 2006, Morgan Stanley entered into a ''swap'' agreement with KeySpan Corporation (''KeySpan''), then the largest electricity producer in the New York City metropolitan area. DOJ asserts this agreement (the ''Morgan/KeySpan Swap'') ensured that KeySpan would withhold substantial output from the New York City electric generating capacity market, thereby discouraging competitive bidding and increasing capacity prices. On or about the same time, Morgan Stanley entered into an offsetting ''swap'' agreement with Astoria—KeySpan's largest competitor (the ''Morgan/Astoria Swap''). Morgan Stanley, acting as the intermediary between KeySpan and Astoria, extracted revenues for its role. Thus, Morgan Stanley facilitated an arrangement ''[t]he likely effect * * * was to increase capacity prices for the retail electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity.'' 76 **Federal Register**, at 62844.

According to DOJ, the Morgan/KeySpan Swap unlawfully restrained competition in New York City's electric capacity market. KeySpan entered into that agreement to protect itself against increased losses from its preferred bidding strategy, due to the entry of new competitors into the capacity market. 76 **Federal Register**, at 62844. Under the Morgan/KeySpan Swap, KeySpan, which already possessed substantial market power in the highly concentrated and constrained New York City capacity market, ''enter[ed] into an agreement that gave it a financial interest in the capacity of Astoria—KeySpan's largest competitor.'' 76

Federal Register, at 62844. By giving KeySpan revenues not only from its own sales, but also from the capacity sales of its largest competitor, the Morgan/KeySpan Swap ''effectively eliminated KeySpan's incentive to compete for sales'' of capacity. 76 **Federal Register**, at 62846. Thus, ''[t]he clear tendency of the Morgan/KeySpan Swap was to alter KeySpan's bidding in the NYC Capacity Market auctions.'' 76 **Federal Register**, at 62846.

As a result, electric capacity prices remained unlawfully inflated, and Morgan Stanley earned approximately $21.6 million in net revenues from the Morgan/KeySpan Swap and the Morgan/Astoria Swap. 76 **Federal Register**, at 62846. In addition, the elimination of competitive pressures, due to the anti-competitive Morgan/KeySpan Swap imposed unnecessary costs on consumers which may have totaled tens of millions of dollars.

POINT I

DOJ HAS NOT PROVIDED ENOUGH INFORMATION TO DETERMINE WHETHER THE PROPOSED SETTLEMENT IS IN THE PUBLIC INTEREST

Before entering any consent judgment proposed by the United States, the court must first determine that entry of such a judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In doing so, ''the court shall consider—

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) &(B).

In seeking this Court's approval, DOJ has the burden to ''provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' United States v. SBC Communs., Inc., 489 F. Supp. 2d 1, 17 (D.D.C. 2007). In this case, DOJ has not met this burden. Neither the competitive impact statement, nor the proposed consent decree provides the information needed to evaluate whether this settlement would be a reasonably adequate remedy for the harm caused by KeySpan.

Under the proposed settlement, Morgan Stanley would be required to pay the United States government a total of $4.8 million dollars. United States v. Morgan Stanley, Proposed Final Judgment and Competitive Impact Statement, 76 **Federal Register** 62843, 9949 (October 11, 2011). According to DOJ, this amount ''remedies [Morgan Stanley's] violation by requiring Morgan to disgorge profits obtained through the anticompetitive agreement.'' 76 **Federal Register**, at 62846. According to DOJ, ''[d]isgorgement will deter Morgan and others from future violations of the antitrust laws.'' 76 **Federal Register**, at 62846. Thus, according to DOJ, the public interest is served because the proposed settlement will both prevent Morgan Stanley's unjust enrichment, and will deter such wrongful conduct in the future.

Preventing Morgan Stanley's unjust enrichment is a legitimate purpose of any proposed settlement. In fashioning relief in response to a violation of the antitrust law, ''[o]ne of [the] objectives * * * is to 'deny to the defendant the fruits of its statutory violation.'' Massachusetts v. Microsoft Corp., 373 F.3d 1199, 1232 (DC Cir. 2004) (quoting United States v. Microsoft Corp., 253 F.3d 34, 103 (DC Cir. 2001)). However, the unstated premise underlying DOJ's claims (that disgorgement is necessary to prevent unjust enrichment, and a $4.8 million penalty is adequate) is that Morgan Stanley's unjust enrichment totaled only $4.8 million. Yet DOJ itself asserts that Morgan Stanley's net revenues totaled $21.6 million. 76 **Federal Register**, at 62847. Thus, DOJ itself acknowledges it is seeking only partial disgorgement.

DOJ nonetheless claims such partial disgorgement will ''send a message of deterrence[,]'' thereby ''deterring Morgan and other parties from entering into similar financial agreements ... or from otherwise engaging in similar anticompetitive conduct in the future.'' 76 **Federal Register**, at 62848. While these claims are central to DOJ's contention that the settlement would be in the public interest, DOJ has not offered any evidence to support the proposition that this settlement will act as a deterrent. This lack of evidence showing the settlement would prevent and deter such conduct is a critical omission. As DOJ acknowledges, preventing and restraining antitrust violations are ''the remedial goals'' of the Sherman Antitrust Act. 76 **Federal Register**; at 62848. Yet the absence of any evidence supporting these claims makes it virtually impossible for the Court to meaningfully evaluate whether a $4.8 million settlement ''represents a reasonable method of eliminating the consequences of the illegal conduct.'' National Soc. of Professional Engineers v. United States, 435 U.S. 679, 698 (1978). This holds true both with respect to depriving Morgan Stanley of its unjust enrichment, and with respect to evaluating whether the settlement will deter such wrongful conduct in the future. Thus, on the current record, the Court has no basis for finding the proposed settlement would be ''in the public interest.''

Given what DOJ has presented, the settlement would not be in the public interest. DOJ seeks only partial disgorgement, so the settlement would not prevent Morgan Stanley's unjust enrichment, since anything less than full disgorgement would not fully strip Morgan Stanley of its wrongful gains. The proposed settlement amount, however, is only a minor fraction (22.2%) of Morgan Stanley's unjust enrichment.[1] Why would such a penalty deter similar violations of the antitrust law in the future? Common sense suggests that such an amount will instead be viewed as merely a cost of doing business. S.E.C. v. Citigroup Global Markets, Inc., Slip Op. at 10 (S.D.N.Y. Nov. 28, 2011) (''[A] consent judgment that does not involve any admissions and that results in only very modest penalties is just as frequently viewed, particularly in the business community, as a cost of doing business imposed by having to maintain a working relationship with a regulatory agency * * *''). Allowing Morgan Stanley to retain almost 80 percent of its ill-gotten gains can hardly be characterized as an effective deterrent without something more to support

[1] In approving DOJ's earlier $12 million settlement with KeySpan, the court noted that, according to DOJ, KeySpan ''did not necessarily earn additional revenues'' by not competing. Instead, the swap offered greater revenue certainty even though ''competing could have earned the company greater revenues * * *'' United States v. KeySpan Corporation, 10 Civ. 1415 (WHP) Memorandum and Order, at 14–15 (S.D.N.Y. Feb. 2, 2011). Because of this, in part, the Court found the $12 million settlement with KeySpan to be reasonable. Here, Morgan Stanley's swap revenues (aside from transactional costs) were profits since it would have had no revenues if KeySpan competed instead of entering into the swap. Accordingly, the court's rationale for finding the KeySpan settlement amount reasonable does not support this proposed settlement with Morgan Stanley.

such a claim.[2] Thus, the proposed $4.8 million settlement would not satisfy either of DOJ's rationales (i.e., preventing Morgan Stanley's unjust enrichment, and deterring such wrongful conduct in the future) for a judicial finding that the settlement is in the public interest.

POINT II

THE COURT SHOULD DIRECT DOJ TO SUPPLEMENT THE RECORD ON THE DETERRENT EFFECT(S) OF THE PROPOSED SETTLEMENT

The Morgan/KeySpan Swap, in both purpose and effect, violated the antitrust law. Its purpose was to ''effectively eliminate[] KeySpan's incentive to compete for sales in the same way a purchase of Astoria or a direct agreement between KeySpan and Astoria would have done.'' 76 **Federal Register**, at 62848. Thus, regardless of its effect on the market, the Morgan/KeySpan Swap violated the Sherman Act. Cf. Summit Health v. Pinhas, 500 U.S. 322, 330 (1991) (1131ecause the essence of any violation of § 1 [of the Sherman Act] is the illegal agreement itself[,] rather than the overt acts performed in furtherance of it, * * * proper analysis focuses, not upon actual consequences, but rather upon the potential harm that would ensue if the conspiracy were successful'').

The Morgan/KeySpan Swap also violated the Sherman Act because of its effect on the market. Its ''clear tendency'' was to alter KeySpan's bidding, in order to prevent competition and keep prices high. 76 **Federal Register**, at 62848. CI United States v. Stasztcuk, 517 F.2d 53, 60 & n.17 (7th Cir. Ill. 1975) (''The federal power to protect the free market may be exercised to punish conduct which threatens to impair competition even when no actual harm results'').

However, because, as discussed in POINT I, DOJ has not proffered evidence sufficient to enable the Court to evaluate whether the proposed settlement is in the public interest, DOJ should be directed to do so. Under-the Tunney Act, ''[t]he court may 'take testimony of Government officials or experts' as it deems appropriate, 15 U.S.C. 16(f)(1); authorize participation by interested persons, including appearances by amici curiae, id. § 16(f)(3); review comments and objections filed with the Government concerning the proposed judgment, as well as the Government's response thereto, id. § 16(f)(4); and 'take such other action in the public interest as the court may deem appropriate,' id. § 16(f)(5).'' Massachusetts v. Microsoft Corp., 373 F.3d 1199, 1206 (DC Cir. 2004).

Requiring DOJ to adduce facts relating to whether such a minimal penalty will prevent and deter such anti-competitive conduct will provide a record basis for any public interest determination made by the Court. Cf. SE.0 v. Bank Of America Corp., _____ F. Supp.2d_____, 2010 U.S. Dist. LEXIS 15460 (S.D.N.Y. Feb. 22, 2010) (approving a proposed consent judgment because, inter alia, after the court rejected an earlier proposed settlement, the parties conducted extensive discovery which established facts supporting the new proposal).

POINT III

THE REASONABLENESS OF THE PROPOSED SETTLEMENT SHOULD BE EVALUATED IN LIGHT OF THE RATEPAYER HARM CAUSED BY MORGAN STANLEY

In determining whether the settlement is in ''the public interest,'' the Court should consider the impact of the proposed settlement on the ratepayers that were harmed by Morgan Stanley's anti-competitive conduct. See 15 U.S.C. § 16(e)(1)(B) (''the court shall consider the impact of entry of such judgment upon * * * the public generally * * *'').[3] DOJ acknowledges ratepayers were harmed, in the form of inflated capacity prices, because of Morgan Stanley's conduct. According to DOJ, ''[w]ithout the Morgan/KeySpan Swap, KeySpan likely would have chosen from a range of potentially profitable competitive strategies in response to the entry of new capacity. Had it done so, the price of capacity would have declined.'' 76 **Federal Register**; at 62846. Because KeySpan decided to withhold capacity rather than compete, ratepayers were harmed in amounts far exceeding Morgan Stanley's $21.6 million in wrongful profit.

Yet, in its earlier settlement with KeySpan, DOJ indicated ratepayers may have no recourse under the antitrust law because of the ''filed rate'' doctrine. See 75 **Federal Register**, at 9951. Moreover, ratepayers may not be able to obtain any relief from FERC because, in early 2008, well before DOJ brought its civil antitrust action against KeySpan, FERC's Staff concluded there was no evidence that KeySpan's bidding behavior violated FERC's Anti-Manipulation Rule, 18 C.F.R. § 1c2(a). FERC Docket Nos. IN08–2–000 & EL07–39–000, Enforcement Staff Report, Findings of a Non-Public Investigation of Potential Market Manipulation by Suppliers in the New York City Capacity Market, p. 17 (February 28, 2008). Thus, in this case ratepayers harmed by KeySpan's anti-competitive conduct may have no meaningful recourse under either the antitrust law or the Federal Power Act.

Even if DOJ could not recover damages under the Sherman Antitrust Act for harm suffered by ratepayers, and is limited to Morgan Stanley's $21.6 million total net revenues, the Court should, when weighing the reasonableness of settling for roughly 20 cents on the dollar, consider the larger consumer harm Morgan Stanley caused, and the apparent lack of any other effective remedy for consumers that were harmed. This lack of a remedy for customers is highly significant given the potential size of the consumer harm Morgan Stanley caused by violating the antitrust law. Yet DOJ has not offered any evidence of how much Morgan Stanley's alleged illegal conduct increased electricity capacity market prices.

If Morgan Stanley's illegal conduct harmed consumers by preventing price declines that could have totaled tens of millions of dollars, then the proposed $4.8 million settlement is so low it would not be fair, reasonable, adequate or in the public interest. Cf. S.E.C. v. Bank Of America Corp., 653 F. Supp.2d 507 (S.D.N.Y. 2009) (disapproving a proposed settlement in part because the proposed $33 million fine was ''a trivial penalty for a false statement that materially infected a multi-billion-dollar merger''). But 4: S.E.C. v. Bank Of America Corp., _____ F. Supp.2d_____, 2010 U.S. Dist. LEXIS 15460 (S.D.N.Y. Feb. 22, 2010) (approving a $150 million fine even though it would have only ''a very modest impact on corporate practices or victim compensation'').

Accordingly, the Court should direct DOJ to address this defect in the settlement proposal. Although exactitude is not required, some evidence should be proffered on this point. See New York v. Julius Nasso Concrete corp., 202 F.3d 82, 88–89 (2d Cir. 2000) (''Where * * * there is a dearth of market information unaffected by the collusive action of the

[2] Arguably, even total disgorgement would have only a limited deterrent effect. ''[T]o 'limit the penalty * * * to disgorgement is to tell a violator that he may [break the law] with virtual impunity; if he gets away undetected, he can keep the proceeds, but if caught, he simply has to be give back the profits of his wrong.'' SEC v. Bear, Stearns & Co., 626 F. Supp. 2d 402,406 (S.D.N.Y. 2009) (quoting SE.C. v. Rabinovich & Assoc., 2008 U.S. Dist. LEXIS 93595, 2008 WL 4937360, at *6 (S.D.N.Y. Nov. 18, 2008)).

[3] Cf. United States v. SBC Communs., Inc., 489 F. Supp. 2d 1, 17 (D.D.C. 2007) (''the court should be concerned with any allegations that the proposed settlement will injure a third party'').

defendants, the plaintiff's burden of proving damages, is, to an extent, lightened[,] [and] the State need only provide the court with some relevant data from which the district court can make a reasonable estimated calculation of the harm suffered.* * *'') (citations and internal quotations omitted); id, 202 F.3d at 89 rino do otherwise would be a perversion of fundamental principles of justice [and would] deny all relief to the injured person, and thereby relieve the wrongdoer from making any amends for his acts''); New York v. Hendrickson Bros., Inc., 840 F.2d 1065, 1078 (2d Cir. 1988) (''The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created') (quoting Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 264 (1946)); Fishman v. Estate of Wirtz, 807 F.2d 520, 551 (7th Cir. Ill. 1986) (''The concept of a 'yardstick' measure of damages, that is, linking the plaintiffs experience in a hypothetical free market to the experience of a comparable firm in an actual free market, is also well accepted'').

CONCLUSION

For the reasons stated above, the Court should direct DOJ to supplement the record to demonstrate why this settlement will prevent such violations in the future.

Respectfully submitted,

Peter McGowan
General Counsel

By: Sean Mullany, *Assistant Counsel Of Counsel,* Public Service Commission, Of the State of New York, Three Empire State Plaza, Albany, New York 12223–1350.

Dated: December 30, 2011, Albany, New York

[FR Doc. 2012–5952 Filed 3–13–12; 8:45 am]

BILLING CODE M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Generic Survey Clearance for the Directorate of Education and Human Resources (EHR)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by May 14, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22030, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: EHR Generic Clearance.

OMB Approval Number: 3145–0136.

Expiration Date of Approval: July 31, 2012.

Abstract: The National Science Foundation (NSF) requests renewal of program accountability and communication data collections (e.g., surveys, face-to-face and telephone interviews, observations, and focus groups) that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (e.g., pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

At the request of OMB an EHR Generic Clearance was established in 1995 to integrate management, monitoring, and evaluation information pertaining to the NSF's Education and Training (ET) portfolio in response to the Government Performance and Results Acts (GPRA) of 1993. Under this generic survey clearance (OMB 3145–0136), data from the NSF administrative databases are incorporated with findings gathered through initiative-, divisional-, and program-specific data collections. The scope of the EHR Generic Clearance primarily covers descriptive information gathered from education and training projects that are funded by NSF. Most programs subject to EHR Generic data collection are funded by the EHR Directorate, but some are funded in whole or in part by disciplinary directorates or multi-disciplinary or cross-cutting programs. Since 2001 in accordance with OMB's Terms of Clearance (TOC), NSF primarily uses the data from the EHR Generic Clearance for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), and the NSF's Office of the Inspector General.

OMB has limited the collection to three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study); (2) project implementation characteristics (also necessary for future use to identify

well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts).

Use of the Information: This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0648.*

Since the EHR Generic Clearance research is primarily used for accountability purposes, including responding from queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under the EHR Clearance serve as baseline data for separate research and evaluation studies.

In order to conduct program- or portfolio-level evaluations, however, both experimental and quasi-experimental evaluation research studies on STEM education interventions require researchers to identify individual-level and organization- or project-level control and treatment groups or comparison groups. NSF-funded contract or grantee researchers and evaluators in part may identify control, comparison, or treatment groups for NSF's ET portfolio using some of the descriptive data gathered through OMB 3145–0136 to conduct well-designed, rigorous research and portfolio evaluation studies.

In accordance with the 2001, 2005, 2008, and 2011 OMB Terms of Clearances, NSF requests separate stand-alone clearance (and separately announces for comment in the **Federal Register**) any program or portfolio research or evaluation.

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

Number of Respondents: 8,494.

Burden of the Public: The total estimate for this collection is 65,868 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is between 1.5 and 72 hours per ''respondent,'' depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants.

Dated: March 9, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–6185 Filed 3–13–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the deformable mirror system that will be used in the Advanced Technology Solar Telescope (ATST). This system is required in order to achieve the requisite spatial resolution to study the finest details of magnetic features in the solar atmosphere.

DATED: March 14, 2012.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Ms. Anna-Lee Misiano, Division of Acquisition and Cooperative Support, 703–292–4339

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on March 6, 2012 the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the deformable mirror system (DMS) that will be used in the ATST. The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that deformable mirrors of satisfactory quality that meet the specifications required for diffraction-limited observations of the sun are not produced by vendors in the United States in sufficient and reasonably available commercial quantities. The total cost of DMS, approximately $3 million, represents approximately 2 percent of the total $146 million Recovery Act award provided for construction of the ATST and about 1 percent of the total project cost.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ATST is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act ''may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.''

The ATST construction is being funded under a cooperative agreement awarded to the Association of Universities for Research in Astronomy (AURA) that began in 2009. The project is currently under construction.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Finding That Relevant Goods Are Not Produced in the United States in Sufficient and Reasonably Available Quality

The science goals of the ATST require that the telescope operate at the so-called diffraction limit in order to resolve spatial features in the solar atmosphere with sizes of order 20 to 30 kilometers. Comparing this size to the average distance to the sun of about 150,000,000 kilometers leads to the

conclusion that the angular size of such features as viewed from the Earth is very small. In order to accomplish such studies, the blurring effect of the earth's turbulent atmosphere needs to be removed. This is accomplished by an advanced system of optics known generically as ''adaptive optics'' (AO). The heart of the AO system is a mirror that can change its shape more than 1,000 times per second with approximately 1,900 separate actuators distributed over the circular area of the mirror. Each actuator must be able to push and pull the face plate by 2.5 micrometers; by comparison, a human hair is approximately 80 micrometers wide. This mirror, along with its control electronics, cooling system, etc. constitutes the DMS. The specifications for the DMS include the following critical performance requirements:

1. Face Sheet flatness—The DMS must have initial and repeatable reflective face sheet flatness to within 15.8 nanometers (root mean square error) for a baseline reference. (For reference, 1 micrometer equals 1000 nanometers.)

2. Actuator spacing—The DMS must have an actuator spacing such that a population of at least 1,900 units are installed within the DMS footprint, which is roughly circular with 200 millimeter diameter.

3. Actuator performance—The actuators must be capable of a specific and repeatable stroke length of equal to or greater than 5 micrometers while in the ATST operational environment.

Failure to meet any of these technical requirements would have severe negative impacts on the spatial resolution performance of the ATST and therefore on its ability to meet its scientific goals.

AURA issued an Announcement of Opportunity in Federal Business Opportunities (FedBizOpps) and, subsequently, an open request for proposals for the design, fabrication, and testing of the DMS for the ATST. Proposals were received from three vendors, two of which are non-U.S. companies. The proposals were evaluated by an internal source selection evaluation board on the basis of technical performance and best value.

A selection plan and proposal evaluation criteria were created in order to equitably evaluate proposals and provide a quantitative method for selection of a ''best value'' proposal based on technical and managerial merit. The selection plan was reviewed and approved per AURA's internal procedures prior to receiving the proposals. Pricing was subsequently factored in by the reviewers to assess overall, ''best value.'' The evaluation criteria were weighted as described in the selection plan depending on the relative importance of each criteria.

After careful technical review, the selection board recommended that the ATST program pursue a contract with one of the non-U.S. vendors as a result of their finding that only that one vendor's offering meets and exceeds all critical performance requirements, particularly the specifications concerning face sheet flattening and actuator performance. Furthermore, the selected vendor is also the only one that has experience in producing mirrors that meet ATST requirements for actuator spacing. The only U.S. bidder failed to meet the critical specification on actuator stroke and could not produce a mirror with the desired 1,933 total actuators with spacing of 4.33 millimeters by 4.21 millimeters.

AURA's conclusion is that there are no U.S. manufacturers who can produce a suitable DMS that meets all of the ATST requirements, so an exemption to the Buy American requirements is necessary.

In the absence of a domestic supplier that could provide a DMS that meets or exceeds the ATST specification, AURA requested that NSF issue a Section 1605 exemption determination with respect to the purchase of a foreign-supplied, specification-compliant DMS, so that the telescope will meet the specific design and technical requirements that are necessary to deliver the image quality necessary for successful performance of its scientific mission. Furthermore, the project's market research indicated that a DMS that meets or exceeds the ATST's technical specifications and requirements is available from a foreign vendor.

NSF's Division of Acquisition and Cooperative Support (DACS) and other NSF program staff reviewed the AURA exemption request submittal, found that it was complete, and determined that sufficient technical information was provided in order for NSF to evaluate the exemption request and to conclude that an exemption is needed and should be granted.

III. Exemption

On March 6, 2012, based on the finding that no domestically produced deformable mirror system meets all of the ATST's technical specifications and requirements and pursuant to section 1605(b), the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency signed on May 27, 2010, granted a limited project exemption of the Recovery Act's Buy American requirements with respect to the procurement of the deformable mirror system.

Dated: March 7, 2012.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2012–6102 Filed 3–13–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings

The National Science Board's Committee on Strategy and Budget Task Force on Data Policies, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Wednesday, March 28, from 1 p.m. to 2 p.m., EDT.

SUBJECT MATTER: Discussion of a continuation of the National Science Board's focus on data policies.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Blane Dahl, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–6278 Filed 3–12–12; 4:15 pm]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 2:30 p.m., Monday, March 26, 2012.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order
II. Executive Session
III. Approval of the Regular Board of Directors Meeting Minutes
IV. Approval of the Audit Committee Meeting Minutes
V. Approval of the Finance, Budget and Program Committee Meeting Minutes
VI. Approval of the Corporate Administration Committee Meeting Minutes
VII. Approval of FY 2011 Audit
VIII. Neighborhood LIFT
IX. Fundraising Abstract
X. Financial Report
XI. DC Lease Discussion & Update
XII. CHC/NC
XIII. Management Report
XIV. Report on FY 2007–2011 Strategic Plan, FY'11 Corporate Scorecard and FY'12 Dashboard & Scorecard
XV. National Foreclosure Mitigation Counseling Program (NFMC) & Emergency Homeowners Loan Program (EHLP)
XVI. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2012–6343 Filed 3–12–12; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of March 12, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Additional Items To Be Considered

Week of March 12, 2012

Friday, March 16, 2012

3:30 p.m. Affirmation Session (Public Meeting) (Tentative)

a. Final Rule: Physical Protection of Byproduct Material (RIN 3150–AI12) (Tentative).

b. *Luminant Generation Company LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4); Energy Northwest (Columbia Generating Station); Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4); DukeEnergy Carolinas, LLC (William States Lee III Nuclear Station, Units 1 and 2), Petitioner's Petition for Review of LBP–11–27 (November 2, 2011)* (Tentative).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: March 9, 2012.

Kenneth Hart,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–6260 Filed 3–12–12; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0233]

Updated Nuclear Regulatory Commission Fiscal Years 2008–2013 Strategic Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Strategic plan.

SUMMARY: The U.S. Nuclear Regulatory Commission (''NRC'' or ''Commission'') is announcing the availability of NUREG–1614, Volume 5, ''U.S. Nuclear Regulatory Commission, Fiscal Years [FY] 2008–2013 Strategic Plan,'' dated February 2012. The updated FY 2008–2013 strategic plan describes the agency's mission and strategic goals, which remain unchanged. The NRC's priority continues to be ensuring the adequate protection of public health and safety, and promoting the common defense and security.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The updated strategic plan is available electronically in ADAMS under Accession No. ML12038A003.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0233.

FOR FURTHER INFORMATION CONTACT: James E. Coyle, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6087; email: *James.Coyle@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Government Performance and Results

Act Modernization Act of 2010 (GPRAMA) requires that an agency's strategic plan be updated for submission to the Congress and the President every four years. The NRC has developed an updated strategic plan for FY 2008–2013 to replace the agency's existing strategic plan.

The NRC published the draft strategic plan for FY 2012–2016 in the **Federal Register** for public comment on October 4, 2011 (76 FR 61402). NRC's Senior Management reviewed and considered all comments before updating the strategic plan. A comment resolution matrix is under ADAMS Accession No ML12038A002 reflecting the disposition of the comments received by the NRC will be posted on the NRC's Web site (*www.nrc.gov*), along with the updated strategic plan.

During the review process, the NRC decided to issue the plan as an update to the existing FY 2008–2013 strategic plan that was published in February 2008. This was due to the fact that there have been no substantial changes in the agency's mission and goals. However, to comply with the requirements of GPRAMA, the NRC is issuing an updated strategic plan. The updated strategic plan also takes into consideration the events that have occurred since the publication of the previous plan.

The NRC's updated FY 2008–2013 strategic plan describes the agency's mission and strategic goals, which remain unchanged. The NRC's priorities continue to be, as always, to ensure the adequate protection of public health and safety, promote the common defense and security, and protect the environment.

The updated strategic plan reflects the agency's Safety and Security goals, and their associated strategic outcomes. This focus on Safety and Security ensures that the NRC remains a strong, independent, stable, and effective regulator.

The updated strategic plan also describes the agency's Organizational Excellence strategies of Openness, Effectiveness, and Operational Excellence, which characterize the manner in which the agency intends to achieve its mission. The plan establishes the agency's long-term strategic direction and outcomes, and provides a foundation to guide the NRC's work and to allocate the NRC's resources.

Stakeholder feedback has been valuable in helping the Commission develop an updated plan that has the benefit of the many views in the regulated civilian nuclear industry.

Dated at Rockville, Maryland, this 1st day of March, 2012.

For the U.S. Nuclear Regulatory Commission.

Jennifer Golder,

Director, Office of the Chief Financial Officer.

[FR Doc. 2012–6152 Filed 3–13–12; 8:45 am]

BILLING CODE 7590–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

[Doc. No. 12–002]

Privacy Act of 1974; System of Records

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice of amendment to existing Privacy Act system of records.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is issuing public notice of its intent to amend a system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended; specifically, RATB–11 entitled ''RATB Investigative Files'' is being amended to reflect legislation expanding the purview of the Board's responsibilities, *see e.g.,* Consolidated Appropriations Act of 2012, Public Law 112–74, § 528, 125 Stat. 786, 920 (2011); and Education Jobs Fund, Public Law 111–226, § 101, 124 Stat. 2389 (2010). Accordingly, the Board is making substantive amendments to its system notice to include: amended categories of individuals covered by the system, amended categories of records in the system, additional authorities for maintenance of the system, amended purposes, a new routine use, and amended record source categories. In addition, the Board is renaming the system as RATB–11–Oversight Support as well as clarifying the security classification, system location, storage, retrievability, safeguards, retention and disposal, and system manager. The amended system of records reads as follows:

RATB—11

SYSTEM NAME:

Oversight Support.

SECURITY CLASSIFICATION:

The majority of the information in the system is Controlled Unclassified Information.

SYSTEM LOCATION:

The principal location of the system is the Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who relate to official Board efforts undertaken in support of: (1) Coordinating and conducting oversight of American Recovery and Reinvestment Act of 2009, Public Law 111–5, §§ 1521, 1523(a)(1), 123 Stat. 115, 289–90 (2009) (Recovery Act), and Education Jobs Fund, Public Law 111–226, § 101, 124 Stat. 2389 (2010), funds to prevent and detect fraud, waste, and abuse; and (2) developing and testing technology resources and oversight mechanisms to detect and remediate fraud, waste, and abuse in federal spending as authorized by the Consolidated Appropriations Act of 2012, Public Law 112–74, § 528, 125 Stat. 786, 920 (2011) (Appropriations Act). These individuals include:

(a) Individuals who are or have been the subject of investigations or inquiries indentified by or submitted to the Board;

(b) Individuals who are or have been witnesses, complainants, or informants in investigations or inquiries identified by or submitted to the Board;

(c) Individuals who are or have been potential subjects or parties to an investigation or inquiry identified by or submitted to the Board; and

(d) Individuals who are or have been related to entities or individuals that are or have been a subject of, potential subject of, or party to an investigation or inquiry identified by or submitted to the Board.

The system also contains records concerning individuals in their entrepreneurial capacity, corporations, and other business entities. These records are not subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations and inquiries identified by or submitted to the Board, including:

(a) Letters, memoranda, and other documents describing complaints, derogatory information, or alleged criminal, civil, or administrative misconduct; and

(b) General intelligence and relevant data, leads for Inspectors General (or other applicable oversight and law enforcement entities), reports of investigations and related exhibits, statements and affidavits, and records obtained during an investigation or inquiry.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The Recovery Act established the Board to coordinate and conduct oversight of Recovery Act funds to prevent fraud, waste, and abuse. Recovery Act, §§ 1521, 1523(a)(1). The Education Jobs Fund requires, among other things, that the funds appropriated thereunder be subject to the same accountability and transparency terms and conditions as Recovery Act funds. Education Jobs Fund, § 101. The Appropriations Act authorizes the Board to develop and test information technology resources and oversight mechanisms to detect and remediate waste, fraud, and abuse in federal spending. Appropriations Act, § 528.

PURPOSE(S):

The purpose of this system of records is to enable the Board to carry out its responsibilities under applicable law, including but not necessarily limited to the Recovery Act, the Education Jobs Fund, and the Appropriations Act. Information collected in this system will assist the Board in its effort to coordinate with others and conduct oversight to detect and prevent fraud, waste, and abuse of Recovery Act and Education Jobs Fund funds. In addition, the information collected will assist the Board in developing and testing information technology resources and oversight mechanisms to enhance transparency of and detect and remediate waste, fraud, and abuse in all federal spending for use by the Board and other federal agencies and entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act (5 U.S.C. 552a(b)), the records or information contained in this system of records may specifically be disclosed outside the Board as a routine use pursuant to the Privacy Act (5 U.S.C. 552a(b)(3)) as follows:

A. To the appropriate federal, state, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. To any individual or entity when necessary to elicit information that will assist in a Board review or audit.

C. To appropriate officials and employees of a federal agency or entity that require information relevant to a decision concerning the hiring, appointment, or retention of an individual; the issuance, renewal, suspension, or revocation of a security clearance; or the execution of a security or suitability investigation.

D. To provide responses to queries from federal agencies and entities, including but not limited to regulatory and law enforcement agencies, regarding federal fund recipients, subrecipients, or vendors, or those seeking federal funds, when the information is relevant to a determination related to or arising out of a past, present or prospective (i) contract or (ii) grant or other benefit.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

F. Information may be disclosed to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

1. The Board, or any component thereof; or

2. Any employee of the Board in his or her official capacity; or

3. Any employee of the Board in his or her individual capacity where the DOJ or the Board has agreed to represent the employee; or

4. The United States, if the Board determines that litigation is likely to affect the Board or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the Board is deemed by the Board to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Board and who have a need to access the information in the performance of their duties or activities for the Board.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information in this system is stored electronically on a digital storage device and as hard copy files within locked containers. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by database management systems software designed to retrieve data elements based upon role-based user access privileges. Records may be retrieved by personal identifiers such as, but not limited to, name, social security number, date of birth, or telephone number. Records may also be retrieved by non-personal information such as file number, entity/institution name, subject matter, agency involved, or other information.

SAFEGUARDS:

The Board has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. Physical access uses a defense in-depth approach restricting access at each layer closest to where the actual system resides. The entire complex is patrolled by security during non-business hours. Physical access to the data system housed within the facility is controlled by a computerized badge-reading system. Multiple levels of security are maintained via dual factor authentication for access using biometrics. The computer system offers a high degree of resistance to tampering and circumvention. This system limits data access to Board and contract staff on a need-to-know basis, and controls individuals' ability to access and alter records within the system. All users of the system of records are given a unique user identification (ID) with personal identifiers, and those user IDs are consistent with the above referenced role-based access privileges to maintain proper security of law enforcement and any other sensitive information. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

Board personnel will review records on a periodic basis to determine whether they should be retained or modified. Further, the Board will retain and dispose of these records in accordance with Board Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Michael Wood, Executive Director, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Access Request.'' Include in the request the full name of the individual involved, his or her current address, date and place of birth, notarized signature (or submitted with date and signature under penalty of perjury), and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the System Manager listed above.

CONTESTING RECORDS PROCEDURES:

Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of investigations and inquiries; individuals and entities with which the subjects of investigations and inquiries are associated; federal, state, local, and foreign law enforcement and non-law enforcement agencies and entities; private citizens; witnesses; informants; and public and/or commercially available source materials.

ADDRESSES: Comments may be submitted:

By Mail or Hand Delivery: Atticus Reaser, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or

By Email to the Board: comments@ratb.gov.

All comments on the proposed amended systems of records should be clearly identified as such.

FOR FURTHER INFORMATION CONTACT: Atticus Reaser, Acting General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006, (202) 254–7900.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on any new routine use of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review. Therefore, please submit any comments by April 23, 2012.

In accordance with 5 U.S.C. 552a(r), the Board has provided a report to OMB and the Congress on the proposed systems of records.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2012–6103 Filed 3–13–12; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29977; File No. 812–13847]

Ares Capital Corporation *et al.;* Notice of Application

March 9, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(3) of the Act.

Applicants: Ares Capital Corporation (the ''Company''), Ares Capital Management LLC (''ACM'') and Ivy Hill Asset Management, L.P. (''Ivy Hill'').

SUMMARY: *Summary of Application:* Applicants request an order (''Order'') to permit the Company to (a) continue to own (directly or indirectly) up to 100% of the outstanding equity interests of Ivy Hill and (b) make additional investments in Ivy Hill, in each case, following such time as Ivy Hill is required to become a registered investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

DATES: *Filing Dates:* The application was filed on November 16, 2010, and amended on June 27, 2011, December 29, 2011, March 7, 2012, and March 9, 2012.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 29, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090. Applicants, Ares Capital Corporation, Ares Capital Management LLC and Ivy Hill Asset Management, L.P., 245 Park Avenue, 44th Floor, New York, NY 10167.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] Shares of the Company's common stock are traded on The NASDAQ Global Select market.

2. The Company's business and affairs are managed under the direction of a nine member board of directors (''Board''), of whom five are not considered interested persons of the Company within the meaning of section 2(a)(19) of the Act (the ''Independent Directors''). The Board has delegated daily management and investment authority to ACM pursuant to an investment advisory and management agreement between ACM and the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act, makes available significant managerial assistance with respect to the issuers of such securities, and has elected to be subject to the provisions of sections 55 through 65 of the Act.

Company. ACM, a Delaware limited liability company, is an investment adviser registered under the Advisers Act.

3. The Company's investment objective is to generate both current income and capital appreciation through debt and equity investments. The Company invests primarily in U.S. middle market companies, where it believes the supply of primary capital is limited and investment opportunities are most attractive. The Company invests primarily in first and second lien senior loans and mezzanine debt, which in some cases includes an equity component like warrants.

4. Ivy Hill, a Delaware limited partnership, manages the investment and, if applicable, reinvestment of the assets of a number of private investment funds and also serves as sub-adviser or sub-manager to certain other private investment funds, whose investment advisers are not ACM or affiliates thereof (collectively, ''Funds'').[2] Ares Operations LLC (the ''Administrator'') provides both the Company and Ivy Hill with administrative services. Both ACM and the Administrator are wholly-owned direct subsidiaries of Ares Management LLC.

5. The Company directly or indirectly owns 100% of Ivy Hill's voting and equity interests. Ivy Hill Asset Management GP, LLC (''Ivy Hill GP'') is the general partner of Ivy Hill and the Company is the sole member of Ivy Hill GP.[3] The Company will only rely on the Order with respect to its investment in Ivy Hill.

6. ACM maintains an investment committee for management of the Company, and Ivy Hill maintains two investment committees with responsibility for the management of designated Funds. On each of Ivy Hill's investment committees there are three members that also sit on ACM's investment committee. There is no overlap of employees between ACM and Ivy Hill.

7. Applicants state that while both the Company and the Funds share the same overall investment objective of investing in middle-market companies, each uses a different strategy to implement this objective. Specifically, the Company focuses on structuring, originating and leading investments directly with issuers while the Funds generally focus on acquiring middle-market investments through secondary market purchases where the investment has been structured, originated and led by a third party. Applicants further state that in some cases, the Company and a Fund may acquire the same instruments from an issuer or other third party. The Company and the Funds may also enter into transactions such as purchases and sales of assets.[4] There may also be situations in which the Company and one or more Funds might invest in different instruments issued by the same issuer, such as where a Fund has purchased first lien debt and the Company invests in second lien or mezzanine debt. The Administrator's legal and compliance team monitors the portfolios and potential investments of both the Company and the Funds for potential conflicts of interest. Procedures are, where appropriate, implemented to restrict communications between Ivy Hill's and ACM's investment professionals so that those investment professionals are not conflicted when making decisions regarding such investments that are in the best interests of their respective clients.[5]

8. In addition to managing the Funds, from time to time, Ivy Hill invests in debt and/or equity securities issued by certain of the Funds and the Company has also invested, and may in the future invest, in securities issued by one or more of the Funds. Furthermore, entities managed by affiliates of ACM, including entities managed by Ares Management LLC, have invested, and such entities and/or entities managed by affiliates of ACM may in the future invest, in securities issued by one or more of the Funds.

9. Ivy Hill currently relies on the exemption set forth in section 203(b)(3) of the Advisers Act, which provides generally that an investment adviser with fewer than 15 clients is not required to register with the Commission. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act[6] eliminated this exemption, and based on the amount of its committed capital under management, Ivy Hill will be required to register with the Commission as an investment adviser.

10. Applicants believe it would cause economic harm to the Company and, thus, the Company's shareholders, for the Company to prematurely be forced to divest its investment in Ivy Hill prior to Ivy Hill achieving its maximum potential value, which, absent the relief requested, the Company believes that it would be required to do.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act makes it unlawful for any registered investment company, and any company controlled by a registered investment company, to purchase or otherwise acquire any security issued by or any other interest in certain securities-related businesses, including the business of any person who is an investment adviser registered under the Advisers Act, unless (a) such person is a corporation all the outstanding securities of which are owned by one or more registered investment companies; and (b) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities. Section 60 of the Act states that section 12 applies to a BDC to the same extent as if it were a registered closed-end investment company. Applicants state that Ivy Hill will not be primarily engaged in the business of underwriting and distributing securities issued by other persons.[7]

2. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and

[2] Each of the Funds relies on section 3(c)(7) for an exclusion from the definition of investment company under the Act.

[3] Ivy Hill GP has no other business other than serving as the general partner of Ivy Hill and will not have any other business so long as Applicants rely on the Order.

[4] Applicants note that each of the Funds that would participate in such transactions has a mechanism for reviewing certain affiliate transactions, generally consisting of the approval of an individual otherwise unaffiliated with Ivy Hill and the Company who is engaged by the Fund for the purpose of reviewing such affiliate transactions.

[5] While there is no formal agreement regarding the sharing of non-public information (''Information Sharing'') between ACM, on the one hand, and Ivy Hill, on the other, applicants believe that most opportunities for Information Sharing are beneficial to the Company and the Funds. The Administrator's legal and compliance department monitors Information Sharing and has implemented controls to ensure that information is not shared where it would be inappropriate. There is no compensation involved in the information sharing process.

[6] Private Fund Investment Advisers Registration Act of 2010, Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[7] Rule 12d3–1 under the Act provides certain limited relief from the restrictions of section 12(d)(3). Since the Company expects that a significant portion of Ivy Hill's gross revenues will be derived from ''securities related activities'' as defined in rule 12d3–1, and since the Company will own no less than 50% of the outstanding equity securities of Ivy Hill, the requirements of rule 12d3–1 would not be satisfied.

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants request an order pursuant to section 6(c) of the Act granting an exemption from the provisions of section 12(d)(3) of the Act to the extent necessary to permit the Company to (a) continue to own (directly or indirectly) up to 100% of the outstanding equity interests of Ivy Hill and (b) make additional investments in Ivy Hill, in each case, following such time as Ivy Hill is required to become an investment adviser registered under the Advisers Act.

4. Applicants state that section 12(d)(3) was intended to safeguard investment companies from (a) entrepreneurial risks of securities related businesses, and (b) conflicts of interest and reciprocal practices between investment companies and securities related businesses.

5. Applicants submit that its investment in Ivy Hill does not raise the same type of entrepreneurial risks that may have concerned Congress in enacting section 12(d)(3). Applicants note that the ownership structure of most securities related businesses has changed since the time of enactment of the Act from privately held general partnerships, which exposed an investment company to the unlimited liability of a general partner, to structures characterized by limited liability. Applicants point out that the Company's shareholders are not exposed to the risk of unlimited liability associated with an interest in Ivy Hill because Ivy Hill GP, through which the Company holds its equity investment in Ivy Hill, is structured as a limited liability company. Therefore, if Ivy Hill were to experience a total loss of capital, the Company would lose only the capital invested in Ivy Hill (and in Ivy Hill GP), but would be protected from any additional monetary or legal liability.

6. Applicants also submit that the continued ownership of, and making additional investments in, Ivy Hill will not present potential conflicts of interest and reciprocal practices. The Company owns 100% of the voting and equity interests in Ivy Hill and, if the requested relief is granted, will maintain at least a majority ownership of the voting and equity interests in Ivy Hill in order to continue to exercise oversight for the strategic direction of Ivy Hill, including the power to control the policies that affect the Company and to protect the Company from potential conflicts of interest and reciprocal practices. Ivy Hill, moreover, will not serve as an investment adviser to the Company or otherwise be in a position to exercise influence over the Company. As a result, Applicants believe that ultimately the interests of the two companies are generally aligned and that the likelihood of conflicts arising between them is low.[8]

7. In certain limited circumstances, Information Sharing and certain downstream affiliate transactions may raise the potential for conflicts of interests. Applicants acknowledge that section 57(a) makes it unlawful for certain persons acting as principal to purchase property from, or sell property to, a BDC or any company controlled by such BDC, or enter into certain joint transactions with the BDC or a company controlled by such BDC. Applicants further acknowledge that the sharing of Covered Information (defined in condition 3) by Ivy Hill and persons controlled by Ivy Hill (collectively, ''Information Providers'') with ACM or persons affiliated with ACM (other than the Company and persons controlled by the Company and other than as necessary to be provided to ACM and the Administrator to provide advisory and administrative services to the Company and Ivy Hill) could be deemed by the Commission to be prohibited under section 57(a) or rule 17d–1. Applicants agree to comply with condition 3 and are not seeking any relief from those provisions in the application.

8. Principal or side-by-side transactions involving the Company or Ivy Hill or any entity controlled by Ivy Hill, on the one hand, and any Fund, on the other hand, would not trigger the application of section 57(a) because the participating Funds are ''downstream'' affiliates of the Company and rule 57b–1 would apply. In some transactions, however, entities managed by certain persons associated with ACM, who are not ''downstream'' affiliates of the Company, may be invested in the Fund that participates in the transaction. Because such persons would have an interest in such transaction, even if an indirect one, ACM or the Administrator might face a conflict of interest when evaluating such transaction between the Company and the Fund. Accordingly, under condition 4, a majority of the Independent Directors who have no financial interest in such transaction will approve any transaction involving the Company, Ivy Hill or any entity controlled by Ivy Hill other than the Funds, on the one hand, and any Fund in which ACM, any person affiliated with ACM (other than the Company or any entity controlled by the Company), any of their clients, or the Administrator, is invested, on the other hand, where such transaction would violate section 57(a) but for rule 57b–1.

9. Applicants submit that their request is necessary and appropriate in the public interest and consistent with the protection of investors. Applicants assert that to continue its ownership of, and ability to make additional investments in, Ivy Hill, its portfolio company, does not present the concerns that section 12(d)(3) was intended to safeguard against and that the exemption would otherwise be consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the Company's ownership of and continued investment in Ivy Hill will permit the Company to continue to realize the increase in value of Ivy Hill, in which it has invested considerable resources. Moreover, if the requested relief is not granted, and Ivy Hill is required to become a registered adviser, the Company will be forced to dispose of its interests in Ivy Hill, thus causing economic harm to the Company and its shareholders by preventing the Company from preserving the value of its existing investment in Ivy Hill and losing the value of expected continued growth and development potential of Ivy Hill and by potentially incurring a loss on its investment in Ivy Hill in connection with such sale.

10. For the foregoing reasons, applicants believe that permitting the Company to continue to own, and make further investments in, Ivy Hill is in the best interests of the Company and its shareholders and that the standards set forth in section 6(c) have been met.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Company will not dispose of the voting or equity interests of Ivy Hill if, as a result, the Company would own, directly or indirectly, less than 50 percent of the outstanding voting and equity interests of Ivy Hill unless the

[8] Applicants state that they will adopt and implement policies and procedures reasonably designed to ensure compliance with the conditions of the Order. Applicants further note that at such time as Ivy Hill is required to register as an investment adviser under the Advisers Act, it will maintain formal policies and procedures related to its operations, including appointing a chief compliance officer, which are designed to ensure that management of Ivy Hill is conducted in the best interests of the Funds, as well as the Company (as the indirect equity owner of Ivy Hill) and the shareholders of the Company.

Company disposes of all of its interests in Ivy Hill.

2. The Board will review at least annually the investment management business of the Company and Ivy Hill (including a review of transactions between the Company and any company controlled by the Company, on the one hand, and Ivy Hill and any company controlled by Ivy Hill, on the other hand) in order to determine whether the benefits derived by the Company warrant the continuation of the ownership by the Company of Ivy Hill and, if appropriate, will approve (by at least a majority of the Independent Directors) at least annually, such continuation.

3. Except to the extent permitted pursuant to exemptive relief from the Commission, neither Ivy Hill (including members of its investment committee with respect to Covered Information (as defined below) received in their capacities as such) nor any persons controlled by Ivy Hill (''Information Providers'') will directly or indirectly provide Covered Information to ACM or any person affiliated with ACM (other than the Company and persons controlled by the Company and as necessary to be provided to ACM and the Administrator to provide advisory and administrative services to the Company and Ivy Hill).

Covered Information means all information except information that:

(i) Is generally available to the public;

(ii) Is of the nature that Information Providers share with unaffiliated market participants at no cost and is not proprietary to the Information Providers;

(iii) Information Providers have obtained from unaffiliated third parties, including but not limited to general market opinions and analyses, analyst reports and diligence reports, and that such third parties generally make available to others, including market participants in the ordinary course, at no cost; or

(iv) Information Providers have obtained from, or are providing on behalf of, borrowers or potential borrowers or their advisors, and that such borrowers or advisors generally make available to unaffiliated market participants at no cost upon request.

4. None of the Company, Ivy Hill or any entity controlled by Ivy Hill, will enter into any Covered Transaction, as defined below, unless a majority of the Independent Directors who have no financial interest in such Covered Transaction has approved it. A ''Covered Transaction'' is any transaction involving the Company, Ivy Hill or any entity controlled by Ivy Hill other than the Funds, on the one hand, and any Fund in which ACM, any person affiliated with ACM (other than the Company or any entity controlled by the Company), any of their clients, or the Administrator, is invested, on the other hand, where such transaction would violate section 57(a) of the Act but for rule 57b–1 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6190 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66541; File No. 81–937]

Order Granting an Application of BF Enterprises, Inc. Under the Securities Exchange Act of 1934

March 8, 2012.

I

BF Enterprises, Inc. (''BF Enterprises'' or the ''company'') has filed an application under Section 12(h) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] for a Commission order exempting the company from the requirement to register its common stock under Section 12(g) of the Exchange Act.[2] Section 12(h) grants the Commission the authority to exempt by order, upon application of an interested person and after notice and opportunity for a hearing, any issuer from Section 12(g) ''if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.''

In its application, BF Enterprises states that it ''was a reporting company under the Exchange Act until 2005 and terminated its Exchange Act registration pursuant to a Form 15 filed with the Commission on August 30, 2005 in connection with a reverse/forward stock split transaction,'' which the company's shareholders ''approved * * * on July 21, 2005 based upon a Schedule 13E–3 filed with the Commission on March 31, 2005 and as subsequently amended by the Company.'' According to the application, a shareholder commenced litigation against the company in the Delaware Chancery Court in 2010 that ultimately resulted in that shareholder transferring its shares of the company's common stock to 500 identical trusts before December 31, 2010, the last day of the company's fiscal year.

Under Section 12(g) of the Exchange Act and the Commission's rules thereunder, an issuer is required to register a class of its equity securities if, at the end of the issuer's fiscal year, the securities are ''held of record'' [3] by 500 or more persons and the issuer has total assets exceeding $10 million.[4] According to the application, BF Enterprises had total assets of $13.3 million as of December 31, 2010. In addition, each of the 500 trust entities was identified as an owner of common stock on the records of security holders maintained by or on behalf of BF Enterprises. However, BF Enterprises contends that it should not be required to register its common stock under Section 12(g) and is seeking an exemptive order to that effect. Specifically, BF Enterprises asserts that exemptive relief would be consistent with the standards articulated in Section 12(h) because: (1) BF Enterprises has fewer than 85 total beneficial owners of its common stock, one of which has expressly stated that its shares are held indirectly through 500 trust entities formed solely for the purpose of attempting to cause the company to register its common stock under Section 12(g) (the ''BFE Trusts''); (2) as of December 31, 2010, BF Enterprises had total assets of approximately $13.3 million and 2010 annual net income of approximately $103,000; (3) BF Enterprises has a total of seven employees and its primary business comprises two parcels of real estate; and (4) there is no trading activity in, and an absence of any regular market for, BF Enterprises' common stock.

On May 12, 2011, the Commission issued a notice of the filing of the application to give any interested person an opportunity to ''submit to the Commission in writing its views on any substantial facts bearing on the

[1] 15 U.S.C. 78*l*(h).

[2] 15 U.S.C. 78*l*(g).

[3] 17 CFR 240.12g5–1. Exchange Act Rule 12g–5 states that: ''For purposes of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be 'held of record' by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer,'' which is subject to certain conditions set forth in Rule 12g–5.

[4] 15 U.S.C. 78*l*(g)(1) and 17 CFR 240.12g–1. When Section 12(g) was enacted, the asset threshold was set at $1 million. The asset threshold has been increased on several occasions, most recently to $10 million in 1996. *See Relief From Reporting by Small Issuers,* Release No. 34–37157 (May 1, 1996) [61 FR 21353].

application or the desirability of a hearing thereon.''[5] The Commission received nine comment letters on the application,[6] some of which were from shareholders of BF Enterprises and all of which opposed the application.

Commentators contended that the Commission should deny the application because the company's shareholders have been harmed by the company's decision to cease filing reports under the Exchange Act. Among other things, the commentators raised concerns about the company's lack of transparency[7] and the detrimental effect of that lack of transparency on security holders, particularly in terms of liquidity[8] and accountability of management.[9] Specifically, some commentators claimed that the company's reverse/forward stock split transaction was unfair to shareholders by leaving them with few or no alternatives to achieving fair value for their investment, particularly when there is a concentration of share ownership in management.[10] In the view of one of these commentators, it would have been fairer to shareholders if the company had chosen to go private—*e.g.,* through a management buyout or sale to a third party—rather than ''go dark.''[11] Commentators also expressed concern that the lack of publicly available information about the company may have resulted in the company repurchasing its common stock from the public at prices lower than those that would have been available in a more informed and liquid market.[12] Others expressed concern about a perceived trend in companies ''going dark'' and the negative impact this trend has on the capital markets generally.[13]

Some commentators urged the Commission to revise the definition of ''holder of record'' to reflect the concentration of ownership of securities of current and former Exchange Act reporting companies in ''street name,'' noting that the current definition allows companies to deregister under the Exchange Act despite having beneficial owners well in excess of current thresholds.[14] One commentator explained that company shareholders who purchased their shares on the open market ''did so with the reasonable expectation that their shares would enjoy continued liquidity for so long as the Company's business remained viable.''[15] This commentator argued that the purpose for establishing the BFE Trusts as owners of BF Enterprises common stock should not serve as grounds for granting the application when the company's purpose in effecting the reverse/forward stock split was to cease filing Exchange Act reports. Some commentators urged the Commission not to provide the relief requested in the application, but, rather, to address the company's arguments in the context of a reconsideration of how shareholders are counted and how many holders should trigger Exchange Act registration.[16] Finally, certain of the commentators also disputed factual assertions in the application, claiming that the ''market value'' or ''intrinsic value'' of the company's assets is in excess of $30 million[17] and that there is trading interest in the company's common stock.[18]

II

Section 12(g) was enacted in 1964 following a study of the securities markets commissioned by Congress and conducted by the staff of the Commission in the early 1960s (the ''Special Study'').[19] In this study, the staff was asked to develop a recommendation for a standard for registration that would be both reasonably reliable and easily enforceable and cover issuers that are ''sufficiently significant from the point of view of the public interest to warrant the regulatory burden to be assumed by the Government and the compliance burden to be imposed on the issuers involved.''[20] Based on a balance of theoretical and practical considerations, the Special Study concluded that the holder of record test would be the most appropriate measure of public interest for imposing statutory disclosure requirements on issuers whose securities trade over-the-counter.[21] The Commission added an asset test to avoid imposing Exchange Act reporting obligations on insubstantial issuers for which the burden of compliance would be disproportionate to the public interest served by public disclosure.[22] The Commission subsequently noted that ''[t]he shareholder-of-record criteria were intended to provide a certain and easily applied measure of public investor interest and to avoid the difficulties inherent in a standard based on the number of beneficial owners. Congress enacted Section 12(g) and 15(d) on the assumption that there was a significant correlation between the number of recordholders and the number of underlying beneficial owners.''[23]

Shortly after Congress enacted Section 12(g) in 1964, the Commission adopted Exchange Act Rule 12g5–1 to define ''held of record'' for purposes of Section 12(g).[24] This definition requires an issuer to count, as holders of record, only persons identified as owners on the record of security holders maintained by or on behalf of the issuer in accordance with accepted practice and subject to certain conditions. The Commission determined not to require issuers to count as holders of record the separate accounts in which securities are held by brokers, dealers, banks or their nominees for the benefit of other persons. The Commission explained that this would ''have the effect of simplifying the process by which companies determine whether or not they are covered by [Section 12(g)].''[25] The Commission further stated that it would ''determine in the light of experience whether inclusion of these accounts at a future date is necessary or appropriate to prevent circumvention of the [Exchange] Act and to achieve the

[5] *See* Notice of an Application of BF Enterprises, Inc. under Section 12(h) of the Securities Exchange Act of 1934, Release No. 34–64479 (May 12, 2011) [76 FR 28482].

[6] Seven different commentators submitted the nine comment letters. The commentators were: Daniel F. Raider (June 6, 2011 and June 27, 2011) (''Raider Letters''); John D. Browning (June 16, 2011) (''Browning Letter''); Jeremy Q. Zhu (June 16, 2011) (''Zhu Letter''); Paul Blumenstein (June 16, 2011 and Aug. 2, 2011) (''Blumenstein Letters''); John H. Norberg (June 15, 2011) (''Norberg Letter''); Joseph M. Sullivan (June 13, 2011) (''Sullivan Letter''); and James E. Mitchell (June 13, 2011) (''Mitchell Letter'').

[7] *See, e.g.,* Browning Letter and Raider Letters.

[8] *See, e.g.,* Browning Letter; Raider Letters and Zhu Letter.

[9] *See, e.g.,* Raider Letter and Blumenstein Letters.

[10] Sullivan Letter; Blumenstein Letters and Zhu Letter.

[11] Blumenstein Letters.

[12] Blumenstein Letters, Mitchell Letter and Norberg Letter.

[13] Blumenstein Letters and Zhu Letter.

[14] *See, e.g.,* Sullivan Letter; Norberg Letter; and Blumenstein Letters.

[15] Blumenstein Letters.

[16] *See, e.g.,* Sullivan Letter; Norberg Letter; and Blumenstein Letter.

[17] Raider Letters and Blumenstein Letters.

[18] Raider Letters; Blumenstein Letters; and Sullivan Letter (asserting that ''[t]he Company's stock has been continuously offered for purchase and sale by multiple market makers in the over the counter market since the Company's deregistration became effective'').

[19] Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 88–95 (1963).

[20] *Id.* at 17, pt. 3.

[21] *Id.*

[22] *See* SEC Chairman William Cary's remarks in the Report of the Committee on Banking and Currency to Accompany S. 1642, S. Rep. No. 88–379 (1963) (''Committee Report'') at 52.

[23] *See On the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities,* Final Report of the Securities and Exchange Commission (Dec. 3, 1976) at 53.

[24] 17 CFR 240.12g5–1.

[25] *See Adoption of Rules 12g5–1 and 12g5–2 Under the Securities Exchange Act of 1934,* Release No. 34–7492 (Jan. 5, 1965) [30 FR 483].

intended coverage on a uniform and acceptable basis.'' [26] The Commission currently is undertaking such an assessment.[27]

Congress added the exemptive authority in Section 12(h) of the Exchange Act to provide the Commission with ''flexibility in the administration'' of Section 12(g) and other reporting provisions of the Exchange Act applicable to securities traded in the over-the-counter market.[28] To this end, Congress provided the Commission with ''ample authority to modify, and provide exemptions from, the statutory requirements for different issuers on the basis of the number of shareholders, trading interest in their securities, nature and extent of their business activities, income, asset size, or other relevant considerations.'' [29] Congress also recognized that strict application of numerical triggers may not, in all cases, be consistent with its desire to balance the public benefits of reporting with its burdens on reporting companies, particularly smaller companies.[30]

The Commission balances the factors in Section 12(h), with no single criterion alone serving as the basis for granting an exemption; rather, the criteria set forth in Section 12(h) serve as ''guidelines'' and the Commission looks at the particular circumstances of each matter to determine whether an exemption meets the standards in Section 12(h).[31] We address each of the factors below.

Number of shareholders: The company asserts, and the commentators do not dispute, that the company had fewer than 85 beneficial holders of its common stock and, excluding the BFE Trusts, fewer than 25 holders of record of its common stock as of December 31, 2010. It also is undisputed that the only reason why BF Enterprises would be deemed to have 500 or more record holders is the action of a single beneficial owner to create 500 trusts and to transfer ownership of shares of BF Enterprises' common stock to those trusts for the sole purpose of attempting to cause the company to register its common stock under Section 12(g). It is further undisputed that this shareholder is the only beneficiary of these trusts.

In our view, this increase in the number of owners appearing on the company's books does not reflect a growth in public holders that requires the protections of Exchange Act reporting; nor is this increase ''sufficiently significant from the point of view of the public interest to warrant the regulatory burden to be assumed by the Government and the compliance burden to be imposed on the [issuer] involved.'' [32] Further, imposing Exchange Act reporting obligations on BF Enterprises solely because of the creation of, and deposit of company shares into, the BFE Trusts would not result in an increase in ''the number of investors protected'' by such reporting, as Congress used that phrase in the Committee Report. As such, requiring the company to report under the Exchange Act does not advance the public policy underlying the Exchange Act's reporting provisions.

Trading interest in the securities: In its application, BF Enterprises asserts that ''there is no trading activity in, and an absence of any regular market for, the Company's securities.'' While some commentators disputed the unqualified nature of this statement, they acknowledged that the company's stock does not trade frequently.[33] Indeed, legal counsel representing the shareholder who created the BFE Trusts acknowledged that, ''[i]n 2010, there were only a few reported trades, and, to Leeward's knowledge, there have been no reported trades in 2011.'' [34] However, all of these commentators asserted that the level of trading interest in BF Enterprises' stock depends to some extent upon the availability of its financial information and news.[35]

While we are mindful that the shareholders of BF Enterprises may benefit in the ways they explained in their comment letters if the company were to resume Exchange Act reporting—*e.g.,* increased transparency, greater market liquidity, enhanced management accountability—we also must consider the burden of Exchange Act reporting on an entity such as BF Enterprises and whether there is currently sufficient trading interest to warrant the compliance burden to be imposed. While we recognize that, with more information, there may be more trading interest, it does not appear to us that there currently exists sufficient trading interest that would justify imposing the compliance burdens of Exchange Act reporting on the company.

We note that, according to otcquote.com, 47 trades, covering fewer than 27,000 shares, in the company's common stock were effectuated in the over-the-counter market during the three-year period from January 1, 2009 through December 31, 2011.[36] This trading activity is of a level that the Commission has determined in the past militates toward granting exemptive relief under Section 12(h).[37] That the

[26] *Id.*

[27] *See Testimony on the Future of Capital Formation,* by Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, before the U.S. House of Representatives Committee on Oversight and Government Reform (May 10, 2011), available at *http://www.sec.gov/news/testimony/2011/ts051011mls.html. See also Testimony on Crowdfunding and Capital Formation,* by Meredith B. Cross, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the U.S. House of Representatives, Committee on Oversight and Government Reform (Sept. 15, 2011), available at *http://www.sec.gov/news/testimony/2011/ts091511mbc.html.*

[28] Committee Report at 63.

[29] *Id.*

[30] The Senate Committee observed: ''Under the Investment Company Act of 1940, Congress set 100 shareholders as the standard for measuring the public interest. Such inclusive coverage might, however, create a burden on issuers and the Commission unwarranted by the number of investors protected, the size of companies affected, and other factors bearing on the public interest. Unlike the Securities Act, which requires filing only on the occasion of an offering, the Exchange Act requires at least annual filings. It is therefore necessary on purely practical grounds to limit in some manner the number of issuers required to comply, so that the flow of reports and proxy statements will be manageable from the regulatory standpoint and not disproportionately burdensome on issuers in relation to the national public interest to be served.'' Committee Report at 19.

[31] *See, e.g., In the Matter of The National Dollar Stores, Ltd.,* Admin. Proc. File No. 3–1212, 81–79 (Sept. 11, 1968) (explaining that ''the criteria [set forth in Section 12(h)] are designed merely to provide us with guidelines in considering the basic tests'' of whether an exemption is not inconsistent with the public interest or the protection of investors; and concluding that limited, conditional relief warranted ''under the circumstances''); *In the Matter of Lake Ontario Concrete Limited,* Admin. Proc. File No. 3–2615 (May 23, 1973) (where Commission recognized ''unusual combination of circumstances'' in granting limited exemption); and *In the Matter of Multi Benefit Realty Fund, et al.,* Admin. Proc. File No. 3–4400 (Mar. 11, 1976) (where four partnerships with aggregate assets of $183 million and 5,600 limited partners denied exemption despite lack of trading interest in applicants' securities and purported sophistication of investors because those factors ''outweighed'' by the applicants' size and by the number of investors involved, with Commission specifically noting ''[t]hough significant, trading interest is not the sole consideration to be looked at in these matters'').

[32] *Special Study* at 17.

[33] Raider Letters; Blumenstein Letters; and Browning Letter.

[34] Blumenstein Letters.

[35] *See, e.g.,* Raider Letters (explaining that, due to the company deregistering under the Exchange Act, ''it is no surprise that there is only limited interest in trading Company stock'').

[36] Specifically, in 2009, there were 11 trades on six days on volume of 6,446 shares; in 2010, there were 22 trades on nine days on volume of 13,200 shares; and in 2011, there were 14 trades on eight days on volume of 7,127 shares.

[37] The Commission determined that there was an ''absence of a regular market for the [issuer's] stock'' and a ''relatively small number of transactions effected'' in the stock where there were only four bid and one ask quotations for the shares for a one-year period (followed by a cessation of published quotations), and a total of 107 sales, involving 12,117 shares, were effected over a 27-month period. *In the Matter of Security Savings and Loan,*

primary reason for the low level of trading may be the company's decision to effect the reverse/forward stock split and ''go dark'' does not, in our view, negatively impact an application under Section 12(h) where, as here, an issuer accomplishes deregistration after notice to its shareholders, including notice of the negative impact on the market for the issuer's securities.[38] Further, we note that the Exchange Act does not require reporting companies to facilitate or maintain a market for their securities: Exchange listing is purely voluntary as is qualifying for quotation on the OTC Bulletin Board.

Nature and extent of business activities, income and asset size: In its application, BF Enterprises asserts that it had total assets of $13.3 million as of December 31, 2010. BF Enterprises also states that is a ''real estate developer whose primary business comprises two properties: a real estate development in suburban Tampa, Florida, and an office building in Tempe, Arizona'' with its assets ''consisting primarily of real estate, mortgage loans receivable and cash and cash equivalents.'' One commentator has disputed BF Enterprises' statement that its total assets as of December 31, 2010 amounted to $13.3 million and its 2010 annual net income was approximately $103,000.[39] Specifically, this commentator estimates the company's assets at more than $30 million and questions the net income amount given total revenues in 2010 of approximately $2.7 million. However, even if this commentator is correct, it is undisputed that BF Enterprises' assets exceed the Section 12(g) asset threshold of $10 million as of December 31, 2010.

It is relevant, nevertheless, that the securities at issue and the company's operations are not of a particularly complex nature, given the type and nature of the company's assets and its small workforce.[40] In particular, BF Enterprises' assets and income are clearly not ''substantial'' and the company's operations are ''limited'' under Commission precedent.[41]

Other factors: Several commentators expressed their concern that a company ''going dark'' can repurchase their securities from stranded shareholders at very substantial discounts to intrinsic value. While an illiquid market can result in a market price lower than that available in a more liquid market, we note that the antifraud provisions of the federal securities laws apply to company repurchases from its shareholders.[42] Accordingly, while the availability of current Exchange Act information about a company may benefit its shareholders who seek to sell their shares into a public market, shareholders of all companies—whether or not subject to Exchange Act reporting—are protected against fraud in connection with their sales or purchases of company stock.

Commentators also expressed a general concern about the ability of public companies to ''go dark'' [43] and the potentially negative impact an exemption in this matter would have on the over-the-counter markets generally.[44] However, the act of ''going dark'' is not itself grounds for denying the application. The appropriate thresholds for ''going dark'' generally are a subject for study and broad public input and therefore more appropriately handled through rulemaking.

III

Having considered the application and the comment letters, we find that the requested exemption is not inconsistent with the public interest or the protection of investors and the purposes fairly intended by the policy and provisions of the Exchange Act, for the following reasons:

(1) As of December 31, 2010, the company had fewer than 85 beneficial owners of its common stock and, excluding the BFE Trusts, fewer than 25 holders of record of its common stock;

(2) The BFE Trusts have only one beneficiary, who has expressly stated that its shares are held indirectly through 500 trust entities formed solely for the purpose of attempting to cause the company to register its common stock under Section 12(g);

(3) There currently appears to be extremely limited trading interest in BF Enterprises' common stock, although we recognize that this may be due, in part, to the company having ceased filing reports under the Exchange Act;

(4) The limited nature and extent of BF Enterprises' business activities; and

(5) Repurchases by the company of its securities are subject to certain anti-fraud provisions of the federal securities laws, including Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

Accordingly, *it is ordered,* that pursuant to Section 12(h) of the Exchange Act, BF Enterprises is hereby exempted from the requirement to register its common stock under Section 12(g) of the Exchange Act, effective immediately; and

It is further ordered, that this exemption shall remain in effect only for so long as counting each of the BFE Trusts as a separate ''holder of record'' for purposes of Section 12(g) would be the sole reason for the number of holders of record of BF Enterprises' common stock to equal or exceed 500.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.[45]

Kevin M. O'Neill,

Deputy Secretary.

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Admin. Proc. File Nos. 3–2511, 81–100 (Aug. 25, 1971). The Commission characterized trading interest as ''inconsequential,'' ''virtually dormant'' and ''insignificant'' where there was an average of five over-the counter transactions per month for a total monthly trading volume of 600 to 700 shares, when compared to 441,700 shares of the same class traded in one year on the Toronto Stock Exchange. *In the Matter of Lake Ontario Cement Limited,* Admin. Proc. File No. 3–2615 (81–99) (May 23, 1973).

[38] Blumenstein Letters (explaining that ''[t]he Company acknowledged in its information statement regarding the Reverse Split that a 'public market * * * would cease to exist' for its shares following the transaction.'')

[39] Raider Letters.

[40] The application states that the company has a total of seven employees. *Compare In the Matter of Multi Benefit Realty Fund, et al.,* Admin. Proc. File No. 3–4400 (Mar. 11, 1976) (where Commission found relevant in assessing this factor that the investment at issue was ''more complex than those in most securities'' because it involved limited partnership interests in ''highly-leveraged, tax-oriented real estate speculations'').

[41] The Commission characterized the applicant's income as ''limited'' where it had ''gross operating income of $446,888 and net income, after dividends on savings accounts and federal income taxes, of $16,988.'' *In the Matter of Security Savings and Loan,* Admin. Proc. File Nos. 3–2511, 81–100 (Aug. 25, 1971). *See also In the Matter of Orchard Supply Building Co.,* Admin. Proc. File No. 3–789; 81–41 (May 1, 1967) (finding retail sales of over $3.5 million to be ''substantial'' and recognizing that the ''impact of those sales on interstate commerce cannot be immaterial'' where applicant engaged in the operation of three diversified hardware stores in the City of San Jose, California).

[42] For example, under Section 10(b) of the Exchange Act and Rule 10b–5 under the Exchange Act, a privately-held company may be liable for material misrepresentations or materially misleading omissions when repurchasing securities from its shareholders. *See, e.g., Smith* v. *Duff and Phelps, Inc.,* 891 F.2d 1567, 1574 (11th Cir.1990) (holding that closely-held company had duty to disclose to retiring employee negotiations with prospective stock purchaser).

[43] *See, e.g.,* Browning Letter.

[44] *See, e.g.,* Blumenstein Letters (arguing that ''[a]lthough the Commission would only be granting relief to one company, investors in OTC stocks may take the granting of such an exemption as an indication that they should be wary of investing in any OTC company that is susceptible of going dark'').

[45] 17 CFR 200.30–1(e)(7).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66572; File No. SR–BYX–2012–006]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing of Proposed Rule Change by BATS Y–Exchange, Inc. To Amend BYX Rule 2.12, Entitled ''BATS Trading, Inc. as Inbound Router''

March 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2012, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.12, to make permanent the existing pilot program that permits the Exchange to receive inbound routes of equities orders through BATS Trading, Inc. (''BATS Trading''), the Exchange's routing broker-dealer, from BATS Exchange, Inc. (''BZX'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, BATS Trading is the approved outbound order routing facility of BZX.[3] The Exchange has been authorized to receive inbound routes of equities orders by BATS Trading from BZX.[4] The Exchange's authority to receive inbound routes of equities orders by BATS Trading from BZX is currently subject to a pilot period of twelve months, ending April 15, 2012. The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that BATS Trading routes in its capacity as a facility of BZX. This is reflected in the proposed amendment to BYX Rule 2.12(b).

Under the pilot, the Exchange is committed to the following obligations and conditions:

- The Exchange shall enter into a plan pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules.
- The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which BATS Trading is identified as a participant that has potentially violated Exchange or SEC Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which BATS Trading is identified as a participant that has potentially violated Exchange or SEC Rules.
- The Exchange, on behalf of BATS Global Markets, Inc., shall establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange.
- The Exchange may furnish to BATS Trading the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.

The Exchange is in compliance with the above-listed obligations and conditions. In meeting them, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to BATS Trading, as well as demonstrate that BATS Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage. Since the Exchange has met all the above-listed obligations and conditions, it now seeks permanent approval of the Exchange and BATS Trading's inbound routing relationship. Upon approval of the proposed rule change, the Exchange will continue to comply with the obligations and conditions as set forth in proposed BYX Rule 2.12.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from BATS Trading acting in its capacity as a facility of BZX, in a manner consistent with prior approvals and established protections. The Exchange believes that meeting the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's

[3] *See* Securities Exchange Act Release No. 58375 (August 21, 2008), 73 FR 49498 (August 21, 2008) (Order Approving Application of BATS Exchange, Inc. for Registration as a National Securities Exchange).

[4] *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (Order Approving Application of BATS Y–Exchange, Inc. for Registration as a National Securities Exchange).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

regulatory responsibility with respect to BATS Trading, as well as demonstrates that BATS Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes 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 Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BYX–2012–006 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6293 Filed 3–12–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66571; File No. SR–BATS–2012–013]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change by BATS Exchange, Inc. to Amend BATS Rule 2.12, Entitled ''BATS Trading, Inc. as Inbound Router''

March 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.12, to make permanent the existing pilot program that permits the Exchange to receive inbound routes of equities orders through BATS Trading, Inc. (''BATS Trading''), the Exchange's routing broker-dealer, from BATS Y–Exchange, Inc. (''BYX'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, BATS Trading is the approved outbound order routing facility of BYX.[3] The Exchange has been authorized to receive inbound routes of equities orders by BATS Trading from BYX.[4] The Exchange's authority to receive inbound routes of equities orders by BATS Trading from BYX is currently subject to a pilot period of twelve months, ending April 15, 2012.

[7] 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. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (Order Approving Application of BATS Y–Exchange, Inc. for Registration as a National Securities Exchange).

[4] *See* Securities Exchange Act Release Nos. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt BATS Rule 2.12, Entitled ''BATS Trading, Inc. as Inbound Router'' and To Make Related Changes); 65516 (October 7, 2011), 76 FR 63977 (October 14, 2011) (SR–BATS–2011–040) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Period of the Inbound Router, as Described in Rule 2.12).

The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that BATS Trading routes in its capacity as a facility of BYX. This is reflected in the proposed amendment to BATS Rule 2.12(b).

Under the pilot, the Exchange is committed to the following obligations and conditions:

• The Exchange shall enter into a plan pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules.

• The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which BATS Trading is identified as a participant that has potentially violated Exchange or SEC Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which BATS Trading is identified as a participant that has potentially violated Exchange or SEC Rules.

• The Exchange, on behalf of BATS Global Markets, Inc., shall establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange.

• The Exchange may furnish to BATS Trading the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.

The Exchange is in compliance with the above-listed obligations and conditions. In meeting them, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to BATS Trading, as well as demonstrate that BATS Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage. Since the Exchange has met all the above-listed obligations and conditions, it now seeks permanent approval of the Exchange and BATS Trading's inbound routing relationship. Upon approval of the proposed rule change, the Exchange will continue to comply with the obligations and conditions as set forth in proposed BATS Rule 2.12.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from BATS Trading acting in its capacity as a facility of BYX, in a manner consistent with prior approvals and established protections. The Exchange believes that meeting the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to BATS Trading, as well as demonstrates that BATS Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Changes 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 Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2012–013 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2012–013 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6289 Filed 3–12–12; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66550; File No. SR–FICC–2008–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Amended Proposed Rule Change to Allow the Mortgage-Backed Securities Division To Provide Guaranteed Settlement and Central Counterparty Services

March 9, 2012.

I. Introduction

On March 12, 2008, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (SR–FICC–2008–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder. On November 21, 2011, FICC amended the proposed rule change. The amended proposed rule change was published for comment in the **Federal Register** on December 12, 2011.[3] On January 10, 2012, the Commission extended the time within which to take action on the proposed rule change to March 9, 2012.[4] The Commission received one comment on the proposed rule change.[5] This order approves the proposal.

II. Description

The proposed rule changes consist of modifications to the rules of FICC's MBSD to allow MBSD to provide guaranteed settlement and central counterparty (''CCP'') services. These modifications necessitated the MBSD to draft a new rulebook, which is also part of this rule filing.[6]

A. MBSD Rulebook Changes

As noted above, the current MBSD rulebook will be replaced in its entirety by a new proposed rulebook that incorporates parts of the current MBSD rulebook where appropriate. Set forth below is an overview of the significant substantive and structural changes to the rules.

1. Definitions

The MBSD rules will have a revised Rule 1, ''Definitions,'' which will include terminology applicable to new MBSD processing and procedures. For example, terms relevant to pool netting have been included (such as ''pool deliver obligation'' and ''pool receive obligation''). Where practical and/or applicable, the MBSD rulebook uses terms from the current GSD rules, in order to harmonize language between the Divisions.

2. Membership

Rule 2, ''Members'', Rule 2A, ''Initial Membership Requirements,'' Rule 3, ''Ongoing Membership Requirements,'' and Rule 3A, ''Cash Settling Bank Members,'' govern membership types, member application requirements, and ongoing reporting requirements.

i. Membership Categories

The new MBSD rules will provide for two membership types (as set forth in Rule 2): Clearing Members and Cash Settling Bank Members. Those entities qualifying for clearing membership will be guaranteed service members of the MBSD—trades submitted by these members will be guaranteed at the point of comparison, and eligible, as applicable, for pool comparison, netting, and settlement. Clearing membership categories include: (i) Registered brokers or dealers; (ii) other registered clearing agencies; (iii) registered investment companies; (iv) banks[7]; (v) government securities issuers/government sponsored enterprises; (vi) insurance companies;[8] and (vii) unregistered investment pools (''UIPs'').[9] In addition, the MBSD will have the discretion to make its services available to other entity types which it deems appropriate subject to the approval of the Commission. Membership requirements for Cash Settling Bank Members are set forth in Rule 3A, ''Cash Settling Bank Members.'' These requirements remain unchanged from the current MBSD rulebook and they mirror the requirements of the GSD-equivalent members.

ii. Initial Membership Requirements

The initial membership requirement for the MBSD members mirrors the current requirements for the GSD netting membership where there is an existing identical membership type in the GSD rules. The two membership categories where there are no GSD equivalents are registered investment companies and UIPs. In addition to standard requirements regarding financial and operational responsibility applicable to all Clearing Members, registered investment companies must be registered under the Investment Company Act of 1940 and have minimum net assets of $100 million. In addition to standard requirements regarding financial and operational responsibility applicable to all Clearing Members, UIPs must:

- Have an investment advisor domiciled in the United States and registered with the Commission under the Investment Advisors Act of 1940; and
- the UIP must have (i) $250 million in net assets, or (ii) $100 million in net assets and the UIP's investment advisor must advise an existing UIP Clearing Member that has assets under management of $1.5 billion.

iii. Ongoing Membership Requirements

Required membership levels must be maintained by all members on an ongoing basis as a condition of

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65899 (Dec. 6, 2011), 76 FR 77287 (Dec. 12, 2011). A non-substantive correction to the notice of the proposed rule change was published on December 14, 2011. *See* Securities Exchange Act Release No. 65899A (Dec. 12, 2011), 76 FR 77865 (Dec. 14, 2011).

[4] Securities Exchange Act Release No. 66124 (Jan. 10, 2012), 77 FR 2103 (Jan. 13, 2012).

[5] Letter from Christopher Killian, Managing Director, Securities Industry and Financial Markets Association (Dec. 19, 2011).

[6] Certain provisions in the current MBSD rulebook that reflect processes that will continue unchanged after introduction of the CCP services are retained in the proposed MBSD rulebook. In order to promote uniformity between FICC's two divisions and to increase transparency for common members, the new MBSD rulebook follows the structure of the Government Securities Division rulebook and, where appropriate, the language of equivalent provisions mirror each other.

[7] The term ''Banks'' includes Federal Savings Associations.

[8] The MBSD does not currently have any insurance company Clearing Members. Financial and other membership requirements for this category may be established in a future rule filing.

[9] The MBSD currently has two members that do not fit into any of the new listed membership types. These entities remain members of the MBSD under Article III, Rule 1, Section (1)(f) of the MBSD rules and remain subject to the MBSD rulebook and all ongoing membership requirements.

membership. Current provisions applicable to the GSD netting membership under the GSD rules have been incorporated to the MBSD rules to apply to certain member types. For example, the GSD currently assesses a premium against any member whose Clearing Fund requirement exceeds its specified regulatory capital figure.[10] The MBSD will also apply this premium to members. Also, bank, broker-dealer, and UIP members of the MBSD will be rated. Among other things, financial measures relevant to these types of entities will be assessed. Any member that receives a poor rating may be monitored more closely and/or placed on FICC's internal watch list.

The MBSD will take additional risk management measures with respect to UIP members. Specifically, the ''value at risk'' (''VaR'') confidence level for UIP members will be set at 99.5%, half a percentage higher than the confidence level used for a VaR calculation for non-UIP Clearing Members.[11] UIP members also are required to achieve a qualitative assessment rating of at least ''medium'' as part of the initial membership requirement. Qualitative assessments will be based on such factors as management, capital, strategy and risk profile, valuation procedures, and internal risk management controls. Current UIP members that become rated less than ''medium'' may be subject to increased Required Fund Deposits and may also become subject to revocation of membership. Finally, the Clearing Fund requirement of UIPs shall be no less than $1 million.[12]

[10] By way of example, under the current GSD rules, if a member has a Clearing Fund requirement of $11.4 million and excess net capital of $10 million, its ''ratio'' is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of $1.4 million (which is equal to the amount by which the member's Clearing Fund requirement exceeds its excess net capital), or $1,596,000. The current GSD rules provide that FICC has the right to: (i) Apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile), and (ii) return all or a portion of the collateral premium amount if it believes that the member's risk profile does not require the maintenance of that amount. These rights will be carried over to the proposed MBSD rules.

[11] The MBSD rules will provide FICC with the discretion to increase the confidence level for UIP and non-UIP Clearing Members if it determines that it is appropriate to do so with respect to a particular Clearing Member or Clearing Members generally. The MBSD rules will require Clearing Fund requirements to each Clearing Member within each membership type to be applied on a consistent and non-discriminatory basis. *See* MBSD Proposed Rule 4 (Clearing Fund and Loss Allocation), Section 2(c).

[12] The MBSD rules will provide FICC with the discretion to increase the minimum charge if it determines that it is appropriate to do so with respect to a particular Clearing Member or Clearing Members generally. The MBSD rules will require Clearing Fund requirements to each Clearing Member within each membership type to be applied on a consistent and non-discriminatory basis. *See* MBSD Proposed Rule 4 (Clearing Fund and Loss Allocation), Section 2(c).

3. Clearing Fund and Loss Allocation

The conversion of the MBSD to a CCP increases the amount of risk for the clearing agency. The CCP assumes the counterparty credit risk of the other Clearing Members which primarily includes: (1) The market risk associated with liquidating the defaulted Member's portfolio, and (2) the liquidity risk associated with maintaining sufficient liquid resources to finance the defaulted Clearing Member's scheduled settlement obligations. FICC believes that the MBSD has established a robust risk management framework to manage the credit risks from its Clearing Members and the credit and liquidity risks involved with its payment, clearing, and settlement process.

The MBSD relies on many different controls to manage its counterparty risk. These controls include: (i) Membership standards, (ii) initial and variation margins, (iii) back and stress testing, (iv) position and risk monitoring, and (v) non-margin collateral. The first set of controls aims to prevent the CCP from conducting business with counterparties that have unacceptably high probabilities of default. As noted above, concurrent with the introduction of CCP services, the MBSD will increase its minimum financial standard for clearing membership eligibility to mirror GSD eligibility standards and enhance its risk monitoring for UIPs.

The second line of defense is the margins collected from counterparties in the form of cash and highly liquid government securities in the Clearing Fund. The dual purpose of the Clearing Fund is to provide readily accessible liquidity to facilitate settlement and reduce loss-related costs which may be incurred in the event of a Clearing Member's insolvency or failure to fulfill its contractual obligations to the MBSD. Margins are intended to cover possible losses between the time of default of a counterparty, at which point the CCP would inherit its positions, and the close-out of these positions through selling or hedging. For this purpose, the MBSD marks Clearing Member portfolios to the market on a daily basis and charges variation margins accordingly, and establishes initial margins to cover a minimum 99th percentile of expected possible losses that could arise over a 3-day settlement period utilizing a VaR-based approach.[13]

In order to further enhance the MBSD's risk framework, the MBSD will add two components—the margin requirement differential and the coverage charge—to the Clearing Fund, as well as additional MBSD mark-to-market items related to the new pool netting services. The MBSD also has the ability to collect charges above the systemically generated Clearing Fund charges when it deems it appropriate in order to protect FICC and its Clearing Members. If any loss were incurred in the liquidation of a Clearing Member that was not covered by the Clearing Member's Clearing Fund deposit or amounts available under the cross-guaranty arrangement to which FICC is a party, the MBSD would invoke its loss allocation process.

The MBSD uses regular back and stress testing to monitor the sufficiency of collected margin levels vis-a-vis the risk represented by the 99th percentile of expected possible losses from Clearing Member portfolios and to monitor its tail risk exposure that is beyond the 99th percentile. If a Clearing Member portfolio does not pass a back test, additional margin will be collected via the coverage charge. Stress tests are also used to evaluate margin adequacy. The MBSD's framework reflects stress events from the last 10 years as well as special stress events outside of the past 10 years and takes the form of swap rate shifts and credit spread shocks that reflect market conditions for the instruments that the MBSD clears or holds as collateral. As described more fully below, the MBSD analyzes and reviews on an intraday basis certain components of the Clearing Fund that are recalculated using updated positions and prices if there is increased exposure in a Clearing Member's portfolio intraday. In addition, the MBSD may at its discretion call for additional collateral on an intraday basis if exposures are in excess of predefined thresholds.

Finally, aside from the risk of loss that could be encountered from a Clearing Member failure, a central counterparty could also face liquidity risk, defined as the risk that the central counterparty has insufficient financial resources to cover a default by a Clearing Member to which it has the largest exposure. To that end, the MBSD maintains sufficient resources to meet its observed liquidity risk. The Clearing Fund would be the primary source to fulfill the liquidity need incurred if MBSD had to complete

[13] An index-based haircut methodology will be used for securities with insufficient pricing data.

settlement on behalf of the defaulting Clearing Member. Other conventional funding tools such as loans secured via the MBSD clearing banks and/or tri-party repo transactions would also be used to fulfill the liquidity need, but if those were unavailable or insufficient, the MBSD would invoke the ''Capped Contingency Liquidity Facility,'' as described below, to provide additional financing in the event of a Clearing Member default.

Tail risk is one of the risks the MBSD has to manage. The MBSD addresses this risk through a continuous process of: (1) Reviewing margin methodologies with stakeholders; (2) analyzing and monitoring margin and collateral requirements; (3) actively reviewing and timely acting on market conditions and credit events; (4) reviewing back and stress tests, and (5) identifying, assessing, and managing risks associated with the products and services provided by the MBSD and FICC.

i. Clearing Fund

The underlying Clearing Fund methodology is designed primarily to account for market risks associated with a Clearing Member's unsettled portfolio. The Clearing Fund model is back tested on a monthly basis and periodically validated by outside experts. Additional charges and premiums may be considered to address additional risks (i.e., credit, reputation, and legal) or non-compliance with the MBSD rules. The Clearing Fund is calculated every business day for each MBSD Clearing Member.

Clearing Fund requirements will be calculated in accordance with the VaR model. The Clearing Fund components will consist of the VaR charge,[14] the coverage charge, the margin requirement differential charge, and the deterministic components charge (which will include the mark-to-market charges, cash obligation items, and accrued principal and interest). The VaR methodology will utilize the prior 252 days of historical information for cash positions, including prices, spreads, and market variables to simulate the market environments in the forthcoming three days. Projected portfolio losses are then calculated assuming these simulated environments actually will be realized. The coverage charge is an additional charge to bring the Clearing Member's coverage to a targeted confidence level. The margin requirement differential considers intra-day portfolio variations and estimates the potential increased risk intra-day and the risk that the next margin call will not be satisfied. The deterministic risk component combines the mark-to-market of the portfolio, gain or loss for the difference between the original contract value and the internally generated netting price derived from the to-be-announced netting process, principal and interest adjustments on failed positions, and other miscellaneous cash items. The deterministic risk component can result in an increase or decrease to a member's total clearing fund requirement.

In order to further mitigate risk, and as part of FICC's efforts to enhance its intraday monitoring capabilities, FICC has determined to expand its intraday monitoring to recalculate the mark-to-market elements of the deterministic risk component. This component of the risk calculations will be updated at least hourly using intraday pricing and position feeds for FICC members and compared against the amounts that were previously collected in the Clearing Fund. If the exposures increase above certain defined thresholds, Risk Management staff will be alerted to consider additional intraday margin calls outside of the formal Clearing Fund collection process. These intraday margin calls would need to be satisfied by the affected members within one hour of FICC's notice. The initial thresholds will be based on changes to a Clearing Member's position size, composition, and price changes on the constituent securities. Qualitative factors including, but not limited to, Watch List status and internal rating will also be considered in the application of intraday mark-to-market.

ii. Use of Payments and Deposits

FICC is providing additional disclosure relating to its use of a Clearing Member's deposits and payments to the Clearing Fund for temporary financing needs. The rulebook also clarifies that whenever the Clearing Fund is charged for any reason, other than to satisfy a clearing loss attributable to a Clearing Member solely from that Clearing Member's Clearing Fund deposit, FICC will provide the reasons therefore to each Clearing Member.[15]

iii. Loss Allocation

FICC is introducing a new loss allocation methodology for the MBSD. If a defaulting Clearing Member's Clearing Fund and any amounts of the defaulting member available under a cross-guaranty agreement are not sufficient to cover losses incurred in the liquidation of the defaulting Clearing Member's positions (''Remaining Losses''), the MBSD's loss allocation methodology will be invoked. Under this proposed loss allocation methodology, Remaining Losses will first be allocated to the retained earnings of FICC attributable to the MBSD, in the amount of up to 25 percent of the retained earnings or such higher amount as may be approved by the Board of Directors of FICC. If a loss still remains, MBSD Clearing Members are placed into one of two tiers for loss allocation purposes: Tier One members are subject to loss mutualization, whereas Tier Two members are not subject to loss mutualization.[16] FICC will divide the Remaining Losses between the Tier One members and Tier Two members. The division of Remaining Losses is based on the amount each solvent Clearing Member would have lost or gained if it had closed out its original outstanding trades with the defaulting Clearing Member on a bilateral basis.[17] FICC then will determine the relevant share of each Tier One member's bilateral losses (members with a bilateral liquidation profit are ignored) in the total of all Clearing Members' bilateral losses and sum these shares to determine the Tier One Remaining Loss. Similarly, FICC will determine the relative share of each Tier Two member's bilateral loss in the total of all Clearing Members' bilateral losses and sum these shares to determine the Tier Two Remaining Loss.

Tier One Remaining Losses will be allocated to Tier One members first by assessing the Required Fund Deposit of each such Member in the amount of up to $50,000 equally. If a loss remains, Tier One members will be assessed ratably, in accordance with the respective amounts of their Required Fund Deposits, based on the average daily amount of the Clearing Member's Required Fund Deposit over the prior

[14] The definition of ''VaR Charge'' (which is referred to as ''VaR Component'' in the current rules) is being amended to remove the reference to the application of ''minimum amounts'' to such VaR Charge. The MBSD is currently applying a minimum 5-basis point charge which will not be applicable when the MBSD CCP becomes a CCP because of the addition of the other components to the overall Clearing Fund calculation. Minimum Clearing Fund deposit amounts per Rule 4 remain applicable.

[15] The Clearing Fund is ''charged'' when FICC has applied the Clearing Fund for more than 30 days and is allocating the amount as a loss or for other loss allocation purposes.

[16] Tier Two members are those that are legally prohibited from participating in loss mutualization. Currently, only Registered Investment Companies qualify as Tier Two members.

[17] Brokered trades are done on a ''give-up basis,'' and brokers are thus not considered parties to fully-matched trades. However, for purposes of loss allocation, broker members will be subject to loss allocation for certain partially-matched trades. Brokers are considered Tier One members, and as such will be subject to loss mutualization.

twelve months. Tier Two Remaining Loss will be allocated to Tier Two Clearing Members based on each Tier Two member's original trading activity with the Defaulting Member that resulted in a loss. Tier Two members will only be subject to loss to the extent they originally traded with the Defaulting Member consistent with regulatory requirements applicable to the Tier Two members. FICC shall assess such loss against the Tier Two members ratably based upon their loss as a percentage of the entire amount of the Tier Two Remaining Loss. Tier Two counterparties will be liable for losses related to both direct and brokered trades [18] including partially-matched trades for which the Tier Two member did not submit a statement to FICC denying the existence of the trade.[19]

4. Trade Processing

Under the proposed MBSD rules, each Clearing Member will be required to submit to the MBSD for processing transactions with other Clearing Members in all securities that are netting-eligible according to MBSD rules and procedures.[20] Eligible transactions will be submitted to FICC's Real-Time Trade Manager (''RTTM'') system for matching purposes.[21] FICC will provide a trade guarantee for all existing types of trades upon comparison of trade details submitted by members.[22]

Additionally, the MBSD will introduce ''pool comparison'' and ''pool netting'' and interpose itself as settlement counterparty to certain settlement obligations. Specifically, after the netting of TBA transactions, settlement obligations will be issued between Clearing Members and Clearing Members will allocate pools for settlement through the MBSD's Electronic Pool Notification (''EPN'') Service.[23] Clearing Members then will submit pool details for those netted TBA settlement obligations through the RTTM system for pool comparison and for consideration for pool netting.[24] Upon FICC's issuance of pool netting results to Clearing Members, those pools that are netted will be novated; i.e., settlement obligations between the Clearing Members will be replaced with settlement obligations between each Clearing Member and FICC. For all other transactions, settlement will occur outside of FICC between the original settlement counterparties and must be reported to FICC through a Notification of Settlement (''NOS'').[25] Obligations that fail to settle will not be re-netted, as they are in the GSD.[26]

5. Settlement

i. Settlement With FICC as Counterparty

As stated above, obligations generated by the pool netting system will settle versus FICC. Clearing Members will be required to designate a clearing bank for purposes of delivering securities to, and receiving securities from, the MBSD in satisfaction of settlement obligations. All deliveries and receipts of securities in satisfaction of pool deliver obligations and pool receive obligations

[18] Brokered trades involve a broker intermediary between two dealers. Each dealer and broker must submit the trade details to the MBSD for trade comparison. This means that each dealer submits against the broker and the broker submits against each dealer. A fully matched trade will be achieved when both dealers match against the broker (i.e. all submissions discussed above match). With a fully matched trade, both dealers assume principal status, which results in the broker having no settlement obligations with respect to the trade; the broker cannot be subject to any loss with respect to such trade. A partially matched trade results when only one of the two submissions achieves a bilateral match versus the broker. The dealer who has matched with the broker will have a settlement guarantee and is subject to Clearing Fund requirements with respect to such trade. If the unmatched dealer submits a statement to FICC denying the existence of the trade, the broker becomes responsible for such trade from a risk management perspective and loss allocation. If the unmatched dealer does not submit a statement to FICC denying the existence of the trade, the dealer becomes responsible for the settlement and risk management and the broker is released from these responsibilities.

[19] To illustrate the proposed MBSD Tier One (''T1'')/Tier 2 (''T2'') loss allocation rules, consider an example where the $20 million Clearing Fund requirement of an insolvent MBSD member X turns out to be insufficient to cover the $30 million liquidation loss that the MBSD incurred as a result of closing out all of X's open positions. If X doesn't have any excess collateral, MBSD would need to allocate a $10 million remaining loss.

Assume that X has unsettled trades with three Tier One original counterparties (T1A, T1B and T1C) and three Tier Two original counterparties (T2A, T2B and T2C), all executed directly. Further assume that the bilateral liquidation results of X's solvent original counterparties are as follows: T1A: $5 million; T1B: ($5 million); T1C: ($15 million); T2A: ($20 million); T2B: ($10 million); T2C: $15 million; Total: ($30 million). Also assume that there are no secondary defaults and no off-the-market trades.

Based on these assumptions, the bilateral Tier One liquidation losses amount to $20 million ($5 million attributable to T1B and $15 million attributable to T1C), while the bilateral Tier Two liquidation losses amount to $30 million ($20 million attributable to T2A and $10 million attributable to T2B). This means that out of a total of $50 million bilateral liquidation losses, 40% or $20 million can be attributed to Tier One counterparties and 60% or $30 million to Tier Two counterparties. As a result, the Tier One remaining loss would be $4 million (i.e., 40% of the MBSD's $10 million overall remaining loss) and the Tier Two remaining loss would be $6 million (i.e., 60% of the MBSD's $10 million overall remaining loss). Given that T2A's and T2B's bilateral losses represent ⅔ and ⅓ respectively of the Tier Two Remaining Loss, T2A's loss allocation will be $4 million and T2B's loss allocation will be $2 million.

The $4 million Tier One Remaining Loss would first be assessed equally to each Tier One member's clearing fund, up to an amount of $50,000 per Tier One member. If a loss still remains, the amount is allocated among Tier One members, pro-rata based on each Tier One member's average daily level of clearing fund over the prior twelve months (or shorter period if a member did not maintain a clearing fund deposit over the full twelve month period).

The loss allocation results are not impacted by whether the defaulting Clearing Member is a Tier One or a Tier Two member.

[20] Currently, the MBSD recognizes two types of trades: (i) ''To be announced'' (''TBA'') trades and (ii) specified pool trades (''SPTs''). A TBA is a contract for the purchase or sale of agency mortgage-backed securities to be delivered at an agreed-upon future date; however, the actual pool identities and/or the number of pools that will be delivered to fulfill the trade obligation or terms of the contract are unknown at the time of the trade. TBA trades may proceed through the Settlement Balance Order engine for netting or may settle on a trade-for-trade basis (''TFTD''). In an SPT contract, required pool data, including the pool number to be delivered on settlement date, is specified at the time of execution.

Clearing Members may use FICC's Interactive Submission Method, Multiple Batch Submission Method, or Single Batch Submission Method to submit trade data to the MBSD.

[21] Trade data submitted to the MBSD must include such identifying information as the MBSD may require and must be submitted in the form and manner and in accordance with the time schedules prescribed by the MBSD rules or otherwise set forth by FICC from time to time. The symbol corresponding to the name of a Clearing Member that is printed, stamped, or written on any form, document, or other item issued by the Clearing Member pursuant to Rule 5 Section 2 shall be deemed to have been adopted by the Clearing Member as its signature and shall be valid and binding upon the Clearing Member in all respects as though it had manually affixed its signature to such form document or other item.

[22] Comparison is deemed to occur at the point at which the MBSD makes available to both of the counterparties an output indicating that the trade data has been compared. FICC generates the output indicating that a trade is compared contemporaneous with successful comparison of the trade data in FICC's RTTM system.

[23] Because Clearing Members will be required to allocate pools via EPN and RTTM in order for pool allocations to proceed to pool comparison and netting, all MBSD Clearing Members will be required to be EPN members.

[24] Not every compared pool will be included in the pool netting system. FICC will determine which guaranteed trades would receive maximum benefit from pool netting by considering such factors as trading velocity and projected netting factor. SPTs are not eligible for pool netting under this proposal.

Pool allocation information (''Pool Instructs'') may be submitted up to the point that pool netting is executed. Pool Instructs must bilaterally compare (i.e., mandatory comparison pool data submitted by the seller must match the mandatory comparison pool data submitted by the buyer) in order for the Pool Instructs to be eligible for consideration for pool netting. Pool Instructs must also be assigned by the MBSD to a valid, open TBA position, meaning that the trade terms submitted on the Pool Instructs must match the trade terms of a TBA CUSIP that has a sufficient open position. Only compared and assigned Pool Instructs will be evaluated for inclusion in pool netting.

[25] These obligations include: (i) SPTs, which are ineligible for pool netting; (ii) transactions for which Clearing Members do not submit allocation information for pool netting; and (iii) transactions with incomplete pool information on file.

[26] The MBSD retains the discretion to re-net fails or to conduct pair-offs if it believes that such actions are necessary to protect itself or its Clearing Members due to market conditions or events.

will be required to be made against simultaneous payment. These securities settlement procedures mirror the current GSD securities settlement rule.

ii. Settlement Outside of FICC

Clearing Members will be required to settle trades ineligible for pool netting and allocated pools that are not processed through the pool netting system bilaterally with applicable settlement counterparties outside of FICC. As noted above, these trades remain guaranteed for settlement by FICC but are not novated. The settlement obligations between the Clearing Members are not replaced with settlement obligations between each Clearing Member and FICC. Clearing Members must submit to FICC NOSs on the applicable clearance date for each transaction. When the MBSD receives an NOS from each counterparty to a transaction, the MBSD will report clearance of the applicable transaction back to each Clearing Member. At this point, the MBSD will stop collecting margin on the transaction and will no longer be responsible for principal and interest payments.

iii. Cash Settlement

Several items have been added to the calculation of each Clearing Member's cash settlement obligation, including: (a) A ''net pool transaction adjustment payment'' (to reflect the difference between the pool net price [27] and a settlement price established at the TBA level); (b) principal and interest payment amounts related to fails; and (c) a ''clearance difference amount'' [28] (to take into account the delivery to FICC of mispriced securities by a Clearing Member).

6. Capped Contingency Liquidity Facility

FICC is adding a provision to the MBSD rulebook that introduces a ''Capped Contingency Liquidity Facility,'' which is a procedure designed to ensure that the MBSD has sufficient liquidity resources to cover the largest failure of a family of accounts. This facility will only be invoked if FICC declares a default or a ''cease to act'' against a Clearing Member and FICC does not have the ability to obtain sufficient liquidity through its Clearing Fund cash deposits and its established repurchase agreement arrangements (''CCLF Event''). FICC believes that the Capped Contingency Liquidity Facility provides Clearing Members with finality of settlement and allows firms to prepare for and manage their potential financing requirements in the event of a Clearing Member's default. Once a CCLF Event has been declared, FICC will contact Clearing Members that are due to deliver obligations to FICC that are owed to a defaulting Clearing Member. FICC will either cancel the Clearing Member's obligations or instruct the Clearing Member to hold the obligations (or a portion thereof) and await instructions as to when to make these deliveries. With respect to the obligations subject to financing (''Financing Amount'') up to the Clearing Member's defined liquidity contribution cap (''Defined Capped Liquidity Amount''),[29] FICC as counterparty, will enter into repurchase agreements with the Clearing Member equal to the Financing Amount pursuant to the terms of the deemed 1996 SIFMA Master Repurchase Agreement (without referenced annexes). If a liquidity need still exists (''Remaining Financing Amount''), FICC will inform Clearing Members that are below the Defined Capped Liquidity Amount and also inform Clearing Members that do not have a delivery obligation to the defaulting Clearing Member.[30] After these Clearing Members have been notified, FICC will distribute the remaining financing need to such Clearing Members on a pro rata basis and enter into repurchase agreements pursuant to the terms of the deemed 1996 SIFMA Master Repurchase Agreement (without referenced annexes). These transactions would remain open until FICC completes the liquidation of the underlying obligations and a haircut based on market conditions will be applied to the transactions.

Once FICC completes the liquidation of the underlying obligation, FICC will instruct the Clearing Member to deliver the securities back to FICC. FICC will then close the repurchase transaction and deliver the securities to complete settlement on the contractual settlement date of the liquidating trade. Because FICC would be receiving and delivering securities on the same day, FICC would not have a liquidity need resulting from the transaction of a defaulting Clearing Member.

7. Corporation Default

FICC is adding provisions to the MBSD rulebook to make explicit the close-out netting of obligations running between FICC and its Clearing Members in the event that FICC becomes insolvent or defaults in its obligations to its Clearing Members. FICC represents that its Clearing Members have stated that the proposed rule changes will provide clarity in their application of balance sheet netting to their positions with FICC under U.S. GAAP in accordance with the criteria specified in the Financial Accounting Standards Board's Interpretation No. 39, Offsetting of Amounts Related to Certain Contracts (FIN 39). The firms have stated further that the provisions would allow them to comply with Basel Accord Standards relating to netting. Specifically, firms are able to calculate their capital requirements on the basis of their net

[27] ''Pool Net Price'' is defined as the uniform price for a pool (expressed in dollars per unit of par value), not including accrued interest, established by FICC on each business day, based on current market information for each eligible security.

[28] ''Clearance Difference Amount'' is defined as the absolute value of the dollar difference between the settlement value of a pool deliver obligation or a pool receive obligation and the actual value at which such pool deliver obligation or pool receive obligation was settled.

[29] The ''Defined Capped Liquidity Amount'' is the maximum amount that a Clearing Member shall be required to fund during a CCLF Event. The Defined Capped Liquidity Amount will be established as follows:

(a) For those Clearing Members that are eligible for and that have established borrowing privileges at the Federal Reserve Discount Window or for those Clearing Members who have an affiliate that is eligible for and has established borrowing privileges at the Federal Reserve Discount Window, FICC will conduct a study every six months, or such other time period as FICC shall determine from time to time as specified in Important Notices to Clearing Members, to determine each Clearing Member's largest liquidity requirement for the applicable time period based on a Clearing Member's sell positions versus other Clearing Members at the family level on a bilateral net basis within a TBA CUSIP. Based on the overall study, FICC will define an adjustable percentage (the initial percentage will be set at 60%), as determined by FICC from time to time, and multiply that percentage amount against the maximum amount to establish each Clearing Member's Defined Capped Liquidity Amount; and

(b) For those Clearing Members that are ineligible for or have not established borrowing privileges at the Federal Reserve Discount Window and for those Clearing Members that do not have an affiliate that is eligible for or has established borrowing privileges at the Federal Reserve Discount Window, FICC will conduct a study every month or such other time period as FICC shall determine from time to time as specified in Important Notices to Clearing Members, to determine each Clearing Member's largest liquidity requirement for the applicable time period based on a Clearing Member's sell positions versus other Clearing Members at the family level on a bilateral net basis within a TBA CUSIP. The Clearing Member's largest liquidity requirement for the past month, adjusted in each case of a CCLF Event to be no greater than the actual pool delivery obligation to the defaulting Clearing Member, will represent the Clearing Member's Defined Capped Liquidity Amount. Clearing Members in this category will have a defined non-adjustable percentage amount set to 100%. Clearing Members in this category will not be required to finance any Remaining Financing Amount.

(c)

[30] Applicable to those Clearing Members that are eligible for and that have established borrowing privileges at the Federal Reserve Discount Window or to those Clearing Members who have an affiliate that is eligible for and has established borrowing privileges at the Federal Reserve Discount Window.

credit exposure where they have legally enforceable netting arrangements with their counterparties, which includes a close-out netting provision in the event of the default of the counterparty (in this case, the division of the clearing corporation acting as a central counterparty).

8. Fails Charge

To encourage market participants to resolve fails promptly, FICC is applying a fails charge recommended by the Treasury Market Practices Group (''TMPG'') that expands the applicability of the fails charge to settlement of pools versus FICC involving failing agency MBS issued or guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae.[31] A fails charge will not apply to TBA and pool level ''round robins.'' [32] FICC believes that the fails charge will reduce the incidence of delivery failures and supporting liquidity in these markets.

The proposed charge will be equal to the greater of (a) 0 percent and (b) 2 percent per annum minus the federal funds target rate. The charge accrues each calendar day a fail is outstanding. The MBSD will not impose a fails charge if delivery occurs on either of the two business days following the contractual settlement date. The MBSD will not employ a minimum fail charge amount, but, instead, will apply the fails charge to any pool for which delivery has not occurred within the two business day grace period.[33] Each business day, the MBSD will provide reports reflecting fail charge amounts to Clearing Members and will generate a consolidated monthly report at month end. Failing parties with a net debit (i.e., the fails charge amounts such party owes exceed the fails charge amounts it is owed) will be required to pay such net amount in respect of those pools that have settled the previous month and that are reflected in the previous month's consolidated month end report by the Class ''B'' payable date (as established by SIFMA guidelines) of the month following settlement in conjunction with other cash movements. The fails charge funds received by the MBSD then will be used to pay Clearing Members with fail net credits.

The MBSD will implement a rate change procedure so that if fails accrue at one rate and the rate changes, the fail will keep the original accrual and new fails calculations will be subject to the new rate. When there is a substitution of the underlying pool, the fails charge will be calculated pursuant to the above formula, using (in the formula) the federal funds target rate for each day of the substitution period beginning on the contractual settlement date.

In the event that the MBSD is the failing party because (i) the MBSD received Agency MBS issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae too late to make redelivery or for any other reason or (ii) MBSD received a substitution of a pool deliver obligation of agency MBS issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae too late for same day redelivery of securities or for any other reason, the fails charge will be distributed pro-rata to the Clearing Members based upon usage of the MBSD's services.

The MBSD will not guarantee fails charge proceeds in the event of a default (i.e., if a defaulting Clearing Member does not pay its fail charge, Clearing Members due to receive fails charge proceeds will have those proceeds reduced pro-rata by the defaulting Clearing Member's unpaid amount). Failure by a Clearing Member to meet its obligations in connection with a fails charge may be a violation of the MBSD rules that is subject to disciplinary actions consistent with the MBSD rule book. FICC's Board of Directors (or appropriate Committee thereof) will retain the right to revoke application of the charges if industry events or practices warrant such revocation. The fails charges will apply to applicable transactions entered into on or after the date of this order, as well as to transactions that were entered into, but remain unsettled as of the date of this order. For transactions entered into prior to, and unsettled as of, the date of this order, the fails charge will begin accruing on the later of the date of this order or the contractual settlement date. The following are examples of fails scenarios and the applicable fails charge in each scenario:

Example 1: A delivery is contracted to occur on settlement date (S), a Tuesday, but does not occur until the second business day following contractual settlement, Thursday (S+2). The Clearing Member would not be subject to a fails charge because delivery occurs within the two business days following the contractual settlement date.

Example 2: A delivery is contracted to occur on settlement date (S), a Tuesday, but does not occur until the third business day following contractual settlement, Friday (S+3). The Clearing Member would be subject to a three-day fails charge.

Example 3: A delivery is contracted to occur on settlement date (S), a Wednesday, but does not occur until the third business day following contractual settlement, Monday (S+3). The Clearing Member would be subject to a five-day fails charge, as the charge accrues on each calendar day in the fail period.

Example 4: A delivery is contracted to occur on settlement date (S), May 10th, but does not occur until the month following the contractual settlement date; it settles on June 8th. The Clearing Member will not be subject to collection of the fails charge in June (the month following the contractual settlement date) because delivery did not occur in May. The participant will be subject to the collection of the fails charge in July (on the Class ''B'' payable date) because delivery occurred in June. The charge will be recalculated for 29 days.

9. Suspension of Rules in Emergency Circumstances

The MBSD rule regarding suspension of its rules in emergency situations is being revised to specify that: (i) The rule applies to emergency circumstances; (ii) an emergency shall exist in the judgement of the FICC Board or a FICC Officer, which causes the Board or the FICC Officer, as applicable, to believe that an extension, waiver, or suspension of the MBSD rules is necessary for FICC to continue to facilitate the prompt and accurate clearance and settlement of securities transactions; (iii) FICC shall notify the Commission of such extension, waiver, or suspension of the MBSD rules within 2 hours of such determination;[34] (iv) the written report of such extension shall include the nature of the emergency, along with the other requirements listed in the current rules; (v) such written report shall be submitted to the Commission no later

[31] TMPG is a group of market participants active in the Treasury securities market and sponsored by the Federal Reserve Bank of New York. The Commission has approved similar rule proposals at the GSD. *See* Securities Exchange Act Release No. 59802 (Apr. 20, 2009), 74 FR 19248 (Apr. 28, 2009) and Securities Exchange Act Release No. 65910 (Dec. 8, 2011), 76 FR 77861 (Dec. 14, 2011) (expanding applicability of the fails charge to Agency debt securities transactions).

[32] ''Round robins'' are a circular series of transactions between multiple parties where there is no ultimate long and short position to be settled. For example, if A sells to B and B sells to C and C sells to A, this group of transactions constitutes a round robin. In a round robin, there is no settlement of securities, but there is satisfaction of money across all interested parties. There can be a fail in a round robin transaction when a deliver obligation arises because the trade submission of certain members of the round robin do not match. The MBSD will not apply the fails charge to a round robin if each affected Clearing Member in the round robin provides the MBSD with the required information to resolve the trade.

[33] FICC is not establishing a minimum charge because the MBSD, as counterparty in multiple transactions, may owe a net credit to one counterparty that is financed by multiple small net debits owed to it by multiple counterparties. The lack of a threshold minimum charge deviates from the TMPG recommendation of a $500 threshold. FICC notified Clearing Members of this deviation in an Important Notice (MBS 119.11) and received no objection.

[34] But no later than one hour before the close of the Federal Reserve Banks' Fedwire Funds Service if such determination relates to the extension of time for settlement and is made on a settlement day.

than three calendar days after the implementation of the extension, waiver, or suspension of the MBSD rules; and (vi) any suspension shall not last for more than thirty calendar days from the date of the event or events giving rise to the suspension unless the MBSD submits a proposed rule change to the Commission seeking approval of a further extension.

10. Ceasing to Act, Wind-Down Members, and Insolvency

The MBSD's rules regarding restrictions on access to services, ceasing to act, winding-down Clearing Members, and Clearing Member mirror the current GSD rules, conformed to apply to the specifics of MBSD processing as applicable. For example, upon the MBSD ceasing to act for a Clearing Member, Clearing Members will be required to submit immediate NOS so that the MBSD has all necessary settlement information with respect to a defaulting Clearing Member to affect a close-out of such Clearing Member. In addition, the MBSD will have the right, with respect to specified pool trades, to substitute alternate pools as necessary.[35]

11. DTCC Audit Committee

While FICC MBSD does not have a rule and it is not adding a rule to require an audit committee, FICC is governed by the DTCC Audit Committee and such Committee could not be dismantled without a proposed rule change filed with the Commission.

12. Summary of Other Rule Changes

i. Current MBSD Rules Not Reflected in Proposed Rulebook

The following current MBSD rules are not included in the new rulebook:

• With respect to Article III (Participants), in the current MBSD rules: Rule 1, ''Requirements Applicable to Participants and Limited Purpose Participants''; Section 5, ''Supplemental Agreement of Participants and Limited Purpose Participants''; and Section 14 ''Special Provisions Applicable to Partnerships'' are not included in the proposed MBSD rules because each of these rules is no longer necessary because proposed Rule 2A harmonizes the MBSD rules with the GSD rules on this subject. Rule 1, ''Requirements Applicable to Participants and Limited Purpose Participants'' Section 15 ''Special Provisions Applicable to Non-Domestic Participants'' is not included in the proposed MBSD rules because as with the GSD, the MBSD will be using the Netting Agreement for foreign members and not the master agreement format. Proposed Rule 2A, ''Initial Membership Requirements,'' Section 5, ''Member Agreement'' covers the provisions of the membership agreement generally and thereby serves to harmonize the proposed MBSD rules with the GSD rules with respect to this subject.

• Rule 3, ''Corporation Declines to Act for a Participant or Limited Purpose Participant'' Section 2 ''Other Grounds for Ceasing to Act for a Participant or Limited Purpose'' of the current MBSD rules is not included in the proposed MBSD rules because it is being replaced by proposed MBSD Rule 14 ''Restrictions on Access to Services'' and Rule 16 ''Insolvency of a Member'' which cover the same matters and harmonize these provisions with those in the GSD rules.

• In an effort to harmonize with the GSD rules, Rule 3, ''Corporation Declines to Act for a Participant or Limited Purpose Participant'' Section 3 is not reflected in the proposed MBSD Rules. FICC does not believe it is necessary to state the current MBSD concept in the proposed MBSD rules because it would apply regardless of whether it is stated in the rules. Rule 3, ''Corporation Declines to Act for a Participant or Limited Purpose Participant'' Sections 5(a) ''Disposition of Open Commitments'' is not included in the proposed MBSD rules because FICC does not accept Letters of Credit as a permissible form of Clearing Fund collateral as a routine matter; however, FICC reserves the right to accept this type of collateral, if needed. In addition, the current MBSD rule addresses the liquidation of other types of collateral posted by the defaulting Clearing Member. Under the proposed MBSD rule, close-out processes, in general, are covered by Rule 17, which has been drafted to be harmonized with the equivalent GSD Rule to the extent possible. Section 5(c) of the current MBSD Rule 3 in Article III is not reflected in proposed rulebook because it addresses non-defaulting Clearing Members engaging in the close-out of the defaulting Clearing Member's positions, which will be undertaken by the MBSD as CCP under the proposed rules.

• Under the section titled ''Schedule of Charges Broker Account Group'' in the appendix to the proposed MBSD rules, FICC no longer provides hardcopy output from microfiche. As a result, the reference to this charge is being removed.

ii. New MBSD Rules

The following rules are being added to the MBSD rulebook in connection with this filing and have not been addressed separately above:

• Rule 3, Section 6 ''General Continuance Standard'' of the proposed MBSD rules includes additional language which states that FICC may require that increased or modified Required Fund Deposits be deposited by the Clearing Member on the same Business Day on which the FICC requests additional assurances from such Clearing Member. FICC has always interpreted the current rules to permit such action; this additional language makes this point explicit.

• Rule 5, ''Trade Comparison'' Section 1 ''General'' and Section 3 ''Trade Submission Communication Methods'' includes disclosure relating to the means by which data may be entered and submitted to FICC. Section 10 ''Modification of Trade Data'' of this rule allows FICC to unilaterally modify trade data submitted by Clearing Members if FICC becomes aware of any changes to the transaction that invalidates the original terms upon which it was submitted or compared and Rule 12 ''Obligations'' of Section 10 discusses the point at which trade data becomes a settlement obligation.

• With respect to the computation of cash balances under Rule 11, ''Cash Settlement,'' FICC has included a new process with respect to fail tracking. Fail tracking is an automated process that takes place when the actual settlement date of a transaction is beyond the contract date. An adjustment is made when one or more beneficiary dates (i.e., certain securities have a record date that does not represent the end of the accrual period and instead the beneficiary date is the actual date the accrual period ends) fall between the contract date and the settlement date. The adjustment results in the payment of funds from the message originator to the message receiver through the Federal Reserve's National Settlement Service. This eliminates a cumbersome manual process for tracking and clearing adjustments from securities transaction counterparties and it impacts all Fed-eligible mortgage-backed securities, including Freddie Mac, Fannie Mae, and Ginnie Mae.

• With respect to Rule 26, ''Financial Reports and Internal Accounting Control Reports'', Section 1 ''Financial Reports'' has been revised to state that FICC will: (i) Prepare its financial statements in accordance with Generally Accepted Accounting Principles; (ii) make unaudited financial statements

[35] In the event of a close-out of a defaulting Clearing Member, broker members will be responsible for partially-matched trades for which FICC has received a statement denying the existence of the trade.

for the fourth quarter available to its Clearing Members within 60 days following the close of FICC's calendar year; and (iii) provide a certain level of minimum disclosures in its quarterly financial statements. This rule has also been revised to include Section 2 ''Internal Accounting Control Reports,'' which requires FICC to make internal accounting control reports available to its Clearing Members.

• The proposed MBSD rules also introduce pool netting fees. Below is a description of each fee:

1. Matched Pool Instruct (''PID'') (per side): When a pool instruct is matched resulting from either an instruct or an affirmation (with or without pending status), a matched fee is charged to both sides.

2. Customer Delivery Request (''CDR'') Pool Instruct Fee: When a pool instruct in a matched status is included in the net (vs. FICC) a CDR fee is charged at the instruct PID level to the Clearing Member that submitted the CDR.

3. Cancel of Matched Pool Instruct: This fee is assessed to the Clearing Member submitting a unilateral cancel on a matched pool instruct.

4. Pool Obligation: This fee is charged to the net long and short Clearing Member when a Pool Obligation (''POID'') is created versus FICC.

5. Post Net Subs: This fee is charged to the Clearing Member that submits a substitution (the net seller) on a POID vs. FICC.

6. Clearance of Pool vs. FICC: This is a fee associated with clearing a POID versus FICC.

7. Financing Charges (Financing costs are the costs of carrying positions overnight): For each Clearing Member, a pass-through charge calculated on a percentage of the total of all such costs incurred by FICC, allocated by Agency product.

iii. Revised MBSD Rules to Harmonize With GSD Rules

The provisions listed below are revised to harmonize them with similar provisions in the current GSD rules and in some cases updated as appropriate to reflect the mortgage-backed securities market:

• Rule 3 Section 12 (Excess Capital Premium)
• Rule 5 Section 10 (Modification of Trade Data by the Corporation)
• Rule 14 (Restrictions on Access to Services)
• Rule 15 (Wind-Down of a Member)
• Rule 16 (Insolvency of a Member)
• Rule 17 (Procedures For When the Corporation Ceases to Act) (revised for the mortgage-backed securities market)
• Rule 17A (Corporation Default)
• Rule 18 (Charges for Services Rendered)
• Rule 19 (Bills Rendered)
• Rule 20 (Admission to Premises of the Corporation, Powers of Attorney, etc.)
• Rule 21 (Forms)
• Rule 22 (Release of Clearing Data)
• Rule 23 (Lists to be Maintained) (revised for the mortgage backed-securities market)
• Rule 24 (Signatures)
• Rule 25 (Insurance)
• Rule 26 (Financial Reports and Internal Accounting Control Reports) (revised as explained above)
• Rule 27 (Rule Changes)
• Rule 28 (Hearing Procedures)
• Rule 29 (Governing Law and Captions)
• Rule 30 (Limitations of Liability)
• Rule 31 (General Provisions)
• Rule 32 (Cross-Guaranty Agreements)
• Rule 33 (Suspension of Rules in Emergency Circumstances) (revised as explained above)
• Rule 34 (Action by the Corporation)
• Rule 35 (Notices)
• Rule 36 (Interpretation of Terms)
• Rule 37 (Interpretation of Rules)
• Rule 38 (Disciplinary Proceedings)
• Rule 39 (DTCC Shareholders Agreement)

III. Comments

The Commission received one comment to the proposed rule change, from SIFMA.[36] The commenter supported the proposed rule change, stating that the proposed rule change would both reduce risk and increase efficiency in the mortgage-backed security market. The commenter believes that the proposed rule change would reduce risk because it would decrease the number of settlements through the pool netting process and as a result likely would reduce the number of fails in the market. Furthermore, the commenter believes the proposed rule change would provide for a less risky process for the liquidation of positions of a defaulting member.[37] The commenter believes that the proposed rule change would increase efficiency because as the total number of settlements is reduced through pool netting, market participants likely would have to deal with fewer settlement-related issues, such as pool notifications, resolution disputes, and fails, for which they currently dedicate significant time and resources.

IV. Discussion

The Commission has carefully considered the proposed rule change and the comment thereto and the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder.

The Commission agrees with the commenter that the proposed rule change likely will reduce risk and promote efficiency in the mortgage-backed security market by reducing the number of settlements that are performed and as a result reducing the number of settlement-related risks and costs that confront counterparties. The Commission also believes that the FICC guarantee and the provision of CCP services will reduce risks of bilateral counterparty default. The Commission believes that these changes are consistent with the Exchange Act, including Section 17A, because they should help facilitate the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds under FICC's control or for which FICC is responsible. In particular, the Commission believes that these changes to the MBSD's rules should result in a more efficient system of settlement for the mortgage-backed security market.

The Commission also notes that the MBSD marks Clearing Member portfolios to the market on a daily basis and charges variation margins accordingly, and establishes initial margins designed to cover a minimum 99th percentile of expected possible losses that could arise over a 3-day settlement period utilizing a VaR-based approach. In addition, in order to further enhance the MBSD's risk framework, the MBSD will add two components—the margin requirement differential and the coverage charge—to the Clearing Fund, as well as additional MBSD mark-to-market items related to the new pool netting services. Furthermore, the MBSD uses regular back and stress testing to monitor the sufficiency of collected margin levels vis-a-vis the risk represented by the 99th percentile of expected possible losses from Clearing Member portfolios and to monitor its tail risk exposure that is beyond the 99th percentile. The Commission believes these steps should, consistent with Section

[36] *See supra* note 5.

[37] The Commission notes that FICC, consulting with market participants and regulators and using emergency powers under its rulebook, has temporarily provided certain central counterparty services in two instances to alleviate liquidity pressure on the market: (i) To facilitate the orderly liquidation of Lehman Brothers' positions and (ii) to facilitate the orderly liquidation of MF Global positions. In both instances, FICC significantly reduced the number of deliveries required by netting deliver and receive obligations among members.

17A(b)(3)(A) of the Exchange Act,[38] facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds under FICC's custody or control or for which FICC is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the amended proposed rule change is consistent with the requirements of the Exchange Act and in particular Section 17A of the Exchange Act and the rules and regulations thereunder.[39]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. SR–FICC–2008–01) be, and hereby is, approved.[40]

By the Commission.

Dated: March 9, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6187 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66544; File No. SR–NASDAQ–2012–032]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Investor Support Program

March 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2012, The NASDAQ Stock Market LLC (''NASDAQ'') 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 NASDAQ. 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

NASDAQ proposes to modify the Investor Support Program (the ''ISP'') under Rule 7014 to introduce an additional method for members to earn an enhanced rebate under the ISP. NASDAQ will implement the proposed change on March 1, 2012. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify the Investor Support Program (the ''ISP'') under Rule 7014 to introduce an additional method for members to earn an enhanced rebate under the ISP. The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (''targeted liquidity'').[3] The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[4] The Exchange noted in the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Without modifying any existing aspects of the ISP, the Exchange now proposes to provide an additional method for members to qualify for an ISP rebate that includes a new criterion focused on liquidity provision through Public Customer Orders in the NASDAQ Options Market. The change recognizes the extent to which members that represent retail and/or institutional investors are active in trading both cash equities and options on behalf of such customers. In fact, to an increasing extent the customers that such members represent simultaneously trade different asset classes within a single investment strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. The NASDAQ Market Center fee schedule for order execution and routing in Rule 7018 already recognizes the convergence between cash equities and options trading through liquidity provider rebate tiers available to members active in both the NASDAQ Market Center and the NASDAQ Options Market.

Participants in the ISP are required to designate specific NASDAQ order entry

[38] 15 U.S.C. 78q–1(b)(3)(A).

[39] 15 U.S.C. 78q–1.

[40] 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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a detailed description of the Investor Support Program as originally implemented, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). See also Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness); 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (NASDAQ–2011–022) (notice of filing and immediate effectiveness); 64050 (March 8, 2011), 76 FR 13694 (March 14, 2011) (SR–NASDAQ–2011–034); 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR–NASDAQ–2011–150) (notice of filing and immediate effectiveness).

[4] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. For members qualifying for the new ISP tier, NASDAQ will pay a credit of $0.0003 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more. The specific criteria for the proposed new ISP tier are as follows:

(1) The member's Participation Ratio [5] for the month exceeds its Baseline Participation Ratio [6] by at least 0.30%. In general terms, the Baseline Participation Ratio is the ratio of shares of liquidity provided by the member in NASDAQ for the month of August 2010 or August 2011 (whichever is lower) to the total consolidated volume for that month. To the extent that a member's participation in NASDAQ equals or exceeds its Baseline Participation Ratio (*i.e.,* to the extent that the member at least matches its participation in NASDAQ during the lower of August 2010 or August 2011), the member may be eligible for the program. Exceeding the Baseline Participation Ratio by specified amounts may qualify the member for higher credits under the ISP. The requirement reflects the expectation that a member participating in the program must maintain or increase its participation in NASDAQ as compared with an historical baseline. All of the ISP's existing tiers have a criterion focused on the member's Participation Ratio.

(2) The member's ''ISP Execution Ratio'' for the month must be less than 10. The ISP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.'' [7] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow. All of the ISP's existing tiers have a criterion focused on the member's ISP Execution Ratio.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month, reflecting the ISP goals of encouraging higher levels of liquidity provision. All of the ISP's existing tiers have a criterion focused on the liquidity provided through ISP-designated ports as a percentage of Consolidated Volume.

(4) At least 80% of the liquidity provided by the member during the month is provided through ISP-designated ports. This requirement is designed to mitigate ''gaming'' of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders. All of the ISP's existing tiers have a criterion requiring the member to provide a specified percentage of liquidity through ISP-designated ports.

In addition to these criteria, which are similar or identical to criteria for existing ISP tiers, members seeking to qualify for the new tier would also be required to satisfy the following criteria:

(5) The member has an average daily volume during the month of 100,000 or more contracts of liquidity provided through one or more of its Nasdaq Option Market market participant identifiers (''MPIDs''), provided that such liquidity is provided through Public Customer Orders, as defined in Chapter I, Section 1 of the Nasdaq Options Market Rules. That rule defines Public Customer Order as an order for the account of a person that is not a broker or a dealer. Thus, in keeping with the goal of the ISP to encourage participation by retail and institutional investors and the members that represent them in exchange markets, the new criterion focused on options would require a specified level of liquidity provision through orders that are directly identified under Nasdaq Options Market rules as having characteristics consistent with this goal.

(6) The member's ratio between shares of liquidity provided through ISP-designated ports and total shares accessed, provided, or routed through ISP-designated ports during the month is at least 0.80. This additional criterion reflects a goal of ensuring that the qualifying member is using its ISP-designated ports substantially for liquidity provision, in keeping with the ISP's overall goal of drawing liquidity-providing orders to exchange markets. A similar criterion is applicable to NASDAQ's Extended Hours Investor Program (the ''EHIP''), which is also provided for under Rule 7014.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The primary objective in making the enhancements to the ISP reflected in the proposed rule change is to add an even greater amount of targeted liquidity to the NASDAQ Market Center and also the NASDAQ Options Market by adding an additional method by which members may qualify for the ISP, but without eliminating or modifying any of the existing methods.

The rule change proposal, like the original ISP, is not designed to permit unfair discrimination, but rather is intended to promote submission of liquidity—providing orders to NASDAQ, which benefits all NASDAQ members and all investors. The change recognizes the extent to which members that represent retail and/or institutional investors are active in trading both cash

[5] ''Participation Ratio'' is defined as follows: ''[F]or a given member in a given month, the ratio of (A) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume.'' ''Consolidated Volume'' is defined as follows: ''[F]or a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' ''System Securities'' means all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[6] ''Baseline Participation Ratio'' is defined as follows: ''[W]ith respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).''

[7] These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of ''immediate or cancel'' orders and therefore cannot be liquidity-providing orders.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4) and (5).

equities and options on behalf of such customers. In fact, to an increasing extent the customers that such members represent simultaneously trade different asset classes within a single strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. Thus, the new tier, like existing tiers, is designed to benefit all market participants by encouraging submission of liquidity—providing orders to the NASDAQ Market Center, and further broadens this incentive by encouraging the submission of liquidity—providing options contracts to the NASDAQ Options Market.

Likewise, the proposal, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of liquidity—providing orders that they submit to the NASDAQ Market Center and the NASDAQ Options Market in order to qualify for the new tier, or existing tiers, would be benefitting all investors, and therefore providing credits to them, as contemplated by the ISP, is equitable. Moreover, NASDAQ believes that the level of the credit available through the new tier—$0.0003 per share for displayed liquidity provided through ISP-designated ports and $0.0001 per share for other displayed liquidity—is reasonable, in that it is comparable to the added rebates of $0.0001, $0.0003, or $0.0004 per share executed already provided under other ISP tiers, and does not reflect a disproportionate increase above the rebates provided to all members with respect to provision of displayed liquidity under Rule 7018, which range from $0.0020 to $0.00295 per share executed. NASDAQ further notes that by adding an additional tier to the ISP without altering any of the existing tiers, NASDAQ is effectively reducing fees for members qualifying for the new tier without making any offsetting fee increases.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because the changes to the ISP are designed to increase the credits provided to members that enhance NASDAQ's market quality through liquidity provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In fact, because it institutes a reduction in fees, NASDAQ believes that the proposed rule change will enhance the degree of competition between NASDAQ and other trading venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] 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.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–032 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6186 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66543; File No. SR–Phlx–2012–25]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Applicable to the Trading of NMS Stocks Through NASDAQ OMX PSX

March 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees applicable to trading on the NASDAQ OMX PSX system (''PSX''). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Phlx is amending its fee and credit schedule for transaction executions on PSX. Specifically, Phlx is introducing reduced fees for accessing liquidity in securities listed on the New York Stock Exchange (''Tape A Securities''), along with correspondingly reduced rebates for liquidity provision in Tape A Securities.[3] Currently, PSX charges $0.0027 per share executed to members accessing liquidity in any security traded by the Exchange. Under the proposed rule change, the fee will be reduced to $0.0019 per share executed for Tape A Securities. However, to keep the Exchange's rebates for liquidity provision in line with the reduced fee to access liquidity, the Exchange will also make reductions in the rebates for Tape A Securities. Currently, the liquidity provider rebate is $0.0026 per share executed with respect to orders with an original displayed size of 2,000 or more shares, and is also $0.0026 with respect to liquidity provided by minimum life orders.[4] Under the proposed rule change, this rebate will be reduced to $0.0018 per share executed for Tape A Securities. The rebate for orders with an original displayed size of less than 2,000 shares is currently $0.0024 per share executed, and will be reduced to $0.0016 per share executed for Tape A Securities. The rebate for non-displayed orders is currently $0.0010 per share executed, and will be reduced to $0.0005 per share executed for Tape A Securities.

The change is designed to encourage greater use of PSX for the purpose of trading Tape A Securities. Specifically, although PSX has market participants that post liquidity in Tape A Securities with regularity, Phlx believes that the extent to which market participants direct liquidity-seeking orders to PSX may be limited by its current fees. Accordingly, Phlx believes that a reduction in the fee to access liquidity will encourage more market participants to seek available liquidity at PSX. Moreover, Phlx further believes that any disincentive to post liquidity caused by a reduction in the rebates for Tape A Securities will be offset by a heightened expectation of prompt execution created by the reduced fee for liquidity-accessing orders.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and (5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms.

The proposed new fee and rebate structure for members that use Phlx to trade Tape A Securities is reasonable because it will result in a reduction of fees for members that access liquidity, which in turn will benefit members that post liquidity by providing greater certainty of execution for their posted orders. Phlx believes that this increased certainty of execution will continue to encourage members to post liquidity at PSX, notwithstanding the associated reduction in liquidity provider rebates. Moreover, because the fee charged to access liquidity funds the payment of a rebate to liquidity providers, Phlx does not believe that it would be reasonable to require an exchange that opts to reduce access fees to maintain pre-existing higher rebates.

Moreover, the proposed change is consistent with an equitable allocation of fees because it is designed to promote a more active market for Tape A Securities on PSX, thereby benefitting all members that seek to trade such securities through the Exchange. Specifically, the change is equitable to members that seek to access liquidity because it will reduce the fees that they pay, and equitable to members that provide liquidity because it will increase the likelihood of posted orders executing. Similarly, to the extent that the proposed change is successful in encouraging greater use of PSX for trading Tape A Securities, it will enhance market quality for all market participants. Finally, Phlx believes that the change is not unfairly discriminatory because the price reduction offered is available to all members that access liquidity in Tape A Securities. Similar pricing incentives that focus on securities listed on particular listing venues are not

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The changes apply to executions priced at $1 or more. Fees and rebates applicable to executions of securities priced below $1 remain unchanged.

[4] Minimum life orders are orders that may not be cancelled for a period of 100 milliseconds following entry.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

uncommon,[7] and provide means by which venues such as Phlx may compete more effectively with listing venues such as NYSE.

Finally, Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for trading Tape A Securities through PSX.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor Phlx's execution services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage trading of Tape A Securities through PSX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–25 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6184 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

[7] *See, e.g.,* Securities Exchange Act Release No. 66322 (February 3, 2012), 77 FR 6831 (February 9, 2012) (SR–NASDAQ–2012–020) (pricing incentives focused on securities listed on exchanges other than The NASDAQ Stock Market or NYSE).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66540; File No. SR–NASDAQ–2012–031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Supplemental Orders

March 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to introduce the ''Supplemental Order'' for use on NASDAQ. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to introduce a new order type, to be known as the ''Supplemental Order,'' for use on NASDAQ. The order type and its associated execution process are virtually identical to the ''Tracking Order'' and ''Tracking Order Process'' that have long been in use at NYSEArca.[3] The purpose of the order is to offer institutional investors and other traders that have longer trading horizons a means to post stable trading interest executable at the national best bid or best offer (''NBBO''). The Exchange believes that if the Supplemental Order becomes widely used, market participants seeking to access liquidity will more readily direct their orders to NASDAQ, because they will have a heightened expectation of the availability of liquidity at the NBBO.

Supplemental Orders are Non-Displayed limit orders that are available for execution only between 9:30 a.m. and 4 p.m., and that are not eligible for participation in the Nasdaq Opening Cross, the Nasdaq Halt Cross, the Nasdaq Imbalance Cross, or the Nasdaq Closing Cross. All Supplemental Orders must be entered with size of one or more normal units of trading. Upon entry in the Nasdaq Market Center system, a Supplemental Order will always post to the book and thereafter become eligible for execution against incoming orders in accordance with the Nasdaq Market Center's Supplemental Process.

An incoming order that has been designated as eligible for routing may interact with Supplemental Orders.[4] Such an order will first be matched against orders other than Supplemental Orders in accordance with Rule 4757(a)(1)(A) through (C). If any of the order remains unexecuted, it will enter the Supplemental Process before being routed to other venues. In the process, the order will be matched against Supplemental Order(s) in price/time priority. However, executions will be permitted to occur only at the NBBO, and only if the size of the incoming order is less than or equal to the aggregate size of Supplemental Order interest available at the price of the order. A Supplemental Order may not trade through a Protected Quotation, and will not be permitted to execute if the NBBO is locked or crossed.

Supplemental Orders post to the book, rather than interacting with resting orders before posting, because the market participant entering a Supplemental Order is willing to cede execution priority in order to provide liquidity to those orders that are eligible to enter into the Supplement Order process (*i.e.,* orders that seek to access liquidity at the NBBO). NYSEArca Tracking Orders are similarly designed to post to the book in all circumstances.

If a Supplemental Order is not executed in full, the remaining portion of the order shall continue to repost in the Supplemental Process until the order is fully executed, the order is cancelled by the member that entered the order, or the size of the order is reduced to less than one normal unit of trading (in which case the remaining order will be cancelled by the System). Supplemental Orders may be entered at any time between 7 a.m. and 4 p.m., but are available for potential execution only between 9:30 a.m. and 4 p.m. Any Supplemental Orders still on the book after 4 p.m. will be cancelled.

In addition to adding descriptions of the Supplemental Order and its associated execution process to Rules 4751 and 4757, NASDAQ is also proposing to make conforming changes to Rule 4755, and to correct several minor typographical errors in Rule 4757.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes that the proposed rule change will promote the interests of retail and institutional investors and other investors with longer term trading horizons by (i) offering liquidity providers a means to use NASDAQ to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution, and (ii) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed change will allow NASDAQ to offer functionality that is similar to functionality already offered by NYSEArca, and will therefore promote competition between exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f)(6) of Rule 19b–4 thereunder,[8] in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASDAQ provided the Commission with such written notice on February 8, 2012. NASDAQ proposes to implement the proposed rule change on a date that is on, or shortly after, the 30th day following the date of the filing.

[3] See NYSEArca Rules 7.31(f) and 7.37(c).

[4] Orders that are not designated for routing are not executable against Supplemental Orders, because market participants entering non-routable orders either expect to post liquidity on NASDAQ, or seek to execute against the NASDAQ displayed quote, as through an Immediate or Cancel order type. By contrast, the Supplemental Order is designed to interact with market participants that seek to access liquidity at the NBBO, and that employ routable orders to access such liquidity at a range of trading venues.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

NASDAQ believes that the proposed rule change does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition because (i) the proposal seeks to enhance market quality by providing a means to encourage market participants to offer greater liquidity at the NBBO, and (ii) the proposal enhances NASDAQ's ability to compete with comparable functionality that is already being offered by NYSEArca.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2012–031 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6183 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66542; File No. SR–BX–2012–012]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Connectivity Options and Fees

March 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2012, The NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange connectivity options and fees. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 7034(b) regarding connectivity to The NASDAQ Stock Market LLC (''NASDAQ'').[3] Specifically, the Exchange proposes to (i) establish a connectivity fee for a 40Gb enhanced bandwidth option; and (ii) provide a waiver of installation fees for upgrades.

Enhanced Bandwidth Option

The Exchange currently offers various bandwidth options for connectivity to the Exchange, including a 10Gb fiber connection, a 1Gb copper connection, and a 100 MB connection.[4] In keeping with changes in technology, the Exchange now proposes to provide an enhanced bandwidth option to enable its clients a more efficient connection to the Exchange. The Exchange proposes a 40G [sic] fiber connection with a one-time installation fee of $1,500, and a per-month connectivity fee of $15,000. The growth in the size of consolidated and proprietary data feeds has resulted in demand for higher bandwidth. As the number of feeds available and the size of the feeds increases, the bandwidth required for market data feeds steadily rises. The Exchange's proposal provides the co-located client the option to select the bandwidth that is appropriate for the firm's current needs and enables it to add or change services as its needs change.

Waiver of Installation Fees

The Exchange also proposes to provide a waiver of the installation fees

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All co-location services are provided by NASDAQ Technology Services LLC.

[4] *See* Exchange Rule 7034(b), Connectivity to Nasdaq.

for client orders of 10Gb and 40Gb fiber connectivity to the Exchange completed between the effectiveness of this proposal and May 31, 2012. The Exchange is providing the waiver to assist its co-located clients in upgrading to higher bandwidth connections to meet the growing needs of co-located clients' business operations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and are [sic] not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

Enhanced Bandwidth Option

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

Reasonable Fees

The Exchange's proposal for 40Gb fiber connectivity will provide co-location clients the ability to increase data transmission and reduce latency, thereby enhancing their operations. The Exchange believes the proposed fees for 40B [sic] fiber connectivity to the Exchange are reasonable because the fees charged for the higher bandwidth allow the Exchange to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. The proposed fees allow the Exchange to recoup costs associated with providing the 40Gb connection and provide the Exchange a profit while providing customers the possibility of reducing the number of their connections to the Exchange. While no other Exchange currently offers the proposed 40Gb bandwidth connection, the Exchange further believes that the proposed fees are reasonable in that the proposed fees are proportionately less than the fees charged by other trading venues for similar connectivity services.[8]

Equitable Allocation

The Exchange also believes the proposed 40Gb fiber fee for connectivity to the Exchange is equitably allocated in that all Exchange members that voluntarily select this service option will be charged the same amount to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. The proposed fees allow the Exchange to recoup costs associated with providing the 40Gb connection and provide the Exchange a profit while providing customers the possibility of reducing the number of their connections to the Exchange. All Exchange members have the option to select this voluntary co-location service.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and are [sic] not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

Removes Impediments and Perfects Mechanism of a Free and Open Market

Furthermore, the enhanced 40Gb fiber connectivity assists the co-located clients in making their network connectivity more efficient, as clients could consolidate the number of connections to the Exchange. Due to the continuous growth of the size of consolidated and proprietary market data feeds transmitted over the Exchange connections, clients need to monitor their connections for data spikes and data gapping issues which can result in potential trading errors, trading losses and may require network resource intervention to resolve. The Exchange believes the enhanced 40Gb connection will remove impediments to and perfect the mechanism of a free and open market and a national market system because the enhanced connectivity option will remove the potential for data spikes and data gapping issues that result from the transmission of the growing size of the consolidated and proprietary market data feeds.

Protects Investors and the Public Interest

The Exchange also believes that the reduction in latencies attributed to the enhanced 40Gb connection option further serves to protect investors and the public interest. The reduction in latencies will remove the potential for data spikes and data gapping issues that result from the transmission of the growing size of the consolidated and proprietary market data feeds. Such data spiking and data gapping issues have the potential of disrupting the marketplace which could negatively impact the investors as well as the public interest.

Not Unfairly Discriminatory

The Exchange also believes the proposed 40Gb fiber fee for connectivity to the Exchange is not unfairly discriminatory in that all Exchange members have the option of selecting the 40Gb connection to the Exchange, and there is no differentiation among members with regard to the fees charged for this option. Furthermore, the Exchange believes the [sic] providing all Exchange Members the proposed connectivity option for the proposed fees, which covers [sic] the hardware, installation, testing and connection costs to maintain and manage the enhanced connection, promotes just and equitable principles of trade.

Waiver of Installation Fees

The Exchange believes that its proposal for the waiver of installation fees is consistent with Section 6(b) of the Act [10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

Reasonable Waiver of Fees

The Exchange believes that its proposal to waive the 10Gb and 40Gb fiber connection installation fees is reasonable because it is being provided

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] NYSE charges $10,000 per month for 10Gb LCN (Liquidity Center Network) Connection. *See https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_1.3.2012.pdf*, page 13. Furthermore, ISE charges $4,000 per month for 10Gb Ethernet network connections. *See http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf*, page 9. By contrast, the Exchange is proposing to offer four times the bandwidth for a monthly fee of $15,000.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

to assist its co-located clients in upgrading to higher bandwidth connections to meet the growing needs of the co-located clients' business operations at a time in the industry when the ever-increasing size of consolidated and proprietary data fees are [sic] causing higher demand for larger bandwidth options to reduce potential disruption in the marketplace.

Equitably Allocated

The Exchange also believes the proposal to waive the 10Gb and 40Gb fiber connection installation fee is equitably allocated in that all Exchange members that voluntarily select these service options will be afforded the waiver of fees until May 31, 2012. All Exchange members have the option to select these voluntary co-location services.

Not Unfairly Discriminatory

The Exchange also believes the proposal to waive the 10Gb and 40Gb fiber connection installation fee is not unfairly discriminatory in that the waiver of fees is provided to all Exchange members that volunteer for these particular service options, and there is no differentiation among members with regard to the waiver of fees for these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not 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 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will facilitate trading activities by providing members an option to enhance the efficiency of their trading through the 40Gb connectivity. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–012. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2012–012 and should be submitted on or before April 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6113 Filed 3–13–12; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66539; File No. SR–NSCC–2012–03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Messaging and Settlement Enhancements to the In Force Transactions Product Service of NSCC's Insurance and Retirement Services and the Establishment of Fees Applicable Thereto

March 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 29, 2012, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to

[1] 15 U.S.C. 78s(b)(1).

Section 19(b)(3)(A)(ii)[2] and (iii)[3] of the Act, and Rule 19b–4(f)(2)[4] and Rule 19b–4(f)(4)(i)[5] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change applies to Rule 57 of NSCC's Rules and Procedures. The rule change consists of messaging and settlement enhancements to the In Force Transactions (''IFT'') product service of NSCC's Insurance and Retirement Services (''I&RS''). The proposed rule change also establishes the fees in connection therewith.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[6]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) *Background.* The I&RS provides a centralized communication link that connects participating insurance companies (''Carriers'') with participating intermediaries, such as broker-dealers, banks, and insurance agencies (''Distributors''), that distribute a participating Carriers' insurance products. In general, the IFT service automates the transmission of data with respect to in force policy transactions among participating I&RS members (''I&RS Members''). In force policy transactions, also known as post issue transactions, are transactions that take place after the underlying insurance contract has become effective. NSCC proposes to enhance IFT's messaging capabilities, as well as leverage NSCC's general settlement capability and apply it to the suite of IFT product services.

The Proposed Messaging Enhancements. The proposed messaging enhancements will allow Distributors of insurance and retirement products (or other benefit plan or program products) processed within the I&RS to send and receive automated messages to and from Carriers relating to (i) money withdrawals and/or (ii) modified arrangement requests with regard to an underlying in force insurance policy.

a. Withdrawal Messages. Withdrawal messages are requests from Distributors to process a one-time full or partial withdrawal of money with regard to an in force insurance policy.

b. Arrangement Messages. Arrangement messages are requests from Distributors to add, modify, or delete service features of an in force insurance policy. A service feature may include, but is not limited to, the following contract features: systematic withdrawals (*e.g.,* changing a currently established monthly withdrawal under an existing policy to a quarterly withdrawal), automatic investment plans (*e.g.,* scheduling automatic additional periodic payments to an insurance policy), asset allocation programs (*e.g.,* requesting a change in the asset to be invested), and asset rebalancing (*e.g.,* requesting a change in the allocation of investment among the various assets).

Any request for a withdrawal from or to add, modify, or delete a service feature in an existing policy would be initiated by the Distributor on behalf of the customer and transmitted to the Carrier through the I&RS network. Each such transaction request will require validation by both the Distributor and the Carrier, enabling each to review the transaction request against its own legal and other product and customer rules applicable to the transaction.

Prior to initiating a withdrawal or arrangement request, the Distributor generally must access current contract information to determine if the request can be made with respect to a particular contract, including confirming fund balances held under the contract and applicable rules. Accordingly, the withdrawal and arrangement enhancements will include a real-time inquiry and response transaction functionality that will allow Distributors to inquire and the Carrier to provide a current ''snapshot'' of the contract. NSCC's Positions and Values service also may be used in conjunction with the request. Receipt of the current contract information from the Carrier permits the Distributor to review the request for suitability and compliance requirements. This preliminary request for and receipt of information is referred to as a ''values inquiry and response.''

Following the values inquiry and response, the Distributor will initiate a withdrawal request or an arrangement request to be delivered to the Carrier. Upon receipt of the applicable request from the Distributor, NSCC will review the request for such information as NSCC determines from time to time to be necessary.[7] If the request appears to contain the information required by NSCC, it will be forwarded by NSCC to the Carrier. The Carrier will then perform ''real time'' validation on the content of the request. This validation may involve consideration of transaction integrity that can be evaluated before fund prices are available and the actual transaction is processed by the Carrier's administration system in the overnight batch cycle. The validation that may occur includes edits such as: the policy exists, the Distributor was preauthorized by the owner for the transaction, the amount being requested can be withdrawn, and the destination account is valid. The level of validation that is performed during the day will be determined by each Carrier and possibly by a ''trading partner agreement.''

Regardless of the complexity of the Carrier's validation process, after receiving the original request the Carrier will create a response message to be sent back to the Distributor through NSCC's I&RS with acceptance or rejection of the withdrawal or arrangement request. NSCC will review the response message for such information as NSCC determines from time to time to be necessary. If the response message appears to contain the information required by NSCC, it will be forwarded by NSCC to the Distributor.

When the withdrawal request or arrangement request is successfully processed by the Carrier, a ''success'' message will be sent through NSCC's I&RS to the Distributor. Alternatively, the Carrier may send a failure message to the Distributor if the requested transaction fails (for instance, if after the request is initiated a price change in an underlying fund results in a value that is outside of the amount allowed for a withdrawal), or the Carrier may send a pending message.

[2] 15 U.S.C. 78s(b)(3)(A)(ii)

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 240.19b–4(f)(4)(i).

[6] The Commission has modified the text of the summaries prepared by NSCC.

[7] Note that Rule 57, Section 1(j) generally provides that NSCC will not be responsible for the completeness or accuracy of any data transmitted between I&RS Members through NSCC's I&RS, nor for any errors, omissions or delays which may occur in the absence of gross negligence on NSCC's part, in the transmission of such data between I&RS Members. The changes to Rule 57 being proposed hereby are subject to the limitations set forth in Rule 57, Section 1(j).

The proposed IFT enhancements will also support a cancellation functionality to allow the Distributor to request the cancellation of a withdrawal or arrangement request. The Carrier may accept the cancellation request, or it may reject it (if, for example, the Carrier does not allow the cancellation under the reject reason code provided by the Distributor).

Implementation of the withdrawal and arrangement messaging enhancements being proposed by this rule filing will be the third phase of NSCC's plan for the automation and standardization of a broad range of messaging enhancements to the IFT product service.[8] The automation of in force transactions is consistent with the insurance industry's straight-through processing objectives and the continued efforts to mainstream insurance products with other financial products.

The proposed IFT messaging enhancements are intended to replace the current varied processes used by Distributors to request withdrawals from or changed arrangements within an insurance contract. Current processes include using Carrier Web sites, telephone, fax, and email. Automation and standardization of the process will increase efficiency, create an automated record of the transaction, and facilitate monitoring compliance with regulatory requirements.[9] By centralizing all withdrawal requests initiated by registered representatives through one application at NSCC, a broker-dealer firm will be better able to monitor the activity of its registered representatives to assure compliance with regulatory requirements. To facilitate compliance requirements under Rule 22c–1 of the Investment Company Act of 1940 (''1940 Act''), the withdrawal request message from the Distributor to the Carrier has mandatory message fields for the transaction date and transaction time, these being the date and time the Distributor received the withdrawal request from its customer. Pursuant to arrangements between a Distributor and the Carrier that issued the variable contract, the Carrier may determine to accept the Distributor's receipt of the order from its customer as the time the order was received for purposes of Rule 22c–1.[10]

The Proposed Settlement Enhancement. The in force money settlement enhancement being proposed by this rule change will leverage NSCC's existing net daily money settlement process and apply it to in force policy withdrawal or premium payment transaction. Once implemented, the proposed money settlement functionality would be available for all in force transactions that include a money settlement component, as opposed to having to create the money settlement functionality on a product-by-product basis as is currently the practice. The in force money settlement enhancement would only be available to I&RS Members and would permit Carriers and Distributors to settle money transactions even if the underlying in force insurance transaction is, or was, processed outside of NSCC (e.g., an in force policy that contains a systematic withdrawal provision). Under the proposed enhancement, a money settlement transaction to be processed within NSCC's I&RS network would be in all cases initiated by the I&RS Member whose account is to be debited. The credit to be paid to the applicable contra side I&RS Member will be processed through NSCC's net daily money settlement process and, to the extent a net credit is due to such contra side I&RS Member under NSCC's settlement rules, payment shall be made in accordance with NSCC's standard settlement procedures.

Automated money settlement for some of these currently non-automated transactions would provide activity detail between I&RS Member Carriers and Distributors currently not existing today and would allow these I&RS Members to include such settlements within their daily NSCC net settlement obligations. As with all I&RS settlement, the proposed settlement enhancement would be a non-guaranteed service of NSCC.

The Proposed Fees. NSCC proposes to update the Fee Schedule to incorporate the fees associated with the messaging and settlement enhancements proposed by this rule filing and to make certain technical and clarification changes. The fees associated with withdrawal message requests will be $1.25 per message request per side. The fees associated with arrangement message requests will be $1.25 per message request per side. The fees associated with settlement processing for withdrawals and premium payments will be $0.50 per transaction per side.

(ii) The proposed rule change will promote processing efficiencies between Carriers and Distributors, thereby facilitating the prompt and accurate processing of securities transactions, consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii)[11] and (iii)[12] of the Act and Rule 19b–4(f)(2)[13] and (4)(i)[14] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member imposed by NSCC and because it effects a change in an existing service of NSCC that does not significantly affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible, and does not significantly affect the respective rights or obligations of NSCC or persons using this service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[8] *See, e.g.,* SR–NSCC–2005–02, Securities Exchange Act Release No. 34–51753 (May 27, 2005), 70 FR 32859 (June 6, 2005); SR–NSCC–2005–09, Securities Exchange Act Release No. 34–52343 (August 26, 2005), 70 FR 52461 (September 2, 2005); SR–NSCC–2008–03, Securities Exchange Act Release No. 34–58053 (June 26, 2008), 73 FR 38749 (July 7, 2008).

[9] Variable insurance products are ''securities'' for purposes of federal securities law, the sale of which is subject to regulation by the Commission and the Financial Industry Regulatory Authority (''FINRA''). In addition, investment options (or ''funds'') included within a variable insurance contract are typically separate accounts that are, absent an exemption, required to register as investment companies under the 1940 Act. Withdrawals must therefore also comply with relevant provisions of the 1940 Act and the regulations promulgated thereunder.

[10] Rule 22c–1 under the 1940 Act, often referred to as the ''forward pricing'' rule, requires that orders in investment company shares be priced based upon the current net asset value (NAV) next computed after receipt of the order to buy or redeem shares (17 CFR 270.22c–1(a)). The receipt of an order for the purchase or redemption of mutual fund shares by a distributing broker-dealer from its customer is generally deemed receipt of the order in investment company shares for purposes of Rule 22c–1. This practice is generally subject to the provisions of the distribution agreement between the fund and the distributing broker-dealer.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 240.19b–4(f)(4)(i).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2012–03 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–NSCC–2012–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/SR-NSCC-2012-03.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2012–03 and should be submitted on or before April 4, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–6106 Filed 3–13–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66538; File No. SR–ICEEU–2012–03]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise Rules Related to Certain Operational Changes Relating to Timing, Effectiveness and Operation of Transfer Orders for Purposes of Compliance With Non-U.S. Legislation

March 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on March 6, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe is in regular communication with representatives of its Clearing Members, as that term is defined in the Rules of ICE Clear Europe[3] (''Rules'') in relation to the operation of clearing processes and arrangements. From time-to-time, ICE Clear Europe must amend its Rules with reference to its home country and home region regulation. These changes follow recent amendments and changes to home country and home region regulation. Following consultation with its applicable home country regulators ICE Clear Europe has published these proposed rule changes, has carried out a public consultation process in respect of all of the changes described below, and has presented and agreed to the changes described below with its Clearing Members. These changes seek to clarify the timing and operation of various clearing processes, for existing clearing activities. Specifically, ICE Clear Europe is making changes to Part 12 of its Rules, which set out how certain transfer, clearing and settlement orders are treated for purposes of non-U.S. insolvency legislation, namely the U.K. Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the ''U.K. Settlement Finality Rules'') and the EU Settlement Finality Directive (Directive 98/26/EC) (together with the U.K. Settlement Finality Rules, the ''Settlement Finality Legislation''). These proposed changes reflect changes to ICE Clear Europe's clearing and payment systems that have been proposed following designation by U.K. authorities as a ''designated system'' for purposes of such legislation; the proposed changes follow various meetings and discussions with the relevant U.K. authorities. These changes were published in ICE Clear Europe circular no. C11/169 on November 25, 2011, available at: *https://www.theice.com/publicdocs/clear_europe/circulars/C11169_att1.pdf*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is for applicable provisions of the Rules to be updated to reflect technical details relating to the treatment of certain transfer, clearing

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* ICE Clear Europe Rule 101. The Rules are available on-line at: *https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=*. All capitalized terms not defined herein are defined in the Rules.

[4] The Commission has modified the text of the summaries prepared by ICE Clear Europe.

and settlement orders for purposes of the Settlement Finality Legislation.

The Rule changes affect Part 12 of the ICE Clear Europe Rules. In general, the rule changes create specific rules regarding: The creation of various Transfer Orders, which include certain Clearing Orders, and Settlement Orders (each as defined for purposes of the Rules); the times at which such orders become irrevocable; the manner by which non-irrevocable Transfer Orders may be varied; and the manner by which Transfer Orders may be satisfied. Finally, certain definitions found in Part 12 of the Rules are amended to account for the Settlement Finality Legislation, and to correspond to other changes to Part 12. Each of these changes is described in detail as follows.

Part 12 of the ICE Clear Europe Rules sets forth Rules that are designed to comply with the Settlement Finality Legislation. In order to update those rules to comply with the Settlement Finality Legislation, Rule 1202 is modified to change the manner by which immediate and automatic entry of various Payment Transfer Orders occurs.

In this regard, various changes are made to Rule 1202.

Rule 1202(a)(i) gives rise to a Payment Transfer Order at any time that a Contract is formed by virtue of the operation of ICE Clear Europe Rule 401. Under the rule changes, such Open Offer Payment Transfer Orders are renamed ''New Contract Payment Transfer Orders''. Rule 1202(a)(i) is also modified to exclude energy contracts arising under Rule 401(a)(vii), and any CDS Contract arising pursuant to Rule 401(a)(x) pursuant to a Bilateral CDS Transaction submitted for Weekly Clearing.

Rule 1202(a)(ii) gives rise to a Payment Transfer Order upon the Clearing House sending an instruction pursuant to Rule 302. Such Payment Transfer Orders are renamed ''Debit Payment Transfer Orders.''

Rule 1202(a)(iii) gives rise to a Payment Transfer Order if and when the Clearing House sends an instruction by means of an electronic, telephone or other message means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank. Under The rule changes, such Payment Transfer Orders are renamed ''AFI–CB Payment Transfer Orders.''

Rule 1202(a)(iv) creates a Payment Transfer Order where the Clearing House sends an instruction by means of an electronic, telephone or other message means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account. Under the rule changes, such Payment Transfer Orders are renamed ''CB–AFI Payment Transfer Orders.''

Rule 1202(a)(v) gives rise to a Payment Transfer Order in the event that the Clearing House receives a notification pursuant to Rule 1205(b). This form of Payment Transfer Order is called an ''Insufficient Funds Payment Transfer Order.'' Under the rule changes, Rule 1202(a)(v) is deleted, as are other references to Insufficient Funds Payment Transfer Orders that exist elsewhere in Part 12.

Rule 1202(e) sets forth the scope of Payment Transfer Orders. Under (i) in that Rule, in the case of an Open Offer Payment Transfer Order, the Payment Transfer Order applies and has effect in the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising. For any CDS Contract arising as a result of Trade Date Clearing, this will be the Initial Payment. In the case of a Credit/Debit Payment Transfer Order, AFI–CB Payment Transfer Order or CB–AFI Payment Transfer Order, the Payment Transfer Order applies and has effect in the amount specified in the relevant instruction referred to in Rule 1202(a). This Rule is amended to specify the change in name from ''Open Offer Payment Transfer Order'' to ''New Contract Payment Transfer Order.'' No substantive change is made to Rule 1202(e).

Rule 1202(b) sets forth the circumstances under which a Securities Transfer Order arises. Under Rule 1202(b)(i), a Position Transfer Order, which is a form of Securities Transfer Order, arises only if both of the Clearing Members are Participants. Under the rule changes, Rule 1202(b)(i)(A) is modified such that the Securities Transfer Order arises if the Clearing House, the relevant Market, and the two Clearing Members involved have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another pursuant to Rule 408(a)(i). Rule 1202(b)(i)(a) is modified to include parenthetical text that both Clearing Members must be Participants for purposes of this Rule 1202(b)(i). This change is not substantive. Rule 1202(b)(i)(B) permits a Securities Transfer Order to arise if the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member pursuant to the Clearing House's powers under Rule 902, Rule 903 or otherwise. Rule 1202(b)(i)(B) is modified to specify that the Clearing Member to whom the Defaulter's position is being transferred must be a Participant for purposes of the creation of a Securities Transfer Order. The scope of Position Transfer Orders under Rule 1202(f) is unchanged: each Position Transfer Order applies and has effect in respect of the Contracts to be transferred, assigned or novated.

Additional means of creating Securities Transfer Orders are added at Rules 1202(b)(ii) through (b)(vi). These Securities Transfer Orders are new to Part 12 of the Rules.

Under Rule 1202(b)(ii) a ''Collateral Transfer Order'' arises if and when the Clearing House accepts, through the ICE Systems, that a Clearing Member has validly requested either the transfer of Non-Cash Collateral to the order of the Clearing House, or a transfer to that Clearing Member or to its order of Non-Cash Collateral. Under Rule 1202(g), a Collateral Transfer Order applies and has effect in respect of the Non-Cash Collateral to be transferred to or to the order of the Clearing House or Clearing Member.

Under Rule 1202(b)(iii), a Securities Transfer Order arises when the Clearing House has received full, complete and correct information in relation to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction from the relevant Market. Such Securities Transfer Orders are designated ''Energy Block Clearing Orders.'' In accordance with Rule 1202(h) Energy Block Clearing Orders apply and have effect in respect of the ICE OTC Transaction or ICE Futures Europe Transaction in question and any resulting Energy Contract.

A Securities Transfer Order arises under Rule 1202(b)(iv) in respect of a Bilateral CDS Transaction submitted for Weekly Clearing if the Clearing House provides a report of such transaction to a Clearing Member after it has checked whether a Bilateral CDS Transaction submitted for Clearing is consistent with the records submitted by another Clearing Member and with the records in Deriv/SERV. Such a Securities Transfer Order is designated a ''Weekly CDS Clearing Order.''

Under Rule 1202(b)(v), a Securities Transfer Order arises in respect of a Bilateral CDS Transaction that is submitted for Trade Date Clearing if the Clearing House issues an acceptance notice in accordance with Rule 401(a)(ix) to a Clearing Member through the ICE System. Such a Securities Transfer Order is designated a ''Trade Date CDS Clearing Order.'' Trade Date

CDS Clearing Orders and Weekly CDS Clearing Orders are together designated as ''CDS Clearing Orders.'' Under Rule 1202(i), each CDS Clearing Order shall apply and have effect in respect of the Bilateral CDS Transaction in question and any resulting CDS Contract.

Under Rule 1202(b)(vi), a ''CDS Physical Settlement Order'' arises in one of two situations. Under Rule 1202(b)(vi)(A), a CDS Physical Settlement Order arises if the Clearing House is provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a Notice of Physical Settlement in respect of Matched CDS Contracts, where the Notice of Physical Settlement specifies an instrument to be delivered that is an SFD Security. Under Rule 1202(b)(vi)(B), a CDS Physical Settlement Order will arise when the Clearing House is provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a NOPS Amendment Notice in respect of Matched CDS Contracts, where the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security but where the Notice of Physical Settlement (including, as amended by any previous NOPS Amendment Notice) had specified an instrument that is not an SFD Security as the instrument that was to be delivered. Since CDS Physical Settlement Orders, as described in Rule 1202(b)(vi), arise in respect of Matched Pairs, then, correspondingly, under Rule 1202(j), two separate CDS Physical Settlement Orders apply and have effect separately in respect of each of the CDS Contracts in the Matched Pair that are subject to a physical settlement obligation, and the instrument to be delivered pursuant thereto.

Rule 1202(k) sets forth the scope of each Transfer Order in respect of the persons against whom such Transfer Order has effect. In this respect, Existing Rule 1202(g) (now renumbered Rule 1202(k)) is unchanged in respect of New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, AFI–CB Payment Transfer Orders or CB–AFI Payment Transfer Orders. This Rule is, however, amended to specify the change in name from ''Open Offer Payment Transfer Order'' to ''New Contract Payment Transfer Order.''

Rule 1202(k) is also amended to set forth the scope (in respect of the persons against whom such Transfer Order has effect) of Collateral Transfer Orders, Energy Block Clearing Transfer Orders, CDS Clearing Orders, and CDS Physical Settlement Orders. Each of Rules 1202(k)(v) through (viii) is new text.

Under Rule 1202(k)(v), a Collateral Transfer Order has effect against and between each of the following Persons: (A) The Clearing Member that is the transferor of the Non-Cash Collateral in question; (B) any Custodian of the Clearing Member or the Clearing House; and (C) the Clearing House.

Under Rule 1202(k)(vi), in the case of an Energy Block Clearing Order, such Energy Block Clearing Order has effect against and between each of the following Persons: (A) each Clearing Member that has submitted or confirmed details of the ICE OTC Block Transaction or ICE Futures Europe Block Transaction; (B) any Affiliate of the Clearing Member that was party to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction and which is an Indirect Participant (if any); and (C) the Clearing House.

Under Rule 1202(k)(vii), a CDS Clearing Order has effect against and between the following Persons: (A) Each Clearing Member that has submitted or confirmed details of the Bilateral CDS Transaction; (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and (C) the Clearing House.

Under Rule 1202(k)(viii), a CDS Physical Settlement Order will have effect against and between the following Persons: (A) Each Clearing Member in the Matched Pair; and (B) the Clearing House.

In order to ensure that Intermediary Financial Institutions are also subject to any Transfer Order, new Rule 1202(l) sets forth that where a Transfer Order applies to an Approved Financial Institution, it also applies to and is effective against any Intermediary Financial Institution used by that Approved Financial Institution.

Rule 1203 sets forth the time(s) at which a Transfer Order becomes irrevocable. With respect to Credit/Debit Payment Transfer Orders, AFI–CB Payment Transfer Orders, and CB–AFI Payment Transfer Orders, no substantial change is made: Rules 1203(a) through (c) specify that such Transfer Orders become irrevocable at the time that the specified party sends a message confirming that the relevant payment will be made. These Rules are amended solely to add, in each case, that such Transfer Orders also become irrevocable at the time that the specified party sends a message confirming that the relevant payment has been made.

Under Rule 1203(d) as it read prior to amendment, an Open Offer Payment Transfer Order becomes irrevocable upon an Approved Financial Institution sending specified form of message confirming that the relevant payment will be made. This Rule is amended to specify the change in name from Open Offer Payment Transfer Order to New Contract Payment Transfer Order, and to specify that such Transfer Order becomes irrevocable when the specified party sends a specified form of message confirming that amount to which the New Contract Payment Transfer Order relates (as specified in Rule 1202(e)(i), described above) will be or has been made.

Rule 1203(e) sets forth when a Position Transfer Order becomes irrevocable. Under that Rule, prior to amendment, a Position Transfer Order would become irrevocable at the time when the definitive record of the long or short position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the ICE Systems to reflect the transfer of Contracts given effect pursuant to the Position Transfer Order. This Rule is amended to change the designation from ''long or short position'' to the defined term ''Open Contract Position,'' and it is also amended to ensure that the definitive record referenced may be updated to show assignment or novation in addition to transfer of Contracts which are given effect pursuant to the Position Transfer Order.

Rules 1203(f) through (j) set forth the irrevocability standards for Collateral Transfer Orders, Energy Block Transfer Orders, CDS Clearing Orders, and CDS Physical Settlement Orders. Rules 1203(f) through (j) are new rule text.

Under Rule 1203(f), a Collateral Transfer Order becomes irrevocable at the earlier of two times: either when the Clearing House receives the Non-Cash Collateral, or when any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which a securities transfer order in a designated system for purposes of the Settlement Finality Legislation which is not the Designated System) becomes irrevocable.

Under Rule 1203(g), an Energy Block Clearing Order becomes irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).

Under Rule 1203(h), a CDS Clearing Order shall become irrevocable when the time specified pursuant to the Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a)(x).

Under Rule 1203(i), a CDS Physical Settlement Order shall become irrevocable at the earliest of three times: first, when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions to a securities system, depository, nominee or custodian for the transfer of securities to or to the account of the Matched CDS Seller; second, at the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or third, if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.

Rule 1204 sets forth the rules regarding cancellation and variation of Transfer Orders. The following amendments are made to Rule 1204 to correspond to the amendments noted above.

Rule 1204(a)(i) provides a residual category of rules for determination of cancellation. That residual category is where the Transfer Order in question is affected by manifest or proven error. While Rule 1204(a)(i) is new text, it generally tracks the circumstances permitting cancellation of Transfer Orders found in Rule 1206 (as the same is written prior to amendment). Rule 1206 is now deleted, as cancellation and variation of Transfer Orders is consolidated into Rule 1204.

Rule 1204(a)(ii) through (v) set forth cancellation and variation rules for New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, Position Transfer Orders, Weekly CDS Clearing Orders, CDS Clearing Orders, Physical Settlement Orders, or Energy Block Clearing Orders.

Under Rule 1204(a)(ii), New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, or Position Transfer Orders may be cancelled or varied if they are void ab initio pursuant to Rule 403, avoided pursuant to Rule 404, or amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to the Rules.

Without prejudice to the generality of Rule 1204(a)(i), Rule 1204(a)(iii) sets forth that cancellation or variation, in the case of a Weekly CDS Clearing Order, may occur if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data relating to any Bilateral CDS Transaction to which the Weekly CDS Clearing Order relates is otherwise capable of being amended in accordance with the Procedures. Rule 1204(a)(iii) is new text.

Under Rule 1204(a)(iv), variation or cancellation may occur, in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched CDS Buyer in accordance with Rule 1505 and Rule 1509. Rule 1204(a)(iv) is new text.

Without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), under Rule 1204(a)(v), variation or cancellation may occur, in the case of an Energy Block Clearing Order or CDS Clearing Order, if such Order relates to a Transaction which is not eligible for Clearing or which is not accepted for Clearing by the Clearing House. Rule 1204(a)(v) is new text.

Under Rule 1204(b) prior to amendment, neither the validity nor the irrevocability of any Transfer Order would of itself be affected by any event described in Rule 1204(a) occurring. This Rule is amended to ensure that it is subject to new Rules 1205(d), (f), and (g) relating to termination of Transfer Orders. Rules 1205(d), (f), and (g) are described below.

Rule 1204(c) states that the terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable the Clearing House to exercise its rights under Rule 1204) that the circumstances described above in Rule 1204(a) have not occurred. Rule 1204(c) is new text.

Rule 1204(d) describes the procedure for Transfer Order Variation. Under that Rule, if any of the circumstances described in Rule 1204(a) has occurred, then the amount payable, Contracts to be transferred or to arise or SFD Securities or Non-Cash Collateral to be delivered pursuant to the affected Transfer Order may at the discretion of ICE Clear Europe be increased, decreased or otherwise varied (as necessary) to reflect payments, transfers, Contracts, assignments, novations, SFD Securities, Non-Cash Collateral or deliveries that would have been required under specified circumstances. Specifically, the variation permitted by ICE Clear Europe is that which would have been required: (i) In the case of Rule 1204(a)(i) applying, had there been no error; (ii) in the case of Rule 1204(a)(ii)(A), Rule 1204(a)(ii)(B) or Rule 1204(a)(v) applying as described above, had no Contract or Transaction ever arisen or occurred; (iii) in the case of Rule 1204(a)(ii)(C) applying as described above, had the Contract always been subject to such amended terms as are agreed or determined; (iv) in the case of Rule 1204(a)(iii) applying as described above, had the details of the Bilateral CDS Transaction always been corrected or amended as permitted in accordance with the Procedures; or (v) in the case of Rule 1204(a)(iv) applying as described above, and the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security, as if the Notice of Physical Settlement had been originally issued as amended pursuant to the NOPS Amendment Notice. This text replaces the earlier procedure for variation by ICE Clear Europe, which permitted variation to amounts that would have been required, in the case of the application of Rule 1204(a)(i) or (ii), had no Contract or Transaction ever arisen or occurred, and in the case of application of Rule 1204(a)(iii), had the Contract always been subject to such amended terms as are agreed or determined.

Rule 1204(e) is unchanged in that a Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants. However, the rule amendments clarify that valid delivery of a NOPS Amendment Notice in accordance with Rules 1505 and 1509 by a Matched CDS Buyer in a Matched Pair is deemed to constitute notice by the Clearing House for purposes of Rule 1204(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

Rule 1204(f) replaces former Rule 1206(a) relating to cancellation of Transfer Orders in lieu of Variation. Under Rule 1204(f), if any of the circumstances described in Rule 1204(a) has occurred, then the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may under Rule 1204(f) be effected by the Clearing House serving a notice of cancellation on all affected Participants. Rule 1204(f) also clarifies that in respect of an Energy Block Clearing Order or CDS Clearing Order, such notice shall be deemed to have been given if the Clearing House (or, in the case of an Energy Block Clearing Order, any Market) rejects a Transaction for Clearing.

Under Rule 1204(g), which is new text, a CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to the Clearing House of a validly delivered NOPS Amendment

Notice specifying an instrument for delivery which is not an SFD Security.

Rule 1204(h) replaces former Rule 1206(b) relating to the ability of ICE Clear Europe to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order that is subject to the events of Rule 1204(a). Rule 1204(h) retains the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule 1204(a) occur. However, the Rule as amended states that no Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House, and also that the ability of the Clearing House to cancel a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

Rule 1205 sets forth the provisions for termination (satisfaction) of Transfer Orders. Rules 1205(a) and (b), which are formerly designated Rules 1207(a) and (b), are unchanged, except that the term ''terminate'' is replaced with ''be satisfied'' to denote the satisfaction (rather than ''termination'') of such Orders. Also, the provisions of Rule 1205(b) are modified to clarify that each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203 (whereupon all Contracts to which the Transfer Order in question relates will have been transferred, assigned or novated pursuant to the Rules).

Rules 1205(c) through (g) describe satisfaction of Collateral Transfer Orders, CDS Clearing Orders, Energy Block Clearing Orders, CDS Physical Settlement Orders, Credit/Debit Payment Transfer Orders, and New Contract Payment Transfer Orders.

Rule 1205(c) sets out the procedures for satisfaction of Collateral Transfer Orders. This Rule comprises new text. Under the Rule, each Collateral Transfer Order shall be satisfied immediately and automatically at the later of two times: either when the Clearing House receives the Non-Cash Collateral in its account, or when the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.

Under Rule 1205(d), the procedures for satisfaction of CDS Clearing Orders or Energy Block Clearing Orders are set forth. Rule 1205(d) is new. Under this Rule, CDS Clearing Orders or Energy Block Clearing Orders are satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).

The satisfaction of CDS Physical Settlement Orders is described in new Rule 1205(e). Under that Rule, a CDS Physical Settlement Order is satisfied immediately and automatically at the time when ICE Clear Europe updates its records of the relevant CDS Contracts in the ICE Systems to reflect that either physical delivery of the security in question has been completed or the delivery obligations of the parties under the relevant CDS Contracts have otherwise been discharged or settled.

Rule 1205(f) amends and replaces prior Rule 1207(c). Under Rule 1207(c), if a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order becomes irrevocable in respect of the same obligation to which an Open Offer Payment Transfer Order relates, the Open Offer Payment Transfer Order shall automatically be terminated and shall not become irrevocable. Under Rule 1205(f) as it is amended, the reference to Insufficient Funds Payment Transfer Order is deleted, the term Open Offer Payment Transfer Order is renamed New Contract Payment Transfer Order, and the term ''terminated'' is replaced with ''satisfied.'' Further, the amendment acknowledges that New Contract Payment Transfer Orders will generally terminate in accordance with Rule 1205(f) when standard clearing and payment processes apply.

Under Rule 1205(g), a New Contract Payment Transfer Order relating to an Energy Contract shall be satisfied immediately and automatically if and at the point that the relevant Energy Transaction or Contract is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii). This replaces former Rule 1207(d), under which an Open Offer Payment Transfer Order is terminated immediately and automatically if and at the point that the relevant Transaction is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

ICE Clear Europe has engaged in a public consultation process in relation to all the changes, pursuant to the Circulars referred to above, and as required under U.K. legislation. ICE Clear Europe has received no opposing views or comments in relation to the proposed rule amendments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have been solicited by ICE Clear Europe pursuant to public consultation processes in the circulars referred to above. No comments have been received. The time period for the public consultation has closed so ICE Clear Europe does not expect to receive any further written comments as a result of this process. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2012–03 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–ICEEU–2012–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICE_Clear_Europe_Settlement_Finality_Rule_Filing.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2012–03 and should be submitted on or before April 4, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[6] and the rules and regulations thereunder applicable to ICE Clear Europe. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[7] which requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it will contribute to ICE Clear Europe ensuring settlement finality of certain transfer, clearing, and settlement orders under the Settlement Finality Legislation.

ICE Clear Europe has requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. The Commission finds good cause for accelerating approval because these changes are required pursuant to the Settlement Finality Legislation. Specifically, these changes reflect modifications to ICE Clear Europe's clearing and payment systems that have been proposed following designation by U.K. authorities as a ''designated system'' for purposes of such legislation; the proposed changes follow various meetings and discussions with the relevant U.K. authorities. If ICE Clear Europe does not make the changes described in this rule proposal, ICE Clear Europe may be in contravention of home country and home region legislation.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–ICEEU–2012–03) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–6105 Filed 3–13–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13029 and #13030]

Kentucky Disaster #KY–00044; Disaster Declaration for Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA—4057—DR), dated 03/06/2012.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 02/29/2012 through 03/03/2012.

DATES: Effective Date: 03/06/2012.

Physical Loan Application Deadline Date: 05/07/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/06/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans)

Johnson, Kenton, Laurel, Lawrence, Menifee, Morgan, Pendleton.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Bath, Boone, Boyd, Bracken, Campbell, Carter, Clay, Elliott, Floyd, Grant, Harrison, Jackson, Knox, Magoffin, Martin, McCreary, Montgomery, Powell, Pulaski, Rockcastle, Rowan, Whitley, Wolfe.

Ohio: Clermont, Hamilton.

West Virginia: Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13029C and for economic injury is 130300.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–6093 Filed 3–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13027 and #13028; Washington Disaster #WA–00036]

Disaster Declaration for Washington

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4056–DR), dated 03/05/2012.

Incident: Severe Winter Storm, Flooding, Landslides, and Mudslides.

Incident Period: 01/14/2012 through 01/23/2012.

Effective Date: 03/05/2012.

Physical Loan Application Deadline Date: 05/04/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/05/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clallam, Grays Harbor, King, Klickitat, Lewis, Mason, Pierce, Skamania, Snohomish, Thurston, Wahkiakum.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13027B and for economic injury is 13028B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–6094 Filed 3–13–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2012–0255]

Public Meeting: U.S. Registration of Aircraft in the Name of Owner Trustees

AGENCY: Federal Aviation Administration.

ACTION: Notice of Public Meeting.

SUMMARY: The FAA will be holding a public meeting on Wednesday, June 6, 2012, on the Notice of Proposed Policy Clarification Regarding the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries. During the meeting, the FAA will be seeking further views from the public with respect to the use of owner trusts to register aircraft for the benefit of beneficiaries that are neither U.S. citizens nor resident aliens. The comment period for the policy clarification notice is extended until July 6, 2012.

DATES: The meeting will be held on Wednesday, June 6, 2012, beginning at 9 a.m. Central Time and ending no later than 5 p.m. Central Time. Written public comments regarding this FAA proposed policy should be submitted by July 6, 2012, via email to *ladeana.peden@faa.gov.*

ADDRESSES: The meeting will be held at the Marriott Renaissance Convention Center Hotel, 10 North Broadway Avenue, Oklahoma City, OK 73102. Phone 1–405–228–8000 or 1–800–466–8351.

FOR FURTHER INFORMATION CONTACT: LaDeana Peden at 405–954–3296, Office of Aeronautical Center Counsel, Federal Aviation Administration. [Assistance for the hearing impaired is available through the Sign Language Resource Service (SLRS), Inc. at: 1–888–842–9460 or 405–721–0800 or *http://www.SLRSinc.com.*]

SUPPLEMENTARY INFORMATION: Incident to the first public meeting in Oklahoma City, OK on June 1, 2011, FAA considered written and transcribed verbal comments by the public concerning issues relating to aircraft registration in the name of owner trustees for the benefit of non-U.S. citizen beneficiaries. FAA then followed up with a notice published in the **Federal Register** on February 9, 2012, proposing to clarify its policy and allowing written public comment on the proposed policy clarification until March 31, 2012. [Notice of Proposed Policy Clarification Regarding the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries.]

As a result of continuing public interest and as requested on behalf of the Aviation Working Group, FAA has decided to hold another public meeting and to extend the deadline for public comment from March 31, 2012 until July 6, 2012. Notwithstanding the extension of the deadline for comments, the FAA would welcome receiving written comments prior to the public meeting in order to frame the discussion at the meeting. The FAA expects that the comments received in response to the February 9 notice and during the public meeting will enable it to develop a final policy clarification shortly thereafter.

Issued in Washington DC on March 9, 2012.

Kathryn B. Thomson,

Chief Counsel, Federal Aviation Administration.

[FR Doc. 2012–6146 Filed 3–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0022]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on January 5, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 13, 2012.

ADDRESSES: You may 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 DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance;

(2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2012–0022.

FOR FURTHER INFORMATION CONTACT: Keith Williams, 202–366–9212, Highway Safety Specialist, Program Planning Team, Office of Safety Programs, Federal Highway Administration, Department of Transportation, 545 John Knox Road Suite 200, 1200 New Jersey Avenue SE., Room E73–405, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Compendium of State Performance Management Practices and Methodologies for Setting a National Safety Performance Target.

Type of request: New information collection requirement.

Background: This information collection effort is part of a larger project to document the methodologies currently used by the States to develop highway safety performance measures and targets. The research project includes a literature review of current guidance and practices, a technical report on performance management and target setting in comparable non-highway safety environments, a peer exchange to explore methodologies and establish promising practices and finally, alternative methodologies for setting a national highway safety performance target.

This information collection will specifically support a compendium and evaluation of how baseline information is used in individual States, the District of Columbia, Metropolitan Planning Organizations (MPOs), local and tribal agencies to select, set and evaluate performance based highway safety measures and how they affect the overall State's highway safety programs. FHWA proposes to conduct a web-based survey to evaluate the methodologies used by State Departments of Transportation, State Governor's Highway Safety Offices, select Metropolitan Planning Organizations and local departments of transportation to identify methodologies for selecting highway safety performance measures and methodologies for setting performance targets based on those measures. Sample size will be approximately 160 persons, representing each of the State Departments of Transportation; each of the Governor's Highway Safety Offices, the District of Columbia, and select MPOs and local departments of transportation. Interview length will be approximately 30 minutes.

The surveys will be conducted by emailing a URL link to the appropriate representative within each organization. A standardized questionnaire will be used to collect the information from the representatives.

This information collection will not require complex statistical analysis and will not be published for general public consumption. The collection will be used to support further research in developing and evaluating a methodology to set and support National and State highway safety performance measures and targets.

Respondents: State DOT's the District of Columbia, and select MPOs and local departments of transportation (160 total).

Frequency: Annually.

Estimated Average Burden per Response: It will take approximately 30 minutes per participant.

Estimated Total Annual Burden Hours: Approximately 80 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 9, 2012.

Michael Howell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2012–6200 Filed 3–13–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind the Notice of Intent To Prepare an Environmental Impact Statement, Valley County, ID

AGENCY: Federal Highway Administration.

ACTION: Rescind Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent published on January 24, 2000 (Volume 65, Number 15) to prepare an EIS for a proposed highway project in Valley County, Idaho is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. John Perry, Field Operations Engineer, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, Telephone: (208)334–9180 or Mr. Greg Vitley, Sr. Environmental Planner, Idaho Transportation Department District 3, P.O. Box 8028, 83707–2028, Telephone: (208)334–8300.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) in cooperation with Idaho Transportation Department (ITD) published a Notice of Intent (NOI) on January 24, 2000 (Volume 65, Number 15) to prepare an Environmental Impact Statement (EIS) evaluating the alternatives for transportation improvements along a 7.04-mile stretch of State Highway 55 (SH–55) from milepost 94.85 to milepost 101.89. The project is officially known as the SH–55, Smith's Ferry to Round Valley Project (Project No. DHP–NH–1568(001); Key No. 01004). The Purpose and Need of this project was to improve safety, reduce existing road deficiencies, and decrease traffic congestion in the area of Smith's Ferry to Round Valley, on SH–55. A series of project team meetings/public workshops were held and a range of alternatives were developed and evaluated; however, because development pressures have decreased since the inception of this project, ITD has determined the basis for the Purpose and Need of the project is no longer valid resulting in the NOI being rescinded.

Instead, minor safety and congestion improvements which may include north and southbound passing lanes, and intersection improvements are being proposed to meet the future needs of the corridor. These improvements could require minor road realignments to avoid existing resources and replacement of Tripod Creek and Round

Valley Creek culverts. To meet fiscal constraint requirements, the project would be programmed in a phased manner. These proposed safety improvements are not anticipated to result in significant impacts on the human or natural environment.

If, at a future time, FHWA determines that the proposed safety and congestion improvements are likely to have a significant impact on the environment, a new NOI to prepare an EIS will be published.

To ensure that the full range of issues related are identified, comments or questions regarding this action to rescind the NOI are invited from all interested parties. These comments or questions should be directed to FHWA or ITD at the addresses provided above.

Peter J. Hartman,

Division Administrator, FHWA—Idaho Division.

[FR Doc. 2012–6123 Filed 3–13–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0012]

Agency Information Collection Activities; New Information Collection Request: Commercial Driver Individual Differences Study

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests approval of a new ICR that is associated with a study that will be conducted by a research contractor to investigate the differences among the characteristics of individual commercial drivers. This information collection will aid FMCSA in developing future safety initiatives by examining a wide array of driver and situational factors to determine if they are associated with increased or decreased crash and incident involvement. On October 3, 2011, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. Five comments were received.

DATES: Please send your comments by April 13, 2012. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2012–0012. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Theresa Hallquist, Federal Motor Carrier Safety Administration, Office of Analysis, Research and Technology, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–1064; Email Address: *theresa.hallquist@dot.gov.* Office hours are from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver Individual Differences Study.

OMB Control Number: 2126–XXXX.

Type of Request: New information collection.

Respondents: Commercial motor vehicle (CMV) drivers and fleet managers.

Estimated Number of Respondents: 21,020.

Estimated Time per Response: The estimated average time per responses are as follows: 1 hour, 5 minutes for paper and 1 hour for electronic Form MCSA–5863, ''Commercial Motor Vehicle Driver Survey,'' submissions; 35 minutes for paper and 30 minutes for electronic Form MCSA–5864, ''Follow-Up Survey of Recent Life Experiences,'' submissions; 75 minutes for paper and 70 minutes for electronic Driver Survey and Job Descriptive Index from the Follow-Up Survey submission; and 10 minutes for the Form MCSA–5865, ''Fleet Managers Survey,'' submissions.

Expiration Date: N/A. This is a new information collection request.

Frequency of Response: This information collection will be a single, nonrecurring event for 16,000 CMV driver participants and 20 fleet managers. For at least 5,000 CMV driver participants, the information collection will occur twice.

Estimated Total Annual Burden: 9,536 hours. 8,822 hours for CMV driver participants: [16,800 CMV drivers completing paper Driver Survey × 65 minutes + 4,200 CMV drivers completing electronic Driver Survey × 1 hour + 4,000 drivers completing paper Follow-Up Survey × 35 minutes per driver/60 minutes + 1,000 drivers completing electronic Follow-Up Survey × 30 minutes per driver/60 minutes + 800 CMV drivers completing paper Driver Survey and Job Descriptive Index × 75 minutes per driver/60 minutes + 200 CMV drivers completing paper Driver Survey and Job Descriptive Index× × 70 minutes per driver/60 minutes = 26,466 hours/3 years = 8,822 hours] + 714 hours for Carrier Operations: [20 participating carriers × 2 hours to learn about and agree to participation + 40 carrier managers completing IRB training × 2 hours + 20 Managers recruiting and handling data collection of 20,000 respondents × 83 hours + 20 Managers completing Fleet Manager Survey × 10 minutes + Carrier managers delivering monthly crash reports to VTTI (20 carriers × 36 months) × 30 minutes/60 minutes = 2,143/3 years = 714 hours]. 8,822 hours for CMV driver participants + 714 hours for Carriers Operations = 9,536 hours.

Background: The purpose of this study is to identify, verify, quantify, and prioritize commercial driver risk factors. Primarily, these are personal factors such as demographic characteristics, medical conditions, personality traits, and performance capabilities. Risk factors may also include work environmental conditions, such as carrier operations type. The study will identify risk factors by linking the characteristics of individual drivers with their driving records, especially the presence or absence of DOT reportable crashes.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: March 5, 2012.

Kelly Leone,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2012–6059 Filed 3–13–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0059]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection: Licensing Applications for Motor Carrier Operating Authority

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA seeks approval to extend an ICR entitled, ''Licensing Applications for Motor Carrier Operating Authority,'' that is used by for-hire motor carriers of regulated commodities, motor passenger carriers, freight forwarders, property brokers, and certain Mexico-domiciled motor carriers to register their operations with the FMCSA. The agency invites public comment on the ICR.

DATES: We must receive your comments on or before May 14, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2012–0059 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf*.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Ryan, Transportation Specialist, Office of Information Technology, Information Technology Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone Number (202) 493–0242; Email Address *denise.ryan@dot.gov*. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background: The FMCSA is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; property brokers under the provisions of 49 U.S.C. 13904; and certain Mexican motor carriers under the provisions of 49 U.S.C. 13902 and the North American Free Trade Agreement (NAFTA) motor carrier access provision. The forms used to apply for registration authority with the FMCSA are: Form OP–1 for motor property carriers and brokers; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders; and Form OP–1(MX) for certain Mexican motor carriers. These forms request information on the applicant's identity, location, familiarity with safety requirements, and type of proposed operations. There are some differences on the forms due to specific statutory standards for registration of the different types of transportation entities.

Title: Licensing Applications for Motor Carrier Operating Authority.

OMB Control Number: 2126–0016.

Type of Request: Extension of a currently-approved information collection.

Respondents: Motor carriers, motor passenger carriers, freight forwarders, brokers, and certain Mexico-domiciled.

Estimated Number of Respondents: 37,239.

Estimated Time per Response: 4 hours to complete Form OP–1(MX); and 2 hours to complete Forms OP–1, OP–1(FF), OP–1(P).

Expiration Date: September 30, 2012.

Frequency of Response: Other (as needed).

Estimated Total Annual Burden: 74,556 hours [71,400 hours for Form OP–1 + 2,000 hours for Form OP–1(P) + 1,000 hours for Form OP–1(FF) + 140 hours for Form OP–1(MX) + 16 hours for OP–1(NNA) = 74,556].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the agency to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: March 2, 2012.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2012–6084 Filed 3–13–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0018]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests approval to revise an ICR entitled, ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders (OMB Control Number 2126–0015),'' which is used to provide registered motor carriers, property brokers, and freight forwarders a means of meeting the Agency's process agent requirements.

On November 29, 2011, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. The Agency did not receive any comments on the notice.

DATES: Please send your comments by April 13, 2012. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2012–0018. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Tura Gatling, Customer Support Team Leader, Commercial Enforcement Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone Number: (202) 385–2412; Email Address: *tura.gatling@dot.gov*. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Control Number: 2126–0015.

Type of Request: Revision of a currently-approved information collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 35,000.

Estimated Time per Response: 10 minutes.

Expiration Date: May 31, 2012.

Frequency of Response: Form BOC–3 must be filed by all for-hire motor carriers, freight forwarders and brokers when the transportation entity first registers with the FMCSA. All brokers shall make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes their process agent designations.

Estimated Total Annual Burden: 5,833 hours [35,000 Form BOC–3 filings per year × 10 minutes/60 minutes to complete form = 5,833 hours].

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; and property brokers under provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA pursuant to 49 CFR 1.73(a)(5).

Registered motor carriers (including private carriers), brokers and freight forwarders must designate an agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303). Registered motor carriers must also designate an agent for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304, 49 CFR 366.4). Every broker shall make a designation for each State in which its offices are located or in which contracts are written (49 U.S.C. 13304, 49 CFR 366.4). Regulations governing the designation of process agents are found at 49 CFR part 366. While part 366 is silent regarding its applicability to freight forwarders, as noted above, they are also required by statute to designate process agents (see 49 U.S.C. 13303). These designations are filed with the FMCSA on Form BOC–3, ''Designation of Agents for Service of Process.''

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: March 5, 2012.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2012–6060 Filed 3–13–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0379]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from seventeen individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before April 13, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0379 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the non-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The seventeen individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

David A. Brannon

Mr. Brannon, age 51, has had a macular scar in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/60. Following an examination in 2011, his ophthalmologist noted, ''I feel Mr. Brannon is qualified to operate a commercial motor vehicle, and he has sufficient vision to perform the task.'' Mr. Brannon reported that he has driven tractor-trailer combinations for 32 years, accumulating 4.2 million miles. He holds a Class A Commercial Driver's License (CDL) from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

Robert L. Brauns

Mr. Brauns, 50, has had complete loss of vision in his right eye due to a traumatic injury sustained in 1998. The best corrected visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''I feel Robert L. Brauns has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brauns reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.5 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bobby R. Brooks

Mr. Brooks, 61, has had complete loss of vision in his right eye due to a traumatic injury sustained 5 years ago. The best corrected visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''Yes, this person has sufficient vision to operate a commercial motor vehicle safely.'' Mr. Brooks reported that he has driven tractor-trailer combinations for 39 years, accumulating 5.4 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Melvin D. Clark

Mr. Clark, 54, has macular scaring in his right eye due to a traumatic injury sustained at age 10. The best corrected visual acuity in right eye is 20/150 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my medical opinion, Mr. Clark demonstrates sufficient vision to perform the driving tasks required to safely operate a commercial vehicle.'' Mr. Clark reported that he has driven straight trucks for 12 years, accumulating 120,000 miles and tractor-trailer combinations for 21 years, accumulating 700,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jackie K. Cooper

Mr. Cooper, 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion this patient, who has been driving commercial vehicles within the state of Utah for an extended period of time and operating safely, has sufficient vision to perform these driving tasks outside the state of Utah as well.'' Mr. Cooper reported that he has driven straight trucks for 10 years, accumulating 50,000 miles and tractor-trailer combinations for 10 years, accumulating 50,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William C. Dempsey, Jr.

Mr. Dempsey, 53, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2011, his ophthalmologist noted, ''Sufficient vision to operate a commercial vehicle.'' Mr. Dempsey reported that he has driven straight trucks for 8 years, accumulating 160,000 miles and tractor-trailer combinations for 33 years, accumulating 1.2 million miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ryan C. Dugan

Mr. Dugan, 31, has a prosthetic right eye due to an injury sustained 10 years ago. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''Because his left eye is completely normal and meets the requirements of horizontal field necessary to operate a commercial vehicle, it is my medical opinion that he has sufficient vision required to operate a commercial vehicle safely.'' Mr. Dugan reported that he has driven straight trucks for 11 years, accumulating 440,000 miles. He holds a Class D operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald J. Garrison

Mr. Garrison, 67, has a corneal scar in his right eye due to a traumatic injury sustained at age 3. The best corrected visual acuity in right eye is count-finger vision and in his left eye, 20/25. Following an examination in 2011, his ophthalmologist noted, ''I feel that Mr. Garrison has adequate vision to operate a motor vehicle and/or a commercial vehicle safely as his vision has been stable most of his life.'' Mr. Garrison reported that he has driven straight trucks for 4 years, accumulating 54,000 miles. He holds a Class D operator's license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glenn C. Grimm

Mr. Grimm, 53, has complete loss of vision in his right eye due to a traumatic injury sustained 33 years ago. The best visual acuity in his left eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''I see no medical ophthalmic contraindication to the patient continuing to perform as a commercial vehicle operator.'' Mr. Grimm reported that he has driven straight trucks for 30 years, accumulating 156,000 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; failure to obey a traffic signal.

Lee P. Holt

Mr. Holt, 45, has had complete loss of vision in his right eye due to a traumatic injury sustained at age 15. The visual acuity in his right eye is light perception and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''Mr. Holt's vision condition has not changed and he has sufficient vision to perform at the same level as pervious in driving a commercial vehicle.'' Mr. Holt reported that he has driven straight trucks for 1 year, accumulating 30,000 miles and tractor-trailer combinations for 6 years, accumulating 2.4 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lance C. Phares

Mr. Phares, 49, has had complete loss in his left eye due to a traumatic injury sustained in 1982. The visual acuity in right eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, I feel Lance has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Phares reported that he has driven straight trucks for 26 years, accumulating 780,000 miles. He holds a Class D operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard A. Pucker

Mr. Pucker, 56, has loss of vision in his left eye due to a traumatic injury sustained in 1974. The best corrected visual acuity in right eye is 20/15 and in his left eye, 20/300. Following an examination in 2011, his optometrist noted, ''In my opinion, the patient has sufficient vision in his right eye and sufficient peripheral vision in his left eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pucker reported that he has driven straight trucks for 38 years, accumulating 1.9 million miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Smith

Mr. Smith, 47, has had anterior ischemic optic neuropathy in left right eye since 2002. The best corrected visual acuity in right eye is 20/16 and in his left eye, no light perception. Following an examination in 2011, his optometrist noted, ''I feel that Mark A. Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 9 years, accumulating 421,000 miles and tractor-trailer combinations for 6 years, accumulating 250,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy L. Stevens

Mr. Stevens, 28, has a prosthetic left eye due to an injury sustained when he was 4 years old. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''I believe that Mr. Stevens is doing very well from an ophthalmologic standpoint and he should have no difficulty in regards to his driving tasks and operating a commercial vehicle.'' Mr. Stevens reported that he has driven straight trucks for 24 years, accumulating 360,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Marion Tutt, Jr.

Mr. Tutt, 46, had amblyopia in his right eye since childhood. The best corrected visual acuity in right eye is 20/200 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, this person has sufficient vision to operate a commercial vehicle safely.'' Mr. Tutt reported that he has driven tractor-trailer combinations for 19 years, accumulating 2.8 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wade W. Ward

Mr. Ward, 51, has had an enucleated right eye since 1998. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2011, his ophthalmologist noted, ''I, Dr. Dirk Dijstal, have as a medical opinion that Mr. Wade Ward has sufficient vision to perform driving tasks such as driving a commercial vehicle.'' Mr. Ward reported that he has driven straight trucks for 2 years, accumulating 22,000 miles and tractor-trailer combinations for 4 years, accumulating 380,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; failure to obey a traffic device.

Jimmy S. Zamora

Mr. Zamora, 54, has had retinal retinopathy in his right eye for the last four years. The best corrected visual acuity in right eye is 20/50 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my medical opinion, Mr. Zamora has sufficient vision to perform

the driving tasks required to operate a commercial vehicle.'' Mr. Zamora reported that he has driven straight trucks for 30 years, accumulating 300,000 miles and tractor-trailer combinations for 30 years, accumulating 3 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows two crashes; he was cited for one of the crashes, and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 13, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 1, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–6085 Filed 3–13–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. RR 999 (Amendment No. 5)]

Released Rates of Motor Common Carriers of Household Goods

AGENCY: Surface Transportation Board.

ACTION: Notice of changes to rules protecting consumers during interstate household-goods moves.

SUMMARY: Notice is hereby given of recent Board decisions concerning interstate household-goods moves. In a decision served January 21, 2011 (January 2011 Decision), the Board implemented a Congressional directive to enhance consumer protection in the case of loss or damage that occurs during interstate household-goods moves.[1] The January 2011 Decision required movers to provide certain information concerning the two available cargo-liability options [2] on the written estimate form—the first form that a moving company must give to a customer—and tentatively raised the dollar value levels used in reimbursing a consumer under the replacement-value option for lost or damaged goods when the consumer had not declared in advance how much the goods were worth. In a decision served on January 12, 2012 (January 2012 Decision), the Board, after reviewing comments filed in response to the January 2011 Decision, modified the requirement in the January 2011 Decision that certain information be put on the estimate form, and it adopted the raised value levels. In particular, the estimate form will now require a shorter notice to be conspicuously placed to notify the consumer early on that it will need to select a liability option at a later time. The brief notice must also refer a potential customer to two sources of further information on the two liability levels and their meaning. Furthermore, the Board will require that movers include the lengthier Valuation Statement [3] on the bill of lading. In addition, the Board affirmed that the charges for full-value protection when the customer does not provide a declared value for a shipment will be the higher of $6.00 per pound (which may be indexed annually) or $6,000. The Board also clarified other aspects of the January 2011 Decision, including the application of these changes to household-goods freight forwarders. Finally, the Board established April 2, 2011, as the effective date for moving companies to comply with the changes outlined in the two decisions. These Board decisions are available on the Board's Web site at *www.stb.dot.gov.*

By decision served on March 9, 2012, the Board granted in part the request of the American Moving and Storage Association for a postponement of the effective date of the decisions. The January 2011 and January 2012 Decisions will become effective on May 15, 2012.

This decision will not significantly affect either the human environment or the conservation of energy resources.

[1] *See* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), 4215, Public Law 109–59, 119 Stat. 1144, 1760 (2005). The Board published notice of the January Decision on January 31, 2011 (76 FR 5,431).

[2] Under one of those options, the consumer would be reimbursed for loss in the amount of 60 cents per pound. Under the other, reimbursement would be based on the replacement value of the goods shipped.

[3] The Valuation Statement is a statement that a consumer hiring a moving company must sign either declaring a total value for the shipment or electing the alternative, per-pound basis on which recovery for any loss would be based.

Decided: March 8, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–6139 Filed 3–13–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0730]

Proposed Information Collection; Comment Request; Deployment Risk and Resilience Inventory (DRRI)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to prepare future military personnel for the challenges of being deployed overseas and how to better assist them after deployment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 14, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0730'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Deployment Risk and Resilience Inventory (DRRI), VA Form 10–21087.

OMB Control Number: 2900–0730.

Type of Review: Extension of a currently approved collection.

Abstract: The primary goal of the DRRI project is to provide a suite of scales that will be useful to researchers and clinicians to study factors that increase or reduce risk for Post Traumatic Stress Disorder (PTSD) and other health problems that Operation Enduring Freedom/Operation Iraqi Freedom veterans experienced before, during, and after deployment.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,412.

Estimated Average Burden per Respondent: 43 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,979.

Dated: March 8, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–6095 Filed 3–13–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0718]

Proposed Information Collection Activity Comment Request: Yellow Ribbon Agreement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine which institutions of higher learning (IHLs) will be participating in the Yellow Ribbon G. I. Education Enhancement Program (Under Title 38 U.S.C. Chapter 33), the maximum number of individuals for whom the IHL will make contributions in any given academic year, and the maximum amount of contributions that may be provided on behalf of participating individuals during the academic year.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 14, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0718'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Yellow Ribbon Agreement (Under Title 38 U.S.C. Chapter 33), VA Form 22–0839.

OMB Control Number: 2900–0718.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38 U.S.C. 3317 requires VA to enter into an agreement with schools wishing to participate in Yellow Ribbon Program. The agreement must state the beginning and ending dates of the academic year for which the school will provide contributions under the Yellow Ribbon Program, the maximum number of individuals for whom the school will make contributions in the specified academic year, and the maximum amount of contributions that may be provided on behalf of participating individuals during the academic year. VA is required to match each dollar provided by the school not to exceed 50 percent of the outstanding established charges. The statute further requires that VA post the information on a Web site for public viewing. VA will accept requests for participation, modifications, and withdrawals of Yellow Ribbon Program agreements during the open season enrollment period (March 15th through May 15th each calendar year) for the upcoming academic year and all future academic years unless changes are requested by VA or the institution.

Affected Public: Business or other for profit and Not for profit institutions.

Estimated Annual Burden: 256 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time per year.

Estimated Number of Respondents: 1,538.

Dated: March 8, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–6096 Filed 3–13–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection Activity Under OMB Review: Application for Assumption Approval and/or Release From Personal Liability to the Government on a Home Loan

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 13, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0110.''

SUPPLEMENTARY INFORMATION:

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran-borrowers complete VA Form 26–6381 to sell their home by assumption rather than requiring the purchaser to obtain their own financing to pay off the VA guaranteed home loan. In order for the veteran-borrower to be released from personal liability, the loan must be current and the purchaser must assume all of the veteran's liability to the Government and to the mortgage holder and meet the credit and income requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 4, 2012, at pages 324–325.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: March 8, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–6097 Filed 3–13–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0609]

Agency Information Collection Activities Under OMB Review: Survey of Veteran Enrollees' Health and Reliance Upon VA

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 13, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0609'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0609.

SUPPLEMENTARY INFORMATION:

Title: Office of Information and Regulatory Affairs, VA Form 10–21034g.

OMB Control Number: 2900–0609.

Type of Review: Revision of a currently approved collection.

Abstract: Public Law 104–262, the Veterans Health Care Eligibility Reform Act of 1996, requires VA to implement a priority-based enrollment system. VA must enroll Veterans by specified priorities as far down the priorities as the available resources permit. The number of priority levels to which VHA will be able to deliver care will be a function of annual funding levels and utilization of health care services by enrollees. Additionally, eligibility reform has brought about the ever-increasing need for VA to plan and budget for evolving clinical care needs of enrollee population at risk of need or use of VA care. There is no valid, recent information available in administrative databases on all enrollees' health status, income, and their reliance upon the VA system. The magnitude of changes each year in enrollees, their characteristics, and system policies make annual surveys necessary to capture this critical information for input into VHA's Health Care Services Demand Model. The survey will provide VA with current information for sound decisions that affect the entire VA health care delivery system and the veterans it serves. VA Form 10–21034g will be used to provide the survey data on morbidity and reliance that is critical to obtaining accurate projections of VA's ability to service Veterans who are seeking VA health care services. The projections also serve as the basis for VA's emphasis on population-based budget formulation, policy scenario testing, and strategic planning.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, page 67557.

Affected Public: Individuals or Households, and Federal Government.

Estimated Annual Burden: 14,400 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 42,200.

Dated: March 8, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–6098 Filed 3–13–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Proposed Information Collection Activity; Comment Request: Applications and Appraisals for Employment for Title 38 Positions and Trainees

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed evaluate claimants' qualification for employment in VA's healthcare services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 14, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900-0205'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, (202) 461–5870 or Fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Applications and Appraisals for Employment for Title 38 Positions and Trainees, VA Forms 10–2850, 2850a through d, and VA Form Letters 10–341a and b.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Forms 10–2850, 2850a through d, and VA Form Letters 10–341a and b, will be used to evaluate an applicant's qualification for employment with the VA, as well as their training, educational, and professional experiences. The data is necessary to determine the applicant's suitability, grade level and clinical privileges.

Affected Public: Individuals or households.

Estimated Annual Burden

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—7,450 hours.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—29,799 hours.

c. Application for Residents, VA Form 10–2850b—17,001 hours.

d. Application for Associated Health Occupations, VA Form 10–2850c—9,933 hours.

e. Application for Health Professions Trainees, VA Form 10–2850d—33,670 hours.

f. Appraisal of Applicant, VA Form Letter 10–341a—25,410 hours.

g. Trainee Qualification and Credentials Verification Letter, VA Form Letter 10–341b—6,709 hours.

Estimated Average Burden per Respondent

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—30 minutes.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—30 minutes.

c. Application for Residents, VA Form 10–2850b—30 minutes.

d. Application for Associated Health Occupations, VA Form 10–2850c—30 minutes.

e. Application for Health Professions Trainees, VA Form 10–2850d—30 minutes.

f. Appraisal of Applicant, VA Form FL 10–341a—30 minutes.

g. Trainee Qualification and Credentials Verification Letter, VA Form 10–341b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—14,900.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—59,598.

c. Application for Residents, VA Form 10–2850b—34,003.

d. Application for Associated Health Occupations, VA Form 10–2850c—19,866.

e. Application for Health Professions Trainees, VA Form 10–2850d—67,341.

f. Appraisal of Applicant, VA Form 10–341a—50,820.

g. Trainee Qualification and Credentials Verification Letter, VA Form 10–341b—80,518.

Dated: March 8, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–6099 Filed 3–13–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0679]

Agency Information Collection Activity under OMB Review: Certification of Change or Correction of Name, Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 13, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources

and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0679'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7485, fax (202) 632–7583 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0679.''

SUPPLEMENTARY INFORMATION:

Title: Certification of Change or Correction of Name, Government Life Insurance, VA Form 29–586.

OMB Control Number: 2900–0679.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–586 to certify a change or correction to their name on Government Life Insurance policies.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 4, 2012, page 325.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Dated: March 8, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–6100 Filed 3–13–12; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR 679

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2012 and 2013 Harvest Specifications for Groundfish; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XA711

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2012 and 2013 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces final 2012 and 2013 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2012 and 2013 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective at 1200 hrs, Alaska local time (A.l.t.), March 14, 2012, through 2400 hrs, A.l.t., December 31, 2013.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from *http://alaskafisheries.noaa.gov.* The final 2011 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2011, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780, or Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut prohibited species catch (PSC) amounts, and seasonal allowances of pollock and Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish notice of final harvest specifications for up to two fishing years as annual target TAC, per § 679.20(c)(3)(ii). The final harvest specifications set forth in Tables 1 through 31 of this document reflect the outcome of this process, as required at § 679.20(c).

The proposed 2012 and 2013 harvest specifications for groundfish of the GOA and Pacific halibut PSC allowances were published in the **Federal Register** on December 22, 2011 (76 FR 79620). Comments were invited and accepted through January 23, 2012. NMFS received one response, containing two general categories of comments, on the proposed harvest specifications. A summary of the comments and NMFS' responses is found in the Response to Comment section of this rule. In December 2011, NMFS consulted with the Council regarding the 2012 and 2013 harvest specifications. After considering public testimony, as well as biological and economic data that were available at the Council's December 2011 meeting, NMFS is implementing the final 2012 and 2013 harvest specifications, as recommended by the Council. For 2012, the sum of the TAC amounts is 438,159 mt. For 2013, the sum of the TAC amounts is 447,752 mt.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2011, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the Council's GOA Plan Team and was presented in the draft 2011 SAFE report for the GOA groundfish fisheries, dated November 2011 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an overfishing level (OFL) and ABC for each species or species group. The 2011 SAFE report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the largest changes from the proposed to the final harvest specifications have been based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for making stock assessments. In October 2011, the Council also reviewed the proposed TACs recommended for several flatfish and other rockfish species, adjusting them downward from ABCs. At the November 2011 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to assessment models, and accompanying stock estimates for all groundfish species and species groups that are included in the final 2011 SAFE report. The SSC reviewed this information at the December 2011 Council meeting. Changes from the proposed to the final harvest specifications in 2012 and 2013 for newly assessed groundfish stocks are discussed below.

The final 2012 and 2013 OFLs, ABCs, and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute ABCs and OFLs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with tier 1 representing the highest level of information quality available and tier 6 representing the lowest level of information quality available.

The SSC adopted the final 2012 and 2013 OFLs and ABCs recommended by the Plan Team for all groundfish species, with the exception of the ABCs for ''other rockfish'' in the Central and Western GOA. The Plan Team's

recommendation was that in 2012 and 2013 the 44 mt ABC for ''other rockfish'' in the Western GOA be combined with the 606 mt ABC for ''other rockfish'' in the Central GOA for a combined Central and Western GOA ABC of 650 mt. This recommendation was intended to spatially apportion ''other rockfish'' so that target fisheries are not restricted based on limited and relatively uncertain estimates of recent survey spatial distributions of ''other rockfish.'' The SSC however, decided to retain the area apportionments of ABC for ''other rockfish'' between the Central and Western GOA. The apportionment of 44 mt to the Western GOA ABC was based on the continued low abundance of harlequin rockfish in the 2011 NMFS bottom trawl survey. The SSC noted that ''other rockfish'' are on bycatch status all year, are taken as incidental catch in other directed fisheries, and are discarded at a high rate. Therefore, the SSC determined that regulatory discards would not decrease by combining the Western and Central regulatory area ABCs and did not recommend a change to the previously approved method for apportioning the ABC.

The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended TACs for 2012 and 2013 that are equal to ABCs for pollock, sablefish, deep-water flatfish, rex sole, Pacific ocean perch, northern rockfish, shortraker rockfish, pelagic shelf rockfish, rougheye rockfish, demersal shelf rockfish, thornyhead rockfish, ''other rockfish'' in the Central and Western GOA, big skates, longnose skate, other skates, squids, sharks, octopuses, and sculpins. The Council recommended TACs for 2012 and 2013 that are less than the ABCs for Pacific cod, shallow-water flatfish, arrowtooth flounder, flathead sole, ''other rockfish'' in the Eastern GOA, and Atka mackerel. The Pacific cod TACs are set to accommodate the State of Alaska's (State's) guideline harvest levels (GHLs) for Pacific cod so that the ABC is not exceeded. The shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries. The ''other rockfish'' TAC in the Eastern GOA is set to reduce the amount of discards in the Southeast Outside (SEO) District. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries.

The final 2012 and 2013 harvest specifications approved by the Secretary of Commerce (Secretary) are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see ADDRESSES). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2011 SAFE report. NMFS also finds that the Council's recommendations for OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the OY range. NMFS reviewed the Council's recommended TAC specifications and apportionments, and approves these harvest specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2012 and 2013 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The sums of the 2012 and 2013 ABCs are 606,048 mt and 612,506 mt, respectively, which are higher in 2012 and 2013 than the 2011 ABC sum of 590,121 mt (76 FR 11111, March 1, 2011).

Specification and Apportionment of TAC Amounts

The ABC for the pollock stock in the combined Western, Central, and West Yakutat Regulatory Areas (W/C/WYK) has been adjusted to reflect the GHL established by the State for the Prince William Sound (PWS) pollock fishery. Based upon genetic studies, fisheries scientists believe that the pollock in PWS is not a separate stock from the combined W/C/WYK population. Accordingly, the Council recommended decreasing the W/C/WYK pollock ABC to account for the State's PWS GHL. For 2012 and 2013, the PWS GHL for pollock is 2,770 mt, an increase from 1,650 mt in 2011.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630, as well as equally among each of the following four seasons: the A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (§ 679.23(d)(2)(i) through (iv), and § 679.20(a)(5)(iv)(A) through (B)). Tables 3 and 4 list the final 2012 and 2013 distribution of pollock in the Central and Western Regulatory Areas of the GOA, and area and seasonal allowances of annual TAC.

The AP, SSC, and Council recommended apportionment of the ABC for Pacific cod in the GOA among regulatory areas based on the three most recent NMFS summer trawl surveys. The 2012 and 2013 Pacific cod TACs are affected by the State's fishery for Pacific cod in State waters in the Central and Western Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council reduced the 2012 and 2013 Pacific cod TACs in the Eastern, Central, and Western Regulatory Areas to account for State GHLs. Therefore, the 2012 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 657 mt; (2) Central GOA, 14,235 mt; and (3) Western GOA, 7,008 mt. The 2013 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 684 mt; (2) Central GOA, 14,788 mt; and (3) Western GOA, 7,280 mt. These amounts reflect the sum of the State's 2012 and 2013 GHLs in these areas, which are 25 percent of the Eastern, Central, and Western GOA ABCs, respectively.

NMFS establishes seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)).

NMFS published a final rule to implement Amendment 83 to the FMP on December 1, 2011 (76 FR 74670), effective January 1, 2012. Amendment 83 allocates the Western and Central GOA Pacific cod TACs among various gear and operational sectors, and eliminates inshore and offshore allocations in these two regulatory areas. Sector allocations limit the amount of Western and Central GOA Pacific cod that each sector is authorized to harvest. Amendment 83

did not change the existing annual Pacific cod TAC allocation between the inshore and offshore processing components in the Eastern GOA. The Pacific cod sector apportionments are discussed in detail in a subsequent section of this preamble.

For sablefish, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2012 and 2013 include commercial fishery and survey data. NMFS stock assessment scientists believe the use of unbiased commercial fishery data reflecting catch-per-unit-effort provides rational input for stock distribution assessments. NMFS evaluates annually the use of commercial fishery data to ensure unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area and makes available five percent of the combined Eastern Regulatory Area ABCs to trawl gear for use as incidental catch in other groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2012 and 2013 allocations of sablefish TAC to hook-and-line and trawl gear in the GOA.

At the October 2011 Council meeting the SCC, AP, and Council recommended— and NMFS—proposed the move of widow and yellowtail rockfish from the pelagic shelf rockfish (PSR) species group to the ''other rockfish'' species group in the GOA. The preamble to the proposed 2012 and 2013 groundfish harvest specifications for the GOA (76 FR 79620, December 22, 2011) discusses the rationale for the action. These final 2012 and 2013 groundfish harvest specifications for the GOA make this recommendation effective. Final 2012 and 2013 amounts for the PSR and ''other rockfish'' species groups are listed in Tables 1 and 2. NMFS intends to prepare an FMP and regulatory amendment to remove the description of the PSR species group and fishery, add a description of the dusky rockfish fishery, and revise the description of the ''other rockfish'' fishery in the FMP and in associated regulations. The management measures associated with PSR would remain the same for dusky rockfish. All references to PSR in this rule refer to dusky rockfish.

Central GOA Rockfish Program

The Central GOA Rockfish Pilot Program expired December 31, 2011. For that reason, NMFS did not include 2012 allocations to the Rockfish Pilot Program in the final 2011 and 2012 harvest specifications for groundfish (76 FR 11111, March 1, 2011). A final rule to implement Amendment 88 to the GOA FMP, the Central GOA Rockfish Program (Rockfish Program), was published on December 27, 2011 (76 FR 81248), and is effective December 27, 2011, through December 31, 2021. The Rockfish Program allocates exclusive harvest privileges to a select group of License Limitation Program (LLP) license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during specific qualifying years. This final rule includes allocations and apportionments of Rockfish Program species, as discussed in the proposed 2012 and 2013 harvest specifications (76 FR 79620, December 22, 2011).

Other Actions Affecting Prohibited Species Catch (PSC) in the GOA

Amendment 93 to Limit Bycatch of Chinook Salmon in the Western and Central GOA Pollock Fisheries

NMFS has submitted Amendment 93 to the FMP for review by the Secretary. NMFS published a proposed rule to implement Amendment 93 on December 14, 2011 (76 FR 77757), with comments on the proposed rule invited through January 30, 2012. If approved, Amendment 93 would establish an annual PSC limit of 25,000 Chinook salmon for the pollock fisheries in the Central and Western GOA, increase observer coverage requirements for vessels under 60 feet length overall until superseded by pending changes to the North Pacific Groundfish Observer Program, and require full retention of all salmon taken in the Central and Western GOA pollock fisheries until they can be counted and sampled. The annual 25,000 Chinook salmon PSC limit would be apportioned between the Western GOA (6,684 fish) and the Central GOA (18,316 fish). If Amendment 93 is approved and implemented in 2012 prior to the start of the pollock C season on August 25, 2012, NMFS would establish a Chinook salmon PSC limit in the C and D pollock seasons of 5,598 fish in the Western GOA and 8,929 fish in the Central GOA in 2012. If the annual Chinook salmon PSC limits are reached in either reporting area, directed fishing for pollock in the applicable reporting area would be closed for the remainder of the fishing year.

Halibut Prohibited Species Catch Limits Revisions

At its October 2011 meeting, the Council decided to pursue possible revisions to the GOA halibut PSC limits through an FMP amendment and an associated regulatory amendment. The alternatives being analyzed include no change, and reductions of 5, 10, or 15 percent of the current halibut PSC limits apportioned between trawl gear and hook-and-line gear. Apportionment of trawl PSC limits between the deep-water and shallow-water complexes, limits for non-exempt American Fisheries Act (AFA) CVs (CVs) using trawl gear, Rockfish Program halibut PSC limits for the catcher/processor (C/P) and CV sectors, and halibut PSC limits for Amendment 80 Program vessels could be affected. The Council intends to schedule initial review and final action for the proposed amendment during 2012 for implementation, pending approval by the Secretary, in 2013.

Changes From the Proposed 2012 and 2013 Harvest Specifications in the GOA

In October 2011, the Council's recommendations for the proposed 2012 and 2013 harvest specifications (76 FR 79620, December 22, 2011) were based largely upon information contained in the final 2010 SAFE report for the GOA groundfish fisheries, dated November 2010 (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2012 groundfish fisheries (76 FR 11111, March 1, 2011) be used for the proposed 2012 and 2013 harvest specifications, pending completion and review of the 2011 SAFE report at its December 2011 meeting.

As described previously, the SSC adopted the final 2012 and 2013 OFLs and ABCs recommended by the Plan Team, with the exception of the combined ABC for ''other rockfish'' in the Central and Western GOA. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations for 2012 and 2013. The final 2012 ABCs are higher than the 2012 ABCs published in the proposed 2012 and 2013 harvest specifications (76 FR 79620, December 22, 2011) for Pacific cod, sablefish, rex sole, arrowtooth flounder, Pacific ocean perch, northern rockfish, shortraker rockfish, ''other rockfish,'' pelagic shelf rockfish, big skate, octopuses, and sculpins. The final 2012 ABCs are lower than the proposed 2012 ABCs for pollock, shallow-water flatfish, deep-water flatfish, flathead sole, rougheye rockfish, demersal shelf rockfish, thornyhead rockfish, longnose skate, ''other skates,'' and sharks. The final 2013 ABCs are higher than the proposed 2013 ABCs for pollock, Pacific cod, sablefish, rex sole, arrowtooth flounder,

Pacific ocean perch, northern rockfish, shortraker rockfish, ''other rockfish,'' pelagic shelf rockfish, big skate, octopuses, and sculpins. The final 2013 ABCs are lower than the proposed 2013 ABCs for shallow-water flatfish, deep-water flatfish, flathead sole, rougheye rockfish, demersal shelf rockfish, thornyhead rockfish, longnose skate, ''other skates,'' and sharks. For the remaining target species, Atka mackerel and squids, the Council recommended, and the Secretary approved, final 2012 and 2013 ABCs that are the same as the proposed 2012 and 2013 ABCs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2011 SAFE report, which was not available when the Council made its proposed ABC and TAC recommendations in October 2011. At that time, the most recent stock assessment information was contained in the final 2010 SAFE report. The final 2011 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the final 2011 SAFE report in December 2011 when it made recommendations for the final 2012 and 2013 harvest specifications. The Council's final 2012 and 2013 TAC recommendations increase fishing opportunities for species for which the Council had sufficient information to raise TACs. Conversely, the Council reduced TACs to limit directed fishing for some species. In the GOA, the total final 2012 TAC amount is 438,159 mt, a decrease of 25 percent from the total proposed 2012 TAC amount of 584,440 mt. The total final 2013 TAC amount is 447,752 mt, a decrease of 23 percent from the total proposed 2013 TAC amount of 584,440 mt.

Based on changes to the assessment method used by the stock assessment scientists, the greatest TAC increases are for Pacific cod and northern rockfish. Based on changes in the estimates of overall biomass, the greatest TAC increases were for sablefish, shortraker rockfish, pelagic shelf rockfish, big skates, and octopuses. Based upon Council recommended changes in setting the TACs at amounts below ABCs the greatest decreases in TACs were for shallow-water flatfish, arrowtooth flounder, flathead sole, and ''other rockfish.'' The Council believed, and NMFS concurs, that setting TACs for these species equal to ABCs would not reflect anticipated harvest levels accurately, as the Council and NMFS expect halibut PSC limits to constrain these fisheries in both 2012 and 2013. However, the final TACs for these species are increased significantly from the final 2011 amounts to provide for greater harvest opportunities.

Based upon changes in the estimates of biomass by stock assessment scientists, the greatest decreases in TACs are for deep-water flatfish, thornyhead rockfish, and longnose skates. For all other species and species groups, changes from the proposed to the final TACs are within plus or minus five percent of the proposed TACs. These TAC changes corresponded to associated changes in the ABCs and TACs, as recommended by the SSC, AP, and Council.

Detailed information providing the basis for the changes described above is contained in the final 2011 SAFE report. The final TACs are based on the best scientific information available. These TACs are specified in compliance with the harvest strategy described in both the proposed and final rules for the 2012 and 2013 harvest specifications. The changes in TACs between the proposed and this final rule are compared in the following table.

COMPARISON OF PROPOSED AND FINAL 2012 AND 2013 GOA TOTAL ALLOWABLE CATCH LIMITS

[Values are rounded to the nearest metric ton and percentage]

Species	2012 and 2013 proposed TAC	2012 Final TAC	Difference between 2012 proposed and final	Percentage difference	2013 Final TAC	Difference between 2013 proposed and final	Percentage difference	Principle reason for difference
Pollock	121,649	116,444	−5,205	−4	125,334	3,685	+3	Biomass.[1]
Pacific cod	58,650	65,700	7,050	+12	68,250	9,600	+16	Model.[2]
Sablefish	10,345	12,960	2,615	+25	12,794	2,449	+24	Biomass.
Shallow-water flatfish	56,242	37,029	−19,213	−34	36,550	−19,692	−35	TAC adjustment.[3]
Deep-water flatfish	6,486	5,126	−1,360	−21	5,126	−1,360	−21	Biomass.
Rex sole	9,396	9,612	216	+2	9,432	36	0	Biomass.
Arrowtooth flounder	211,027	103,300	−107,727	−51	103,300	−107,727	−51	TAC adjustment.
Flathead sole	50,591	30,319	−20,272	−40	30,408	−20,183	−40	TAC adjustment.
Pacific ocean perch	16,187	16,918	731	+5	16,500	313	+2	Biomass.
Northern rockfish	4,614	5,507	893	+19	5,153	539	+12	Model.
Shortraker rockfish	914	1,081	167	+18	1,081	167	+18	Biomass.
Other rockfish	3,842	1,080	−2,762	−72	1,080	−2,762	−72	TAC adjustment.
Pelagic shelf rockfish	4,347	5,118	771	+18	4,762	415	+10	Biomass.
Rougheye rockfish	1,312	1,223	−89	−7	1,240	−72	−5	Biomass.
Demersal shelf rockfish.	300	293	−7	−2	293	−7	−2	Biomass.
Thornyhead rockfish	1,770	1,665	−105	−6	1,665	−105	−6	Biomass.
Atka mackerel	4,700	2,000	−2,700	−57	2,000	−2,700	−57	TAC adjustment.
Big skate	3,328	3,767	439	+13	3,767	439	+13	Biomass.
Longnose skates	2,852	2,625	−227	−8	2,625	−227	−8	Biomass.
Other skates	2,093	2,030	−63	−3	2,030	−63	−3	Biomass.
Squids	1,148	1,148	0	0	1,148	0	0	n/a.
Sharks	6,197	6,028	−169	−3	6,028	−169	−3	Biomass.
Octopuses	954	1,455	501	+53	1,455	501	+53	Biomass.
Sculpins	5,496	5,731	235	+4	5,731	235	+4	Biomass.
Total	584,440	438,159	−146,281	−25	447,752	−136,688	−23	

[1] Biomass—Change in estimate of biomass.
[2] Model—Change in assessment methodology.
[3] TAC adjustment—Change in TAC to less than the ABC amount.

The final 2012 and 2013 TAC recommendations for the GOA are within the OY range established for the GOA and do not exceed the ABC for any species or species group. Tables 1 and 2 list final the OFL, ABC, and TAC

amounts for GOA groundfish for 2012 and 2013, respectively.

TABLE 1—FINAL 2012 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Pollock [2]	Shumagin (610)	n/a	30,270	30,270
	Chirikof (620)	n/a	45,808	45,808
	Kodiak (630)	n/a	26,348	26,348
	WYK (640)	n/a	3,244	3,244
	W/C/WYK (subtotal)	143,716	105,670	105,670
	SEO (650)	14,366	10,774	10,774
	Total	158,082	116,444	116,444
Pacific cod [3]	W	n/a	28,032	21,024
	C	n/a	56,940	42,705
	E	n/a	2,628	1,971
	Total	104,000	87,600	65,700
Sablefish [4]	W	n/a	1,780	1,780
	C	n/a	5,760	5,760
	WYK	n/a	2,247	2,247
	SEO	n/a	3,173	3,173
	E (WYK and SEO) (subtotal)	n/a	5,420	5,420
	Total	15,330	12,960	12,960
Shallow-water flatfish [6]	W	n/a	21,994	13,250
	C	n/a	22,910	18,000
	WYK	n/a	4,307	4,307
	SEO	n/a	1,472	1,472
	Total	61,681	50,683	37,029
Deep-water flatfish [5]	W	n/a	176	176
	C	n/a	2,308	2,308
	WYK	n/a	1,581	1,581
	SEO	n/a	1,061	1,061
	Total	6,834	5,126	5,126
Rex sole	W	n/a	1,307	1,307
	C	n/a	6,412	6,412
	WYK	n/a	836	836
	SEO	n/a	1,057	1,057
	Total	12,561	9,612	9,612
Arrowtooth flounder	W	n/a	27,495	14,500
	C	n/a	143,162	75,000
	WYK	n/a	21,159	6,900
	SEO	n/a	21,066	6,900
	Total	250,100	212,882	103,300
Flathead sole	W	n/a	15,300	8,650
	C	n/a	25,838	15,400
	WYK	n/a	4,558	4,558
	SEO	n/a	1,711	1,711
	Total	59,380	47,407	30,319
Pacific ocean perch [7]	W	2,423	2,102	2,102
	C	12,980	11,263	11,263
	WYK	n/a	1,692	1,692
	SEO	n/a	1,861	1,861
	E (WYK and SEO) (subtotal)	4,095	n/a	n/a
	Total	19,498	16,918	16,918

TABLE 1—FINAL 2012 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Northern rockfish [8 9]	W	n/a	2,156	2,156
	C	n/a	3,351	3,351
	E	n/a	0	0
	Total	6,574	5,507	5,507
Shortraker rockfish [11]	W	n/a	104	104
	C	n/a	452	452
	E	n/a	525	525
	Total	1,441	1,081	1,081
Other rockfish [9 12]	W	n/a	44	44
	C	n/a	606	606
	WYK	n/a	230	230
	SEO	n/a	3,165	200
	Total	5,305	4,045	1,080
Pelagic shelf rockfish [13]	W	n/a	409	409
	C	n/a	3,849	3,849
	WYK	n/a	542	542
	SEO	n/a	318	318
	Total	6,257	5,118	5,118
Rougheye and Blackspotted rockfish [10]	W	n/a	80	80
	C	n/a	850	850
	E	n/a	293	293
	Total	1,472	1,223	1,223
Demersal shelf rockfish [14]	SEO	467	293	293
Thornyhead rockfish	W	n/a	150	150
	C	n/a	766	766
	E	n/a	749	749
	Total	2,220	1,665	1,665
Atka mackerel	GW	6,200	4,700	2,000
Big skate [15]	W	n/a	469	469
	C	n/a	1,793	1,793
	E	n/a	1,505	1,505
	Total	5,023	3,767	3,767
Longnose skate [16]	W	n/a	70	70
	C	n/a	1,879	1,879
	E	n/a	676	676
	Total	3,500	2,625	2,625
Other skates [17]	GW	2,706	2,030	2,030
Squids	GW	1,530	1,148	1,148
Sharks	GW	8,037	6,028	6,028
Octopus	GW	1,941	1,455	1,455
Sculpins	GW	7,641	5,731	5,731
Total		747,780	606,048	438,159

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 23 percent, 55 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 67 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. Table 3 lists the final 2012 seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 5 lists the final 2012 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gear in 2012. Table 7 lists the final 2012 allocations of sablefish TACs.

[5] ''Deep-water flatfish'' means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[6] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[7] ''Pacific ocean perch'' means *Sebastes alutus.*

[8] ''Northern rockfish'' means *Sebastes polyspinous.* For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the slope rockfish species group.

[9] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous.*

[10] ''Rougheye rockfish'' means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[11] ''Shortraker rockfish'' means *Sebastes borealis.*

[12] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The ''other rockfish'' species group in the SEO District means slope rockfish.

[13] ''Pelagic shelf rockfish'' means *Sebastes variabilis* (dusky).

[14] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[15] ''Big skate'' means *Raja binoculata.*

[16] ''Longnose skate'' means *Raja rhina.*

[17] ''Other skates'' means *Bathyraja* spp.

TABLE 2—FINAL 2013 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area[1]	OFL	ABC	TAC
Pollock[2]	Shumagin (610)	n/a	32,816	32,816
	Chirikof (620)	n/a	49,662	49,662
	Kodiak (630)	n/a	28,565	28,565
	WYK (640)	n/a	3,517	3,517
	W/C/WYK (subtotal)	155,402	114,560	114,560
	SEO (650)	14,366	10,774	10,774
	Total	169,768	125,334	125,334
Pacific cod[3]	W	n/a	29,120	21,840
	C	n/a	59,150	44,363
	E	n/a	2,730	2,047
	Total	108,000	91,000	68,250
Sablefish[4]	W	n/a	1,757	1,757
	C	n/a	5,686	5,686
	WYK	n/a	2,219	2,219
	SEO	n/a	3,132	3,132
	E (WYK and SEO) (subtotal)	n/a	5,351	5,351
	Total	15,129	12,794	12,794
Shallow-water flatfish[6]	W	n/a	20,171	13,250
	C	n/a	21,012	18,000
	WYK	n/a	3,950	3,950
	SEO	n/a	1,350	1,350
	Total	56,781	46,483	36,550
Deep-water flatfish[5]	W	n/a	176	176
	C	n/a	2,308	2,308
	WYK	n/a	1,581	1,581
	SEO	n/a	1,061	1,061
	Total	6,834	5,126	5,126
Rex sole	W	n/a	1,283	1,283
	C	n/a	6,291	6,291
	WYK	n/a	821	821
	SEO	n/a	1,037	1,037
	Total	12,326	9,432	9,432
Arrowtooth flounder	W	n/a	27,386	14,500
	C	n/a	142,591	75,000
	WYK	n/a	21,074	6,900

TABLE 2—FINAL 2013 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area[1]	OFL	ABC	TAC
	SEO	n/a	20,982	6,900
	Total	249,066	212,033	103,300
Flathead sole	W	n/a	15,518	8,650
	C	n/a	26,205	15,400
	WYK	n/a	4,623	4,623
	SEO	n/a	1,735	1,735
	Total	60,219	48,081	30,408
Pacific ocean perch[7]	W	2,364	2,050	2,050
	C	12,662	10,985	10,985
	WYK	n/a	1,650	1,650
	SEO	n/a	1,815	1,815
	E (WYK and SEO) (subtotal)	3,995	n/a	n/a
	Total	19,021	16,500	16,500
Northern rockfish[8 9]	W	n/a	2,017	2,017
	C	n/a	3,136	3,136
	E	n/a	0	0
	Total	6,152	5,153	5,153
Shortraker rockfish[11]	W	n/a	104	104
	C	n/a	452	452
	E	n/a	525	525
	Total	1,441	1,081	1,081
Other rockfish[9 12]	W	n/a	44	44
	C	n/a	606	606
	WYK	n/a	230	230
	SEO	n/a	3,165	200
	Total	5,305	4,045	1,080
Pelagic shelf rockfish)[13]	W	n/a	381	381
	C	n/a	3,581	3,581
	WYK	n/a	504	504
	SEO	n/a	296	296
	Total	5,822	4,762	4,762
Rougheye and Blackspotted rockfish[10]	W	n/a	82	82
	C	n/a	861	861
	E	n/a	297	297
	Total	1,492	1,240	1,240
Demersal shelf rockfish[14]	SEO	467	293	293
Thornyhead rockfish	W	n/a	150	150
	C	n/a	766	766
	E	n/a	749	749
	Total	2,220	1,665	1,665
Atka mackerel	GW	6,200	4,700	2,000
Big skate[15]	W	n/a	469	469
	C	n/a	1,793	1,793
	E	n/a	1,505	1,505
	Total	5,023	3,767	3,767
Longnose skate[16]	W	n/a	70	70
	C	n/a	1,879	1,879

TABLE 2—FINAL 2013 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area[1]	OFL	ABC	TAC
	E	n/a	676	676
	Total	3,500	2,625	2,625
Other skates[17]	GW	2,706	2,030	2,030
Squids	GW	1,530	1,148	1,148
Sharks	GW	8,037	6,028	6,028
Octopus	GW	1,941	1,455	1,455
Sculpins	GW	7,641	5,731	5,731
Total		756,621	612,506	447,752

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 23 percent, 55 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 67 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. Table 4 lists the final 2013 seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 6 lists the final 2013 Pacific cod seasonal apportionments.

[4] Sablefish is only allocated to trawl gear for 2013. Table 8 lists the final 2013 allocation of sablefish TACs to trawl gear.

[5] ''Deep-water flatfish'' means Dover sole, Greenland turbot, Kamchatka flounder, and deep sea sole.

[6] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[7] ''Pacific ocean perch'' means *Sebastes alutus.*

[8] ''Northern rockfish'' means *Sebastes polyspinous.* For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the slope rockfish species group.

[9] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous*.

[10] ''Rougheye rockfish'' means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[11] ''Shortraker rockfish'' means *Sebastes borealis.*

[12] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The ''other rockfish'' species group in the SEO District means slope rockfish.

[13] ''Pelagic shelf rockfish'' means *Sebastes variabilis* (dusky).

[14] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[15] ''Big skate'' means *Raja binoculata.*

[16] ''Longnose skate'' means *Raja rhina.*

[17] ''Other skates'' means *Bathyraja* spp.

Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, squids, sharks, octopuses, and sculpins in reserves for possible apportionment at a later date during the fishing year. For 2012 and 2013, NMFS proposed reapportionment of all the reserves in the proposed 2012 and 2013 harvest specifications published in the **Federal Register** on December 22, 2011 (76 FR 79620). NMFS did not receive any public comments on the proposed reapportionments. For the final 2012 and 2013 harvest specifications, NMFS reapportioned, as proposed, all the reserves for pollock, Pacific cod, flatfish, squids, sharks, octopuses, and sculpins. The TAC amounts shown in Tables 1 and 2 reflect reapportionment of reserve amounts for these species and species groups.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. However, for

2012 and 2013, the Council recommends, and NMFS approves, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season and not the distribution based on the winter surveys. The average is intended to reflect the migration patterns and distribution of pollock, and the performance of the fishery, in that area during the A season for the 2012 and 2013 fishing years. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 23 percent, 55 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 67 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively.

Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the unharvested seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and SEO District of 3,244 mt and 10,774 mt, respectively, in 2012, and 3,517 mt and 10,774 mt, respectively, in 2013, are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

Tables 3 and 4 list the final 2012 and 2013 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 3—FINAL 2012 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season[1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total[2]
A (Jan 20–Mar 10)	5,797	(22.64%)	14,023	(54.76%)	5,787	(22.60%)	25,607
B (Mar 10–May 31)	5,797	(22.64%)	17,221	(67.25%)	2,589	(10.11%)	25,607
C (Aug 25–Oct 1)	9,338	(36.47%)	7,282	(28.44%)	8,986	(35.10%)	25,606
D (Oct 1–Nov 1)	9,338	(36.47%)	7,282	(28.44%)	8,986	(35.10%)	25,606
Annual Total	32,070		45,808		26,348		102,426

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 4—FINAL 2013 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season[1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total[2]
A (Jan 20–Mar 10)	6,285	(22.64%)	15,202	(54.76%)	6,274	(22.60%)	27,761
B (Mar 10–May 31)	6,285	(22.64%)	18,668	(67.25%)	2,806	(10.11%)	27,760
C (Aug 25–Oct 1)	10,123	(36.47%)	7,896	(28.44%)	9,743	(35.10%)	27,761
D (Oct 1–Nov 1)	10,123	(36.47%)	7,896	(28.44%)	9,743	(35.10%)	27,761
Annual Total	32,816		49,662		28,565		111,043

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Annual and Seasonal Apportionments of Pacific Cod TAC

NMFS published a final rule to implement Amendment 83 to the FMP on December 1, 2011 (76 FR 74670), effective January 1, 2012. Amendment 83 allocates the Western and Central GOA Pacific cod TACs among gear and operational sectors, based on each sector's catch history. Amendment 83 also limits access to the Federal Pacific cod TAC fisheries prosecuted in State waters, known as parallel fisheries, adjacent to the Western and Central GOA. Based on the restructuring of the GOA Pacific cod fisheries under Amendment 83, NMFS makes final

allocations of the annual Pacific cod TAC seasonally between the inshore and offshore components in the Eastern GOA, among vessels using jig gear, CVs less than 50 feet (15.2 m) in length overall using hook-and-line gear, CVs equal to or greater than 50 feet (15.2 m) in length overall using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear in the Central GOA, and among vessels using jig gear, CVs using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear in the Western GOA.

NMFS may also apply any overage or underage of Pacific cod harvest by each sector from the A season to the B season. Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season will be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that are determined by NMFS as likely to go unharvested by a sector may be reapportioned to other sectors for harvest during the remainder of the fishery year.

NMFS calculated the final 2012 and 2013 Pacific cod TAC allocations as follows. First, the jig sector receives 1.5 percent of the annual Pacific cod TAC in the Western GOA and 1.0 percent of the annual Pacific cod TAC in the Central GOA, as required by § 679.20(c)(7). The jig sector annual allocation is further apportioned between the A (60 percent) and B (40 percent) seasons as required by § 679.20(a)(12)(i). Should the jig sector harvest 90 percent or more of its allocation in an area during a fishing year, then this allocation would increase by 1 percent in the subsequent fishing year, up to 6 percent of the annual TAC. NMFS allocates the remainder of the annual Pacific cod TAC based on gear type, operation type, and vessel length overall in the Western and Central GOA seasonally as required by § 679.20(a)(12)(A) and (B). Tables 5 and 6 list the seasonal apportionments and allocations of the final 2012 and 2013 Pacific cod TACs.

TABLE 5—FINAL 2012 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (1.5% of TAC)	315	N/A	189	N/A	126
Hook-and-line CV	290	0.70	145	0.70	145
Hook-and-line C/P	4,100	10.90	2,257	8.90	1,843
Trawl CV	7,952	27.70	5,736	10.70	2,216
Trawl C/P	497	0.90	186	1.50	311
All Pot CV and Pot C/P	7,869	19.80	4,100	18.20	3,769
Total	21,024	60.00	12,614	40.00	8,410
Central GOA					
Jig (1.0% of TAC)	427	N/A	256	N/A	171
Hook-and-line <50 CV	6,174	9.32	3,938	5.29	2,235
Hook-and-line ≥50 CV	2,835	5.61	2,372	1.10	464
Hook-and-line C/P	2,158	4.11	1,736	1.00	422
Trawl CV	17,581	21.14	8,936	20.45	8,645
Trawl C/P	1,775	2.00	847	2.19	928
All Pot CV and Pot C/P	11,755	17.83	7,538	9.97	4,217
Total	42,705	60.00	25,623	40.00	17,082
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	1,971	.....	1,774	.....	197

TABLE 6—FINAL 2013 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (1.5% of TAC)	328	N/A	197	N/A	131
Hook-and-line CV	301	0.70	151	0.70	151
Hook-and-line C/P	4,259	10.90	2,345	8.90	1,915
Trawl CV	8,261	27.70	5,959	10.70	2,302
Trawl C/P	516	0.90	194	1.50	323
All Pot CV and Pot C/P	8,175	19.80	4,259	18.20	3,915
Total	21,840	60.00	13,104	40.00	8,736
Central GOA					
Jig (1.0% of TAC)	444	N/A	266	N/A	177
Hook-and-line <50 CV	6,413	9.32	4,091	5.29	2,322
Hook-and-line ≥50 CV	2,946	5.61	2,464	1.10	482
Hook-and-line C/P	2,242	4.11	1,804	1.00	438
Trawl CV	18,263	21.14	9,282	20.45	8,981
Trawl C/P	1,844	2.00	880	2.19	964
All Pot CV and Pot C/P	12,212	17.83	7,831	9.97	4,381
Total	44,363	60.00	26,618	40.00	17,745
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,047	.....	1,842	.....	205

Allocations of the Sablefish TACs

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawling in the SEO District of the Eastern Regulatory Area, the Council recommended allocating 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District and making the remainder of the WYK sablefish TAC available to vessels using hook-and-line gear. NMFS concurs with the Council's recommendation, and, as a result, allocates 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This recommendation results in a 2012 allocation of 271 mt to trawl gear and 1,976 mt to hook-and-line gear in the WYK District, a 2012 allocation of 3,173 mt to hook-and-line gear in the SEO District, and a 2013 allocation of 268 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2012 sablefish TACs to hook-and-line and trawl gear. Table 8 lists the allocations of the 2013 sablefish TACs to trawl gear.

The Council recommended that the hook-and-line sablefish TAC be established annually to ensure that this Individual Fishery Quota (IFQ) fishery is conducted concurrent with the halibut IFQ fishery and is based on recent sablefish survey information. The Council also recommended that only a trawl sablefish TAC be established for two years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. However, since there is an annual assessment for sablefish and the final harvest specifications are expected to be published before the IFQ season begins (typically, early March), the Council recommended that the hook-and-line sablefish TAC be set on an annual basis, rather than for two years, so that the best scientific information available could be considered in establishing the sablefish ABCs and TACs. Also, because sablefish is closed for directed fishing for trawl gear during the entire fishing year (except for vessels with Rockfish Program cooperative allocations) and fishing for groundfish is prohibited prior to January 20, it is not likely that the trawl allocation of sablefish established by the final 2011 and 2012 harvest specifications would be reached before the effective date of the final 2012 and 2013 harvest specifications.

TABLE 7—FINAL 2012 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,780	1,424	356
Central	5,760	4,608	1,152
West Yakutat [1]	2,247	1,976	271
Southeast Outside	3,173	3,173	0
Total	12,960	11,181	1,779

[1] The trawl allocation is based on allocating five percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

TABLE 8—FINAL 2013 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATION TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,757	n/a	351
Central	5,686	n/a	1,137
West Yakutat [2]	2,219	n/a	268
Southeast Outside	3,132	n/a	0
Total	12,794	n/a	1,756

[1] The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to one year.

[2] The trawl allocation is based on allocating five percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

Demersal Shelf Rockfish (DSR)

The recommended 2012 and 2013 DSR TAC is 293 mt. Management of DSR is delegated to the State. In 2006, the Alaska Board of Fish allocated future SEO District DSR TACs between the commercial fishery (84 percent) and the sport fishery (16 percent) after deductions were made for anticipated subsistence harvests (8 mt). This results in 2012 and 2013 allocations of 239 mt to the commercial fishery and 46 mt to the sport fishery. The State deducts estimates of incidental catch of DSR in the commercial halibut fishery and test fishery mortality from the DSR commercial fishery allocation. In 2011, this resulted in 89 mt being available for the directed commercial DSR fishery apportioned between four outer coast areas. Only one of these areas, the South Southeast Outside area, was open to directed commercial fishery with a GHL of 25 mt and a harvest of 22 mt. DSR harvest in the halibut fishery is linked to the annual halibut catch limits; therefore the State cannot estimate potential DSR incidental catch in that fishery until those quotas are established. Federally-permitted CVs using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA are required to retain all DSR (§ 679.20(j)). The State will announce the opening of directed fishing for DSR in 2012 in January following the International Pacific Halibut Commission's (IPHC) January 2012 annual meeting.

Apportionments to the Central GOA Rockfish Program

Amendment 88 to the GOA FMP establishes the Central GOA Rockfish Program (Rockfish Program). NMFS published a final rule to implement Amendment 88 on December 27, 2011 (76 FR 81248). These final 2012 and 2013 groundfish harvest specifications for the GOA includes the various fishery cooperative allocations and sideboard limitations established by the Central GOA Rockfish Program. Under the Rockfish Program, the primary rockfish species (Pacific ocean perch, northern rockfish, and pelagic shelf rockfish) are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries. Potential participants in the Rockfish Program include vessels in CV cooperatives, C/P cooperatives, and vessels in the entry level longline category.

The Rockfish Program assigns quota share and cooperative quota to participants for primary and secondary species, allows a participant holding an LLP license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of C/P LLP licenses to opt-out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear. Additionally, the Rockfish Program continues to establish sideboard limits to limit the ability of harvesters operating under the Rockfish Program from increasing their participation in other, non-Rockfish Program fisheries.

Additionally, the Rockfish Program allocates a portion of the halibut PSC limit from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d)). This includes 117 mt to the CV sector and 74 mt to the C/P sector. It also would permanently retire 27 mt (values are rounded to the nearest metric ton) of the halibut PSC limit from being allocated to any fishery.

NMFS initially allocates 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 30 mt of PSR to the entry level longline fishery in 2012 and 2013. The remainder of the TACs for the primary rockfish species are allocated to the CV and C/P cooperatives. The allocation for the entry level longline fishery would increase incrementally each year if the sector harvests 90 percent or more of the allocation of a species. The incremental increase would continue each year until it reaches the cap set for the maximum percent of the entry level allocation for

that species in accordance with Table 28e to part 679. Table 9 lists the initial 2012 and 2013 allocations for each rockfish primary species to the entry level longline fishery, the incremental increase for future years, and the cap for the entry level longline fishery.

TABLE 9—INITIAL 2012 AND 2013 ALLOCATIONS OF ROCKFISH TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	2012 and 2013 allocations	Incremental increase per season if ≥90% of allocation is harvested	Up to maximum % of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1
Northern rockfish	5 metric tons	5 metric tons	2
Pelagic shelf rockfish	30 metric tons	20 metric tons	5

The Rockfish Program allocates primary rockfish species among various components of the Rockfish Program. Tables 10 and 11 list the final 2012 and 2013 allocations of rockfish in the Central GOA to longline gear in the entry level rockfish fishery and other participants in the Rockfish Program, which include CV and C/P cooperatives. NMFS is also setting aside incidental catch amounts (ICAs) of 900 mt of Pacific ocean perch, 125 mt of northern rockfish, and 125 mt of pelagic shelf rockfish for other directed fisheries in the Central GOA. These amounts are based on recent average incidental catches in the Central GOA by other groundfish fisheries. Allocations between vessels belonging to CV or C/P cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives, C/P cooperatives, and C/Ps electing to opt-out of the program are not due to NMFS until March 1 of each calendar year. Therefore, NMFS cannot calculate the 2012 and 2013 allocations in conjunction with these final harvest specifications. NMFS will post these allocations on the Alaska Region Web site at (*http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm)* when they become available in March.

TABLE 10—FINAL 2012 ALLOCATIONS OF ROCKFISH IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND OTHER PARTICIPANTS IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Species	TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to other participants in the Rockfish Program [2]
Pacific ocean perch	11,263	900	10,363	5	10,358
Northern rockfish	3,351	125	3,226	5	3,221
Pelagic shelf rockfish	3,849	125	3,724	30	3,694
Total	18,463	1,000	17,463	40	17,423

[1] Longline gear includes hook-and-line, jig, troll, and handline gear.
[2] Other participants in the Rockfish Program include vessels in CV and C/P cooperatives.

TABLE 11—FINAL 2013 ALLOCATIONS OF ROCKFISH IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND OTHER PARTICIPANTS IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Species	TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to other participants in the Rockfish Program [2]
Pacific ocean perch	10,985	900	10,235	5	10,230
Northern rockfish	3,136	125	3,011	5	3,006
Pelagic shelf rockfish	3,581	125	3,456	30	3,426
Total	17,702	1,000	16,702	40	16,662

[1] Longline gear includes hook-and-line, jig, troll, and handline gear.
[2] Other participants in the Rockfish Program include vessels in CV and C/P cooperatives.

Under Amendment 88, NMFS also allocates secondary species to cooperatives in the Rockfish Program (§ 679.81(c)). These species include sablefish from the trawl gear allocation, thornyhead rockfish, Pacific cod for the CV cooperatives, and rougheye and shortraker rockfish for the C/P cooperatives. Tables 12 and 13 list the final 2012 and 2013 apportionments of rockfish secondary species in the Central GOA to CV and C/P cooperatives.

TABLE 12—FINAL 2012 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Species	Annual central GOA TAC	Catcher vessel cooperatives		Catcher/Processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	42,705	3.81	1,627	N/A	N/A
Sablefish	5,760	6.78	391	3.51	202
Shortraker rockfish	452	N/A	N/A	40.00	181
Rougheye rockfish	850	N/A	N/A	58.87	500
Thornyhead rockfish	766	7.84	60	26.50	203

TABLE 13—FINAL 2013 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Species	Annual central GOA TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	44,363	3.81	1,690	N/A	N/A
Sablefish	5,686	6.78	386	3.51	200
Shortraker rockfish	452	N/A	N/A	40.00	181
Rougheye rockfish	861	N/A	N/A	58.87	507
Thornyhead rockfish	766	7.84	60	26.50	203

Halibut PSC Limits

Section 679.21(d) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear and authorizes the establishment of apportionments for pot gear. In December 2011, the Council recommended that NMFS maintain the 2012 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries for the 2012 and 2013 groundfish fisheries. Ten mt of the hook-and-line limit is further allocated to the DSR fishery in the SEO District. The DSR fishery is defined at § 679.21(d)(4)(iii)(A). This fishery has been apportioned 10 mt in recognition of its small-scale harvests. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall and are exempt from observer coverage. Therefore, observer data are not available to verify actual bycatch amounts. NMFS estimates low halibut bycatch in the DSR fishery because (1) the duration of the DSR fisheries and the gear soak times are short; (2) the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut; and (3) the directed commercial DSR fishery has a low DSR TAC. Of the 300 mt TAC for DSR in 2011, 89 mt was available for the commercial fishery, of which 22 mt were harvested.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery from the non-trawl halibut limit for 2012 and 2013. The Council recommended, and NMFS approves, these exemptions because (1) the pot gear fisheries have low annual halibut bycatch mortality (averaging 22 mt annually from 2002 through 2011); (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ (§ 679.7(f)(11)); (3) sablefish IFQ fishermen typically hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries. NMFS estimates that halibut mortality is negligible in the jig gear fisheries given the small amount of groundfish harvested by jig gear (averaging 297 mt annually from 2003 through 2011), the selective nature of jig gear, and the high survival rates of halibut caught (and subsequently released) with jig gear.

Section 679.21(d)(5) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require the Council and NMFS to consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council obtained the information it considered when setting the halibut PSC limits from the 2011 SAFE report, NMFS catch data, State of Alaska catch data, IPHC stock assessment and mortality data, and public testimony.

NMFS concurs in the Council's recommendations listed in Table 14, which shows the final 2012 and 2013 Pacific halibut PSC limits, allowances, and apportionments. Sections 679.21(d)(5)(iii) and (iv) specify that any underages or overages of a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the fishing year.

TABLE 14—FINAL 2012 AND 2013 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear [1]				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20–April 1	27.5	550	January 1–June 10	86	250	January 1–December 31	10
April 1–July 1	20	400	June 10–September 1	2	5		
July 1–September 1	30	600	September 1–December 31.	12	35		
September 1–October 1	7.5	150					
October 1–December 31	15	300					
Total		2,000			290		10

[1] The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (§ 679.21(d)(3)(iii)). Table 15 lists the final 2012 and 2013 apportionments of Pacific halibut PSC trawl limits between the trawl gear deep-water and the shallow-water species fisheries.

TABLE 15—FINAL 2012 AND 2013 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY

[Values are in metric tons]

Season	Shallow-water	Deep-water [1]	Total
January 20–April 1	450	100	550
April 1–July 1	100	300	400
July 1–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal January 20–October 1	900	800	1,700
October 1–December 31 [2]			300
Total			2,000

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive a portion of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment. This amount is not currently known, but will be posted later on the Alaska Region web site (*http://alaskafisheries.noaa.gov)* when it becomes available in March.

[2] There is no apportionment between shallow-water and deep-water trawl species fisheries during the fifth season (October 1 through December 31).

Under Amendment 83 to the GOA FMP, which established Pacific cod sector splits, the ''other than DSR'' halibut PSC apportionment to vessels using hook-and-line gear must be apportioned between CVs and C/Ps (76 FR 74670, December 1, 2011). NMFS must calculate the halibut PSC limit apportionments for the entire GOA to hook-and-line CVs and C/Ps in accordance with (§ 679.21(d)(4)(iii)(B)(*1*) and (*2*) in conjunction with these harvest specifications.

A comprehensive description and example of the calculations necessary to apportion the ''other than DSR'' hook-and-line halibut PSC limit between the hook-and-line CV and C/P sectors were included in the proposed rule to implement Amendment 83 (76 FR 44700, July 26, 2011) and is not repeated here. For 2012 and 2013, NMFS is apportioning halibut PSC limits of 173 mt and 117 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. In addition, these annual limits are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent. Table 16 lists the 2012 and 2013 annual and seasonal halibut PSC apportionments between the hook-and-line sectors in the GOA.

No later than November 1, NMFS will determine whether either of the hook-and-line sectors will have an unused amount of halibut PSC. If so, projected unused amount of halibut PSC will be made available to the other hook-and-line sector for the remainder of that fishing year if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations (§ 679.9(d)(4)(iii)(B)(*3*)).

TABLE 16—APPORTIONMENTS OF THE "OTHER HOOK-AND-LINE FISHERIES" ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

"Other than DSR" allowance	Hook-and-line sector	Percent of annual amount	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
290	Catcher Vessel	59.7	173	January 1–June 10	86	149
				June 10–September 1	2	3
				September 1–December 31	12	21
	Catcher/Processor	40.3	117	January 1–June 10	86	101
				June 10–September 1	2	2
				September 1–December 31	12	14

The Rockfish Program requires NMFS to allocate a fixed amount of the deep-water species fishery's halibut PSC third seasonal apportionment to participants in the Rockfish Program. This amount is based on 87.5 percent of the 2000 through 2006 average halibut mortality usage of 219 mt. Of this amount, 117.3 mt of the halibut PSC is allocated to the CV sector and 74.1 mt is allocated to the C/P sector. The remaining 12.5 percent, or 38 mt, would no longer be annually apportioned for use by fisheries using trawl gear in the GOA.

Regulations implementing the Rockfish Program (76 FR 81248, December 27, 2011) limit the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl fisheries (§ 679.21(d)(5)(iii)(B)). Halibut PSC limit reallocations to the non-Rockfish Program trawl fisheries from the Rockfish Program are limited to no more than 55 percent of the unused annual halibut PSC apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by vessels directed fishing with trawl gear for the remainder of the fishing year.

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch was data collected by fisheries observers during 2011. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear in 2011 is 1,847 mt, 240 mt, and 45 mt, respectively, for a total halibut mortality of 2,132 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2011 fishing year. Table 17 lists the closure dates for fisheries that resulted from the attainment of seasonal or annual halibut PSC limits.

TABLE 17—2011 FISHERY CLOSURES DUE TO ATTAINMENT OF PACIFIC HALIBUT PSC LIMITS

Fishery category	Opening date	Closure date	**Federal Register** citation
Trawl Deep-water, season 2	January 20, 2011	April 22, 2011	76 FR 23511, April 27, 2011.
Trawl Shallow-water,[1] season 4	September 1, 2011	September 3, 2011	76 FR 55276, September 7, 2011.
Trawl Shallow-water,[1] season 4	September 14, 2011	September 16, 2011	76 FR 57679, September 16, 2011.
Trawl Shallow-water,[1] season 4	September 20, 2011	Remained open through December 31, 2011.	
Hook-and-line gear, all targets[2]	January 1, 2011	Remained open through December 31, 2011.	

[1] With the exception of vessels participating in the Central GOA Rockfish Program and vessels fishing for pollock using pelagic trawl gear.
[2] With the exception of the sablefish fishery which was open March 12, 2011, through November 18, 2011.

Current Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2011 Pacific halibut stock assessment (December 2011), available on the IPHC Web site at *www.iphc.int.* The IPHC considered the 2011 Pacific halibut assessment for 2012 at its January 2012 annual meeting when it set the 2012 commercial halibut fishery catch limits.

The halibut resource is fully utilized. Recent catches in the commercial halibut fisheries in Alaska over the last 18 years (1994 through 2011) have averaged 31,535 mt round weight per year. In January 2012, the IPHC recommended Alaska commercial catch limits totaling 15,430 mt round weight for 2012, a 21.5 percent decrease from 19,662 mt in 2011. Through December 31, 2011, commercial hook-and-line harvests of halibut off Alaska totaled 19,140 mt round weight. The IPHC staff recommendations for commercial catch limits continue to be based on applying the Slow Up—Full Down policy of a 33 percent increase from the previous year's catch limits when stock yields are projected to increase, but uses a 100 percent decrease in recommended catch when stock yields are projected to decrease, as was done for the 2011 fishery.

The largest decreases in the 2012 catch limit recommendations for Alaska are for Area 3A, from 8,685 mt round weight in 2011 to 7,208 mt round weight in 2012; for Area 3B, from 4,542 mt in 2011 to 3,066 mt in 2012; for Area 4A, from 1,458 mt in 2011 to 948 mt in 2012; for Area 4B, from 1,318 mt in 2011 to 1,130 mt in 2012; and for combined Areas CDE, from 2,250 mt in 2011 to 1,491 mt in 2012. The only increase in catch limit recommendations in Alaska is for Area 2C, from 1,409 mt round weight in 2011 to 1,587 mt round weight in 2012.

For more information, see the proposed 2012 and 2013 harvest specifications (76 FR 79620, December 22, 2011), which discusses the potential impacts of expected fishing for

groundfish on halibut stocks, as well as methods available for reducing halibut bycatch in the groundfish fisheries.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS is implementing the Council's recommendation that the halibut DMRs developed and recommended by the IPHC for the 2010 through 2012 GOA groundfish fisheries be used for monitoring the final 2012 and 2013 halibut bycatch mortality allowances (see Tables 14 through 16). The IPHC developed the DMRs for the 2010 through 2012 GOA groundfish fisheries using the 10-year mean DMRs for those fisheries. Long-term average DMRs were not available for some fisheries, so rates from the most recent years were used. For the squid, shark, sculpin, octopus, and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A discussion of the DMRs and their justification is presented in Appendix 2 to the 2009 SAFE report (see **ADDRESSES**). Table 18 lists the final 2012 and 2013 DMRs. These DMRs are unchanged from the proposed 2012 and 2013 harvest specifications (76 FR 79620, December 22, 2011). In 2012, the IPHC will update its DMR recommendations for the 2013 through 2015 groundfish fisheries.

TABLE 18—FINAL 2012 AND 2013 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Values are percent of halibut assumed to be dead]

Gear	Target fishery	Mortality rate (%)
Hook-and-line	Other fisheries [1]	12
	Skates	12
	Pacific cod	12
	Rockfish	9
Trawl	Arrowtooth flounder	72
	Deep-water flatfish	48
	Flathead sole	65
	Non-pelagic pollock	59
	Other fisheries	62
	Pacific cod	62
	Pelagic pollock	76
	Rex sole	64
	Rockfish	67
	Sablefish	65
	Shallow-water flatfish	71
Pot	Other fisheries	17
	Pacific cod	17

[1] Other fisheries includes all gear types for sculpin, shark, skate, squids, octopuses, and hook-and-line sablefish.

American Fisheries Act C/P and CV Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA C/Ps and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA C/Ps from harvesting any species of groundfish in the GOA. Section 679.7(k)(1)(iv) prohibits listed AFA C/Ps from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 ft (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period.

As provided by Amendment 83 to the FMP (76 FR 74670, December 1, 2011), NMFS has recalculated and establishes sideboards limitations for Pacific cod for the non-exempt AFA CVs in the Western and Central GOA that would supersede the inshore and offshore processing sideboards established under the AFA. The sideboard limits for other species would continue to be calculated as they have in the past, including the Eastern GOA Pacific cod sideboard limits. Tables 19 and 20 list the final 2012 and 2013 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Tables 19 and 20.

TABLE 19—FINAL 2012 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2012 TACs	Final 2012 non-exempt AFA CV sideboard limit
Pollock	A Season January 20—March 10.	Shumagin (610)	0.6047	5,797	3,505
		Chirikof (620)	0.1167	14,023	1,636
		Kodiak (630)	0.2028	5,787	1,174
	B Season March 10–May 31	Shumagin (610)	0.6047	5,797	3,505
		Chirikof (620)	0.1167	17,221	2,010
		Kodiak (630)	0.2028	2,589	525
	C Season August 25–October 1.	Shumagin (610)	0.6047	9,338	5,647
		Chirikof (620)	0.1167	7,282	850
		Kodiak (630)	0.2028	8,986	1,822
	D Season October 1–November 1.	Shumagin (610)	0.6047	9,338	5,647
		Chirikof (620)	0.1167	7,282	850
		Kodiak (630)	0.2028	8,986	1,822
	Annual	WYK (640)	0.3495	3,244	1,134
		SEO (650)	0.3495	10,774	3,766
Pacific cod	A Season [1] January 1–June 10.	W	0.1331	12,614	1,679
		C	0.0692	25,623	1,773
	B Season [2] September 1–December 31.	W	0.1331	8,410	1,119
		C	0.0692	17,082	1,182
	Annual	E inshore	0.0079	1,774	14
		E offshore	0.0078	197	2
Sablefish	Annual, trawl gear	W	0.0000	356	0
		C	0.0642	1,152	74
		E	0.0433	271	12
Flatfish, Shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	18,000	1,057
		E	0.0126	5,779	73
Flatfish, deep-water	Annual	W	0.0000	176	0
		C	0.0647	2,308	149
		E	0.0128	2,642	34
Rex sole	Annual	W	0.0007	1,307	1
		C	0.0384	6,412	246
		E	0.0029	1,893	5
Arrowtooth flounder	Annual	W	0.0021	14,500	30
		C	0.0280	75,000	2,100
		E	0.0002	13,800	3
Flathead sole	Annual	W	0.0036	8,650	31
		C	0.0213	15,400	328
		E	0.0009	6,269	6
Pacific ocean perch	Annual	W	0.0023	2,102	5
		C	0.0748	11,263	842
		E	0.0466	3,553	166
Northern rockfish	Annual	W	0.0003	2,156	1
		C	0.0277	3,351	93
Shortraker rockfish	Annual	W	0.0000	104	0
		C	0.0218	452	10
		E	0.0110	525	6
Other rockfish	Annual	W	0.0034	44	0
		C	0.1699	606	103
		E	0.0000	430	0
Pelagic shelf rockfish	Annual	W	0.0001	409	0
		C	0.0000	3,849	0
		E	0.0067	860	6
Rougheye rockfish	Annual	W	0.0000	80	0
		C	0.0237	850	20
		E	0.0124	293	4
Demersal shelf rockfish	Annual	SEO	0.0020	293	1
Thornyhead rockfish	Annual	W	0.0280	150	4
		C	0.0280	766	21
		E	0.0280	749	21
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	469	3

TABLE 19—FINAL 2012 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2012 TACs	Final 2012 non-exempt AFA CV sideboard limit
		C	0.0063	1,793	11
		E	0.0063	1,505	9
Longnose skates	Annual	W	0.0063	70	0
		C	0.0063	1,879	12
		E	0.0063	676	4
Other skates	Annual	Gulfwide	0.0063	2,030	13
Squids	Annual	Gulfwide	0.0063	1,148	7
Sharks	Annual	Gulfwide	0.0063	6,028	38
Octopuses	Annual	Gulfwide	0.0063	1,455	9
Sculpins	Annual	Gulfwide	0.0063	5,731	36

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 20—FINAL 2013 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2013 TACs	Final 2013 non-exempt AFA CV sideboard limit
Pollock	A Season January 20–March 10.	Shumagin (610)	0.6047	6,285	3,801
		Chirikof (620)	0.1167	15,202	1,774
		Kodiak (630)	0.2028	6,274	1,272
	B Season March 10–May 31	Shumagin (610)	0.6047	6,285	3,801
		Chirikof (620)	0.1167	18,668	2,179
		Kodiak (630)	0.2028	2,807	569
	C Season August 25–October 1.	Shumagin (610)	0.6047	10,123	6,121
		Chirikof (620)	0.1167	7,896	821
		Kodiak (630)	0.2028	9,742	1,976
	D Season October 1–November 1.	Shumagin (610)	0.6047	10,123	6,121
		Chirikof (620)	0.1167	7,896	921
		Kodiak (630)	0.2028	9,742	1,976
	Annual	WYK (640)	0.3495	3,517	1,229
		SEO (650)	0.3495	10,774	3,766
Pacific cod	A Season [1] January 1–June 10.	W	0.1331	13,104	1,744
		C	0.0692	26,618	1,842
	B Season [2] September 1–December 31.	W	0.1331	8,736	1,163
		C	0.0692	17,745	1,228
	Annual	E inshore	0.0079	1,842	15
		E offshore	0.0078	205	2
Sablefish	Annual, trawl gear	W	0.0000	351	0
		C	0.0642	1,137	73
		E	0.0433	268	12
Flatfish, Shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	18,000	1,057
		E	0.0126	5,300	67
Flatfish, deep-water	Annual	W	0.0000	176	0
		C	0.0647	2,308	149
		E	0.0128	2,642	34
Rex sole	Annual	W	0.0007	1,283	1
		C	0.0384	6,291	242
		E	0.0029	1,858	5
Arrowtooth flounder	Annual	W	0.0021	14,500	30
		C	0.0280	75,000	2,100
		E	0.0002	13,800	3
Flathead sole	Annual	W	0.0036	8,650	31
		C	0.0213	14,500	309

TABLE 20—FINAL 2013 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2013 TACs	Final 2013 non-exempt AFA CV sideboard limit
		E	0.0009	6,358	6
Pacific ocean perch	Annual	W	0.0023	2,050	5
		C	0.0748	10,985	822
		E	0.0466	3,465	161
Northern rockfish	Annual	W	0.0003	2,017	1
		C	0.0277	3,136	87
Shortraker rockfish	Annual	W	0.0000	104	0
		C	0.0218	452	10
		E	0.0110	525	6
Other rockfish	Annual	W	0.0034	44	0
		C	0.1699	606	103
		E	0.0000	430	0
Pelagic shelf rockfish	Annual	W	0.0001	381	0
		C	0.0000	3,581	0
		E	0.0067	800	5
Rougheye rockfish	Annual	W	0.0000	82	0
		C	0.0237	861	20
		E	0.0124	297	4
Demersal shelf rockfish	Annual	SEO	0.0020	293	1
Thornyhead rockfish	Annual	W	0.0280	150	4
		C	0.0280	766	21
		E	0.0280	749	21
Atka mackerel	Annual	Gulfwide	0.0309	2,000	13
Big skates	Annual	W	0.0063	469	3
		C	0.0063	1,793	11
		E	0.0063	1,505	9
Longnose skates	Annual	W	0.0063	70	0
		C	0.0063	1,879	12
		E	0.0063	676	4
Other skates	Annual	Gulfwide	0.0063	2,030	13
Squids	Annual	Gulfwide	0.0063	1,148	7
Sharks	Annual	Gulfwide	0.0063	6,028	38
Octopuses	Annual	Gulfwide	0.0063	1,455	9
Sculpins	Annual	Gulfwide	0.0063	5,731	36

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Non-Exempt AFA Catcher Vessel Halibut PSC Limits

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Table 21 lists the final 2012 and 2013 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA. These halibut PSC limits are unchanged from the proposed 2012 and 2013 harvest specifications.

TABLE 21—FINAL 2012 AND 2013 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2012 and 2013 PSC limit	2012 and 2013 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	450	153
		deep-water	0.070	100	7
2	April 1–July 1	shallow-water	0.340	100	34
		deep-water	0.070	300	21
3	July 1–September 1	shallow-water	0.340	200	68
		deep-water	0.070	400	28
4	September 1–October 1	shallow-water	0.340	150	51
		deep-water	0.070	0	0

TABLE 21—FINAL 2012 AND 2013 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA—Continued

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2012 and 2013 PSC limit	2012 and 2013 non-exempt AFA CV PSC limit
5	October 1–December 31	all targets	0.205	300	62

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using a LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

Vessels exempt from Pacific cod sideboards are those that landed less than 45,359 kilograms of Bering Sea snow crab and more than 500 mt of groundfish (in round weight equivalents) from the GOA between January 1, 1996, and December 31, 2000, and any vessel named on an LLP license that was based in whole or in part on the fishing history of a vessel meeting the criteria in § 680.22(a)(3).

Sideboard limits for non-AFA crab vessels in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Sections 680.22(d) and (e) establish the formulas used to calculate groundfish sideboard limitations in the GOA. These limitations are calculated by dividing the non-AFA crab vessels' retained catch for each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period.

NMFS issued a final rule on June 20, 2011 (76 FR 35772), to implement Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. Amendment 34 amended the Bering Sea and Aleutian Islands Crab Rationalization Program to exempt additional recipients of crab quota share from GOA pollock and Pacific cod sideboards. Such sideboards apply to some vessels and LLP licenses that are used to participate in these two fisheries. The sideboard ratios for pollock are unchanged. The sideboard ratios for Pacific cod in the Western GOA have been superseded by the Pacific cod sector splits implemented by Amendment 83, which includes dividing the Pacific cod sideboards among applicable industry sectors.

Under Amendment 83 (76 FR 74670, December 1, 2011), the non-AFA crab vessel sideboards for the inshore and offshore components in the Western and Central GOA were combined. These combined sideboards must then be divided per the sector allocations established under Amendment 83. Thus, NMFS is specifying sideboard limitations in the Pacific cod fisheries for the non-AFA crab vessels in the Western and Central GOA that supersede the original inshore offshore and offshore processing sideboards established under the Crab Rationalization Program. Tables 22 and 23 list the final 2012 and 2013 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 22—FINAL 2012 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2012 TACs	Final 2012 non-AFA crab vessel sideboard limit
Pollock	A Season January 20–March 10	Shumagin (610)	0.0098	5,797	57
		Chirikof (620)	0.0031	14,023	43
		Kodiak (630)	0.0002	5,787	1
	B Season March 10–May 31	Shumagin (610)	0.0098	5,797	57
		Chirikof (620)	0.0031	17,221	53
		Kodiak (630)	0.0002	2,589	1
	C Season August 25–October 1	Shumagin (610)	0.0098	9,338	92
		Chirikof (620)	0.0031	7,282	23
		Kodiak (630)	0.0002	8,986	2
	D Season October 1–November 1	Shumagin (610)	0.0098	9,338	92
		Chirikof (620)	0.0031	7,282	23
		Kodiak (630)	0.0002	8,986	2
	Annual	WYK (640)	0.0000	3,244	0
		SEO (650)	0.0000	10,774	0

TABLE 22—FINAL 2012 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2012 TACs	Final 2012 non-AFA crab vessel sideboard limit
Pacific cod	A Season [1] January 1–June 10	W Jig	0.0000	12,614	0
		W Hook-and-line CV	0.0004	12,614	5
		W Hook-and-line C/P	0.0018	12,614	
		W Pot CV	0.0997	12,614	1,258
		W Pot C/P	0.0078	12,614	98
		W Trawl CV	0.0007	12,614	9
		C Jig	0.0000	25,623	0
		C Hook-and-line CV	0.0001	25,623	3
		C Hook-and-line C/P	0.0012	25,623	31
		C Pot CV	0.0474	25,623	1,215
		C Pot C/P	0.0136	25,623	348
		C Trawl CV	0.0012	25,623	31
	B Season [2] Jig Gear: June 10–December 31. All other gears: September 1–December 31	W Jig	0.0000	8,410	0
		W Hook-and-line CV	0.0004	8,410	3
		W Hook-and-line C/P	0.0001	8,410	15
		W Pot CV	0.0997	8,410	838
		W Pot C/P	0.0078	8,410	66
		W Trawl CV	0.0007	8,410	6
		C Jig	0.0000	17,082	0
		C Hook-and-line CV	0.0001	17,082	2
		C Hook-and-line C/P	0.0012	17,082	20
		C Pot CV	0.0474	17,082	810
		C Pot C/P	0.0136	17,082	232
		C Trawl CV	0.0012	17,082	20
	Annual	E inshore	0.0110	1,774	20
		E offshore	0.0000	197	0
Sablefish	Annual, trawl gear	W	0.0000	356	0
		C	0.0000	1,152	0
		E	0.0000	271	0
Flatfish, shallow-water	Annual	W	0.0059	13,250	78
		C	0.0001	18,000	2
		E	0.0000	5,779	0
Flatfish, deep-water	Annual	W	0.0035	176	1
		C	0.0000	2,308	0
		E	0.0000	2,642	0
Rex sole	Annual	W	0.0000	1,307	0
		C	0.0000	6,412	0
		E	0.0000	1,893	0
Arrowtooth flounder	Annual	W	0.0004	14,500	6
		C	0.0001	75,000	8
		E	0.0000	13,800	0
Flathead sole	Annual	W	0.0002	8,650	2
		C	0.0004	14,500	6
		E	0.0000	6,269	0
Pacific ocean perch	Annual	W	0.0000	2,102	0
		C	0.0000	11,263	0
		E	0.0000	3,553	0
Northern rockfish	Annual	W	0.0005	2,156	1
		C	0.0000	3,351	0
Shortraker rockfish	Annual	W	0.0013	104	0
		C	0.0012	452	1
		E	0.0009	525	0
Other rockfish	Annual	W	0.0035	44	0
		C	0.0033	606	2
		E	0.0000	430	0
Pelagic shelf rockfish	Annual	W	0.0017	409	1
		C	0.0000	3,849	0
		E	0.0000	860	0
Rougheye rockfish	Annual	W	0.0067	80	1
		C	0.0047	850	4
		E	0.0008	293	0

TABLE 22—FINAL 2012 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2012 TACs	Final 2012 non-AFA crab vessel sideboard limit
Demersal shelf rockfish	Annual	SEO	0.0000	293	0
Thornyhead rockfish	Annual	W	0.0047	150	1
		C	0.0066	766	5
		E	0.0045	749	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	469	18
		C	0.0159	1,793	29
		E	0.0000	1,505	0
Longnose skate	Annual	W	0.0392	70	3
		C	0.0159	1,879	30
		E	0.0000	676	0
Other skates	Annual	Gulfwide	0.0176	2,030	36
Squids	Annual	Gulfwide	0.0176	1,148	20
Sharks	Annual	Gulfwide	0.0176	6,028	106
Octopuses	Annual	Gulfwide	0.0176	1,455	26
Sculpins	Annual	Gulfwide	0.0176	5,731	101

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 23—FINAL 2013 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2013 TACs	Final 2013 non-AFA crab vessel sideboard limit
Pollock	A Season January 20–March 10.	Shumagin (610)	0.0098	6,285	62
		Chirikof (620)	0.0031	15,202	47
		Kodiak (630)	0.0002	6,274	1
	B Season March 10–May 31	Shumagin (610)	0.0098	6,285	62
		Chirikof (620)	0.0031	18,668	58
		Kodiak (630)	0.0002	2,806	1
	C Season August 25–October 1.	Shumagin (610)	0.0098	10,123	99
		Chirikof (620)	0.0031	7,896	24
		Kodiak (630)	0.0002	9,743	2
	D Season October 1–November 1.	Shumagin (610)	0.0098	10,123	99
		Chirikof (620)	0.0031	7,896	24
		Kodiak (630)	0.0002	9,743	2
	Annual	WYK (640)	0.0000	3,517	0
		SEO (650)	0.0000	10,774	0
Pacific cod	A Season[1] January 1–June 10.	W Jig	0.0000	13,104	0
		W Hook-and-line CV	0.0004	13,104	5
		W Hook-and-line C/P	0.0018	13,104	24
		W Pot CV	0.0997	13,104	1,306
		W Pot C/P	0.0078	13,104	102
		W Trawl CV	0.0007	13,104	9
		C Jig	0.0000	26,618	0
		C Hook-and-line CV	0.0001	26,618	3
		C Hook-and-line C/P	0.0012	26,618	32
		C Pot CV	0.0474	26,618	1262
		C Pot C/P	0.0136	26,618	362
		C Trawl CV	0.0012	26,618	32
	B Season[2] Jig Gear: June 10–December 31. All other gears: September 1–December 31.	W Jig	0.0000	8,736	0
		W Hook-and-line CV	0.0004	8,736	3

TABLE 23—FINAL 2013 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2013 TACs	Final 2013 non-AFA crab vessel sideboard limit
		W Hook-and-line C/P	0.0018	8,736	16
		W Pot CV	0.0997	8,736	871
		W Pot C/P	0.0078	8,736	68
		W Trawl CV	0.0012	8,736	6
		C Jig	0.0000	17,745	0
		C Hook-and-line CV	0.0001	17,745	2
		C Hook-and-line C/P	0.0012	17,745	21
		C Pot CV	0.0474	17,745	841
		C Pot C/P	0.0136	17,745	241
		C Trawl CV	0.0012	17,745	21
	Annual	E inshore	0.0110	1,842	20
		E offshore	0.0000	205	0
Sablefish	Annual, trawl gear	W	0.0000	351	0
		C	0.0000	1,137	0
		E	0.0000	268	0
Flatfish, shallow-water	Annual	W	0.0059	13,250	78
		C	0.0001	18,000	2
		E	0.0000	5,330	0
Flatfish, deep-water	Annual	W	0.0035	176	1
		C	0.0000	2,308	0
		E	0.0000	2,642	0
Rex sole	Annual	W	0.0000	1,283	0
		C	0.0000	6,291	0
		E	0.0000	1,858	0
Arrowtooth flounder	Annual	W	0.0004	14,500	6
		C	0.0001	75,000	8
		E	0.0000	13,800	0
Flathead sole	Annual	W	0.0002	8,650	2
		C	0.0004	14,500	6
		E	0.0000	6,358	0
Pacific ocean perch	Annual	W	0.0000	2,050	0
		C	0.0000	10,985	0
		E	0.0000	3,465	0
Northern rockfish	Annual	W	0.0005	2,017	1
		C	0.0000	3,136	0
Shortraker rockfish	Annual	W	0.0013	104	0
		C	0.0012	452	1
		E	0.0009	525	0
Other rockfish	Annual	W	0.0035	44	0
		C	0.0033	606	2
		E	0.0000	430	0
Pelagic shelf rockfish	Annual	W	0.0017	381	1
		C	0.0000	3,581	0
		E	0.0000	800	0
Rougheye rockfish	Annual	W	0.0067	82	1
		C	0.0047	861	4
		E	0.0008	297	0
Demersal shelf rockfish	Annual	SEO	0.0000	293	0
Thornyhead rockfish	Annual	W	0.0047	150	1
		C	0.0066	766	5
		E	0.0045	749	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	469	18
		C	0.0159	1,793	29
		E	0.0000	1,505	0
Longnose skate	Annual	W	0.0392	70	3
		C	0.0159	1,879	30
		E	0.0000	676	0
Other skates	Annual	Gulfwide	0.0176	2,030	36
Squids	Annual	Gulfwide	0.0176	1,148	20
Sharks	Annual	Gulfwide	0.0176	6,028	106
Octopuses	Annual	Gulfwide	0.0176	1,455	26
Sculpins	Annual	Gulfwide	0.0176	5,731	101

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

Amendment 88 to the FMP implements the Central GOA Rockfish Program, as previously described in the preamble. The Rockfish Program amendment establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, C/P rockfish sideboard restrictions, and C/P opt-out vessel sideboard restrictions. These sideboards are intended to limit the ability of rockfish harvesters to expand into other fisheries. A full description of the Rockfish Program sideboard provisions is contained in the proposed rule to implement Amendment 88 (76 FR 52148, August 19, 2011).

CVs participating in the Rockfish Program may not participate in directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the West Yakutat district and Western GOA from July 1 through July 31. Furthermore, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

Amendment 88 also establishes rockfish and halibut PSC sideboard limitations for C/Ps participating in Rockfish Program cooperatives. These C/Ps are prohibited from directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the West Yakutat district and Western GOA from July 1 through July 31. Holders of C/P-designated LLP licenses that opt-out of participating in a Rockfish Program cooperative will be able to access that portion of each sideboard limit that is not assigned to rockfish cooperatives. Tables 24 and 25 list the final 2012 and 2013 Rockfish Program C/P sideboard limits in the West Yakutat district and the Western GOA. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat district are not displayed.

TABLE 24—FINAL 2012 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	Final 2012 TACs	Final 2012 C/P limit
West Yakutat District	Pelagic shelf rockfish	Confidential [1]	542	Confidential [1]
	Pacific ocean perch	Confidential [1]	1,692	Confidential [1]
Western GOA	Pelagic shelf rockfish	72.3	409	296
	Pacific ocean perch	50.6	2,102	1,064
	Northern rockfish	74.3	2,156	1,602

[1] Not released due to confidentiality requirements associated with fish ticket data established by NMFS and the State of Alaska.

TABLE 25—FINAL 2013 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	Final 2013 TACs	Final 2013 C/P limit
West Yakutat District	Pelagic shelf rockfish	Confidential [1]	504	Confidential [1]
	Pacific ocean perch	Confidential [1]	1,650	Confidential [1]
Western GOA	Pelagic shelf rockfish	72.3	381	275
	Pacific ocean perch	50.6	2,050	1,037
	Northern rockfish	74.3	2,017	1,499

[1] Not released due to confidentiality requirements associated with fish ticket data established by NMFS and the State of Alaska.

The C/P sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries during the period July 1 through July 31. No halibut PSC sideboard limits apply to the CV sector. C/Ps that opt-out of the Rockfish Program would be able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to C/P rockfish cooperatives. The sideboard provisions for C/Ps that elect to opt-out of participating in a rockfish cooperative are described in the final rule implementing Amendment 88 (76 FR 81248, December 27, 2011). These ratios and amounts are not known at this time because vessels applications for C/Ps electing to opt-out are due to NMFS on March 1 of each calendar year, thereby preventing NMFS from calculating final 2012 and 2013 allocations. NMFS will post these allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm* when they become available in March. Table 26 lists the final 2012 and 2013 Rockfish Program halibut PSC limits for the C/P sector.

TABLE 26—FINAL 2012 AND 2013 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Sector	Shallow-water complex halibut PSC sideboard ratio (percent)	Deep-water complex halibut PSC sideboard ratio (percent)	Annual halibut mortality limit (mt)	Annual shallow-water complex halibut PSC sideboard limit (mt)	Annual deep-water complex halibut PSC sideboard limit (mt)
Catcher/processor	0.10	2.50	2,000	2	50

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl C/P sector. To limit the ability of participants eligible for the Amendment 80 Program to expand their harvest efforts in the GOA, the Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits shown in Table 37 to 50 CFR part 679. Under regulations at § 679.92(d), the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004. Tables 27 and 28 list the final 2012 and 2013 sideboard limits for Amendment 80 Program vessels. These limits are based on the final 2012 and 2013 TACs established by this action, and thus may differ proportionately from the sideboard limits in the proposed harvest specifications. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Tables 27 and 28.

TABLE 27—FINAL 2012 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2012 TAC (mt)	2012 Amendment 80 vessel sideboards (mt)
Pollock	A Season January 20–February 25.	Shumagin (610)	0.003	5,797	17
		Chirikof (620)	0.002	14,023	28
		Kodiak (630)	0.002	5,787	12
	B Season March 10–May 31	Shumagin (610)	0.003	5,797	17
		Chirikof (620)	0.002	17,221	34
		Kodiak (630)	0.002	2,589	5
	C Season August 25–September 15.	Shumagin (610)	0.003	9,338	28
		Chirikof (620)	0.002	7,282	15
		Kodiak (630)	0.002	8,986	18
	D Season October 1–November 1.	Shumagin (610)	0.003	9,338	28
		Chirikof (620)	0.002	7,282	15
	October 1–November 1	Kodiak (630)	0.002	8,986	18
	Annual	WYK (640)	0.002	3,244	6
Pacific cod	A Season [1] January 1–June 10.	W	0.020	12,614	252
		C	0.044	25,623	1,127
	B Season [2] September 1–December 31.	W	0.020	8,410	168
		C	0.044	17,082	752
	Annual	WYK	0.034	1,971	67
Pacific ocean perch	Annual	W	0.994	2,102	2,089
		WYK	0.961	1,692	1,626
Northern rockfish	Annual	W	1.000	2,156	2,156
Pelagic shelf rockfish	Annual	W	0.764	409	312
		WYK	0.896	542	486

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 28—FINAL 2013 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2013 TAC (mt)	2013 Amendment 80 vessel sideboards (mt)
Pollock	A Season January 20–February 25.	Shumagin (610)	0.003	6,285	19
		Chirikof (620)	0.002	15,202	30
		Kodiak (630)	0.002	6,274	13
	B Season March 10–May 31	Shumagin (610)	0.003	6,285	19
		Chirikof (620)	0.002	18,668	37
		Kodiak (630)	0.002	2,806	6
	C Season August 25–September 15.	Shumagin (610)	0.003	10,123	30
		Chirikof (620)	0.002	7,896	16
		Kodiak (630)	0.002	9,743	19
	D Season October 1–November 1.	Shumagin (610)	0.003	10,123	30
		Chirikof (620)	0.002	7,896	16
		Kodiak (630)	0.002	9,743	19
	Annual	WYK (640)	0.002	3,517	7
Pacific cod	A Season [1] January 1–June 10.	W	0.020	13,104	262
		C	0.044	26,618	1,171
	B Season [2] September 1–December 31.	W	0.020	8,736	175
		C	0.044	17,745	781
	Annual	WYK	0.034	2,047	70
Pacific ocean perch	Annual	W	0.994	2,050	2,038
		WYK	0.961	1,650	1,586
Northern rockfish	Annual	W	1.000	2,017	2,017
Pelagic shelf rockfish	Annual	W	0.764	381	291
		WYK	0.896	504	452

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: allocation of halibut PSC cooperative quota under the Central GOA Rockfish Program and the exemption of the F/V GOLDEN FLEECE from this restriction (§ 679.92(b)(2)). Table 29 lists the final 2012 and 2013 halibut PSC limits for Amendment 80 Program vessels, as contained in Table 38 to 50 CFR part 679. These halibut PSC limits are unchanged from those listed in the proposed 2012 and 2013 harvest specifications.

TABLE 29—FINAL 2012 AND 2013 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2012 and 2013 annual PSC limit (mt)	2012 and 2013 Amendment 80 vessel PSC limit
1	January 20–April 1	shallow-water	0.0048	2,000	10
		deep-water	0.0115	2,000	23
2	April 1–July 1	shallow-water	0.0189	2,000	38
		deep-water	0.1072	2,000	214
3	July 1–September 1	shallow-water	0.0146	2,000	29
		deep-water	0.0521	2,000	104
4	September 1–October 1	shallow-water	0.0074	2,000	15
		deep-water	0.0014	2,000	3
5	October 1–December 31	shallow-water	0.0227	2,000	45
		deep-water	0.0371	2,000	74

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component or sector allocation will be reached, the Regional Administrator may establish a directed fishing allowance (DFA) for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the species listed in Table 30 are necessary to account for the incidental catch of these species in other anticipated groundfish fisheries for the 2012 and 2013 fishing years.

TABLE 30—2012 AND 2013 DIRECTED FISHING CLOSURES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Target	Area/component/gear	Incidental catch amount
Pollock	all/offshore	not applicable[1]
Sablefish[2]	all/trawl	1,779 (2012) 1,756 (2013)
Shortraker rockfish[2]	all	1,081
Other rockfish	all	1,080
Rougheye rockfish	all	1,223 (2012) 1,240 (2013)
Thornyhead rockfish	all	1,665
Atka mackerel	all	2,000
Big skate	all	3,767
Longnose skate	all	2,625
Other skates	all	2,030
Squids	all	1,148
Sharks	all	6,028
Octopuses	all	1,455

[1] Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).
[2] Closures not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program.

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 30 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 30. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2013.

Section 679.64(b)(5) provides for management of AFA CV groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8), and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA CV sideboard limits listed in Tables 19 and 20 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2012 and 2013 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator sets the DFAs for the species and species groups in Table 31 at zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA CVs in the GOA for the species and specified areas listed in Table 31. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2013.

TABLE 31—2012 AND 2013 NON-EXEMPT AFA CV SIDEBOARD DIRECTED FISHING CLOSURES FOR ALL GEAR TYPES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Species	Regulatory area/district	Incidental catch amount
Pacific cod	Eastern	14 (inshore) and 2 (offshore) in 2012 15 (inshore) and 2 (offshore) in 2013
Shallow-water flatfish	Eastern	73 in 2012 67 in 2013
Deep-water flatfish	Western	0
Rex sole	Eastern and Western	1 and 5
Arrowtooth flounder	Eastern and Western	3 and 30
Flathead sole	Eastern and Western	6 and 31
Pacific ocean perch	Western	5
Northern rockfish	Western	1
Pelagic shelf rockfish	Entire GOA	6 in 2012 5 in 2013
Demersal shelf rockfish	SEO District	1

TABLE 31—2012 AND 2013 NON-EXEMPT AFA CV SIDEBOARD DIRECTED FISHING CLOSURES FOR ALL GEAR TYPES IN THE GOA—Continued

[Amounts for incidental catch in other directed fisheries are in metric tons]

Species	Regulatory area/district	Incidental catch amount
Sculpins	Entire GOA	36

Section 680.22 provides for the management of non-AFA crab vessel sideboards using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that the non-AFA crab vessel sideboards listed in Tables 22 and 23 are insufficient to support a directed fishery and has set the sideboard DFA at zero, with the exception of Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas. Therefore, NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and species groups listed in Tables 22 and 23, with the exception of the Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas.

Section 679.82 provides for the management of Rockfish Program sideboard limits using directed fishing closures in accordance with § 679.82(d) and (e). The Regional Administrator has determined that the CV sideboards listed in Tables 24 and 25 are insufficient to support a directed fishery and has set the sideboard DFA at zero. Therefore, NMFS is closing directed fishing for Pacific ocean perch and pelagic shelf rockfish in the WYK district and the Western Regulatory Area, and for northern rockfish in the Western Regulatory Area by CVs participating in the Central GOA Rockfish Program during the month of July in 2012 and 2013. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2013.

Closures implemented under the 2011 and 2012 Gulf of Alaska harvest specifications for groundfish (76 FR 11111, March 1, 2011) remain effective under authority of these final 2012 and 2013 harvest specifications, and are posted at the following Web sites: *http://alaskafisheries.noaa.gov/index/infobulletins/infobulletins.asp?Yr=2011,* and *http://alaskafisheries.noaa.gov/2011/status.htm.* While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. NMFS may implement other closures during the 2012 and 2013 fishing years as necessary for effective conservation and management.

Response to Comments

This action was published as a proposed rule on December 22, 2011 (76 FR 79620), and public comments about it were solicited until January 23, 2012. NMFS received one comment submission containing two general categories of comments. This comment was received from a company involved in the halibut sport fishery in Alaska. These comments are summarized and responded to below.

Comment 1: Maintaining the current Pacific halibut PSC limits for trawl and hook-and-line gear is unacceptable. The halibut exploitable biomass had decreased significantly in recent years, which has adversely affected various user groups, including the commercial halibut IFQ fisheries, guided and unguided sport sectors, and subsistence users. The Council's ongoing effort to consider halibut PSC reductions for the commercial groundfish fisheries in the GOA is commendable. However, the Council has not yet taken final action on that issue, and even if it does in 2012, halibut PSC limit reductions in the GOA may not occur until 2013. Therefore, NMFS and the Council must consider interim PSC reductions, prior to the selection and implementation of any future GOA halibut PSC limit reductions.

Response: The action to revise GOA halibut PSC limits is under development and consideration by the Council. Initially, this potential revision was under consideration for implementation through the 2012 and 2013 harvest specifications. In October 2011, the Council initiated a new action to remove GOA halibut PSC limits from the annual harvest specifications process through an amendment to the GOA FMP. In addition, the action would establish the means to set GOA halibut PSC limits in federal regulations. The Council reviewed a draft Environmental Assessment (EA) and Regulatory Impact Review (RIR) at its February 2012 meeting and is scheduled to take final action on halibut PSC revisions later in 2012. As the effort to review and potentially revise these limits is under active review and consideration by the Council, NMFS does not believe it to be either necessary or appropriate to reduce either the trawl or hook-and-line gear halibut PSC limits as part of the final 2012 and 2013 harvest specifications.

The GOA groundfish fisheries currently are subject to binding halibut PSC limits set by the Council for purposes of halibut conservation. Commercial groundfish fisheries are required to stop fishing when their halibut PSC limits are taken. Directed fisheries for some groundfish species may be closed due to the attainment of halibut PSC limits before the target species' TACs have been fully harvested. Participants in these fisheries incur significant costs to stay within their halibut catch limits. The pending action to revise halibut PSC limits is assessing the economic effects of changes to the current trawl and hook-and-line halibut PSC limits on various components of the GOA groundfish fisheries.

Comment 2: The draft EA and RIR prepared for the pending halibut PSC revision under consideration by the Council are inadequate. The range of alternatives considered for the potential revisions should include higher PSC limit reductions than five, ten, or 15 percent. The EA should be augmented with additional studies pertaining to halibut bycatch effects on other halibut fishery sectors, additional information about the economic impacts of the alternatives, and a more detailed explanation of halibut bycatch estimation and any potential bias associated with estimating halibut bycatch. The RIR should be augmented to fully account for the costs and benefits to each resource user sector, rather than focusing on the commercial sector. Finally, the analysis does not sufficiently address National Standards 1, 8, and 9 of the Magnuson-Steven Act.

Response: NMFS notes the commenter's observations and concerns about the GOA halibut PSC revision EA and RIR. We also encourage the commenter to continue to follow the GOA halibut PSC revision action through the Council and rulemaking processes, and provide additional comments about the action and its

associated analytical documents to the Council and NMFS, as appropriate.

Classification

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866 and 13563.

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2012, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The EIS found no significant environmental consequences of this action and its alternatives. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for the 2012 and 2013 groundfish harvest specifications.

A SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that (1) approval of the 2012 and 2013 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2012 and 2013 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Protection Act documentation is not necessary to implement the 2012 and 2013 harvest specifications.

Pursuant to section 604 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* a FRFA was prepared for this action. The FRFA incorporates the IRFA, and includes a summary of the significant issues raised by public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action.

A copy of the FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 22, 2011. NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action, and included a summary in the proposed rule. The comment period closed on January 23, 2012. No comments were received on the IRFA. No changes were made from the proposed rule to the final rule based on comments received about the IRFA.

The entities directly regulated by this action are those that receive allocations of groundfish in the EEZ of the GOA, and in parallel fisheries within State of Alaska waters, during the annual harvest specifications process. These directly regulated entities include the groundfish CVs and groundfish C/Ps active in these areas. Direct allocations of groundfish are also made to Central GOA Rockfish Program cooperatives. These entities are, therefore, also considered to be directly regulated.

In 2009, there were 660 individual CVs with revenues less than or equal to $4 million. Some of these vessels are members of AFA inshore pollock cooperatives, or of GOA rockfish cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 627 small CVs remaining in the GOA.

In 2009, nine C/Ps grossed less than $4 million. Some of these vessels were affiliated through ownership by the same business firm. NMFS estimates that these vessels were owned by eight separate firms. Vessels in this group were also affiliated through membership in two cooperatives (the Amendment 80 Alaska Seafood Cooperative and the Freezer Longline Conservation Cooperative). After taking account of firm and cooperative affiliations, NMFS estimates that these nine vessels represent four small entities.

The number of Rockfish Program cooperatives can change from year to year. In 2010, there were eight separate cooperatives (NMFS 2011). The Rockfish Program cooperatives are directly regulated, since they receive allocations of TAC through the harvest specifications process. The cooperatives are large entities, since they are affiliated with firms with a combined total gross revenue of over $4 million.

This action does not modify recordkeeping or reporting requirements.

NMFS considered alternative harvest strategies when choosing the preferred harvest strategy in December 2006. These included the following:

- *Alternative 1:* Set TACs to produce fishing mortality rates, F, that are equal to maxFABC, unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term ''maxFABC'' refers to the maximum permissible value of FABC under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- *Alternative 3:* For species in Tiers 1, 2, and 3, set TAC to produce F equal to the most recent 5-year average actual F. For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent five year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent five year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average F may provide a better indicator of actual F than FABC does.
- *Alternative 4:* (1) Set TACs for rockfish species in Tier 3 at F75%. Set TACs for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the GOA. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all TACs, including rockfish TACs, is equal to the lower bound of the area OY (116,000 mt in the GOA). This alternative sets conservative and spatially explicit TACs for rockfish species that are long-lived and late to mature and sets conservative TACs for the other groundfish species.
- *Alternative 5:* (No Action) Set TACs at zero.

These alternatives do not both meet the objectives of this action although they have a smaller adverse economic impact on small entities than the preferred alternative. The Council rejected these alternatives as harvest

strategies in 2006, and the Secretary did so in 2007.

Alternative 1 selected harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests are constrained by the upper bound of the GOA OY of 800,000 metric tons. The sums of ABCs in 2012 and 2013 are 606,048 mt and 612,506 mt, respectively. The sums of the TACs in 2012 and 2013 are 438,159 mt and 447,752 mt, respectively. Thus, although the sum of ABCs in each year is less than 800,000 metric tons, the sums of the TACs in each year are less than the sums of the ABCs.

In most cases, the Council has set TACs equal to ABCs. The divergence between aggregate TACs and aggregate ABCs reflects a variety of special species- and fishery-specific circumstances:

Pacific cod TACs are set equal to 75 percent of the Pacific cod ABCs in each year to account for the guideline harvest levels set by the State of Alaska for Pacific cod in its fisheries that are equal to 25 percent of the Council's ABCs. Thus, this difference does not actually reflect a Pacific cod harvest below the Pacific cod ABC.

Shallow-water flatfish and flathead sole TACs are set below ABCs in the Western and Central GOA regulatory areas. Arrowtooth flounder TACs are set below ABC in all GOA regulatory areas. Catches of these flatfish species rarely, if ever, approach the proposed ABCs or TACs. Important trawl fisheries in the GOA take halibut PSC, and are constrained by limits on the allowable halibut PSC mortality. These limits routinely force the closure of trawl fisheries before they have harvested the available groundfish ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of some ABCs and TACs. Markets can also constrain harvests below the TACs, as has been the case with arrowtooth flounder, in the past. These TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries.

The other rockfish TAC is set below the ABC in the Southeast Outside district based on several factors. In addition to conservation concerns for the rockfish species in this group, there is a regulatory prohibition against using trawl gear east of 140° W. longitude. Because most species of other rockfish are caught exclusively with trawl gear, the catch of such species with other gear types, such as hook-and-line, is low. The commercial catch of other rockfish in the Eastern regulatory area (which includes the West Yakutat and Southeast Outside districts) in the last decade has ranged from approximately 70 mt to 248 mt per year.

The GOA-wide Atka mackerel TAC is set below the ABC. The estimates of survey biomass continue to be unreliable in the GOA. Therefore, the Council recommended and NMFS agrees that the Atka mackerel TAC in the GOA be set at an amount to support incidental catch in other directed fisheries.

Alternative 3 selects harvest rates based on the most recent five years of harvest rates (for species in Tiers 1 through 3) or for the most recent five years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TACs from the upper end of the OY range in the GOA to its lower end of 116,000 metric tons. Overall this would reduce 2012 TACs by about 81 percent. This would lead to significant reductions in harvests of species harvested by small entities. While production declines in the GOA would undoubtedly be associated with price increases in the GOA, these increases would still be constrained by the availability of substitutes, and are very unlikely to offset revenue declines from smaller production. Thus, this action would have a detrimental economic impact on small entities.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

In the 2012 and 2013 harvest specifications, yellowtail and widow rockfish have been moved from the pelagic shelf rockfish (PSR) species group to the other rockfish species group. This has been done to leave dusky rockfish alone in the PSR category. Dusky rockfish dominate the PSR category and support a valuable fishery in the Western and Central GOA. Dusky rockfish have been assessed with an age-structured model and are a Tier 3a species, unlike yellowtail and widow rockfish, which are Tier 5 species. This separation allows managers to treat dusky rockfish like other rockfish species in Tier 3a with age-structured models and to have an OFL and ABC specific to this species. A discussion paper reviewing this action found that this management reorganization would have no adverse economic impact on commercial fishermen in the GOA. The discussion paper indicated that the PSR fishery rarely harvested the TAC. Therefore, a reduction in TACs associated with the shift in species would be inconsequential. The paper also concluded that it would not have an adverse impact on participants in the Central Gulf of Alaska Rockfish Program (GOA FMP Amendment 88). The action has the effect of increasing the OFL and ABC for other rockfish. Thus, this action is not expected to have an adverse impact on small entities.

Impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Acting Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule, because delaying this rule is contrary to the public interest. The Plan Team review occurred in November 2011, and Council consideration and recommendations occurred in December 2011. Accordingly, NMFS review could not begin until January 2012. For all fisheries not currently closed because the TACs established under the final 2011 and 2012 harvest specifications (76 FR 11111, March 1, 2011) were not reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because their TACs could be reached within that time period. If implemented immediately, this rule would allow these fisheries to continue to fish because the new TACs implemented by this rule are higher than the ones under which they are currently fishing.

Certain fisheries, such as those for pollock and Pacific cod are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, squids, sharks, octopuses, and sculpins are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If this rule allowed for a 30-day delay in effectiveness and if a TAC is reached, NMFS would close directed fishing or prohibit retention for the applicable species. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards. Waiving the 30-day delay allows NMFS to prevent economic loss to fishermen that could otherwise occur should the 2012 TACs be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance,

including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace.

In fisheries subject to declining sideboards, a failure to implement the updated sideboards before initial season's end could deny the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboards, economic benefit could be denied to the sideboarded sectors.

If the final harvest specifications are not effective by March 17, 2012, which is the start of the 2012 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2012 and 2013 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season. Also, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true for those species that have lower 2012 ABCs and TACs than those established in the 2011 and 2012 harvest specifications (76 FR 11111, March 1, 2011). Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TACs. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2012 and 2013 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2012 and 2013 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: March 7, 2012.

Alan D. Risenhoover,

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

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Part III

The President

Notice of March 13, 2012—Continuation of the National Emergency With Respect to Iran Executive Order 12957

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Presidential Documents

Title 3—

The President

Notice of March 13, 2012

Continuation of the National Emergency With Respect to Iran Executive Order 12957

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959, imposing more comprehensive sanctions to further respond to this threat; on August 19, 1997, the President issued Executive Order 13059, consolidating and clarifying the previous orders; and I issued Executive Order 13553 of September 28, 2010, Executive Order 13574 of May 23, 2011, Executive Order 13590 of November 20, 2011, and Executive Order 13599 of February 5, 2012, to take additional steps pursuant to this national emergency.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2011. This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 13, 2012.

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H.R. 3630/P.L. 112–96
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