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Presidential Documents

Title 3—

The President

Proclamation 8612 of December 3, 2010

International Day of Persons With Disabilities, 2010

By the President of the United States of America

A Proclamation

America stands in solidarity with the growing number of nations around the world that have committed themselves to ending unequal treatment of persons with disabilities. On International Day of Persons with Disabilities, we acknowledge the contributions of women and men with disabilities around the world, and we recognize our charge to ensure that all individuals can enjoy full inclusion and participation in our societies.

My Administration is continuing to protect and promote human rights, fair opportunity, and equal access for people with disabilities. Last year, the United States became a proud signatory of the United Nations Convention on the Rights of Persons with Disabilities, the first new human rights treaty of the 21st century. Like our laws in the United States, this treaty urges equal protection and equal benefit of the law for all persons with disabilities, and it reaffirms the inherent dignity, worth, and independence of the 650 million individuals with disabilities worldwide. To advance our international work in this area, my Administration has named a Special Advisor for International Disability Rights at the Department of State. My Administration also continues to support the efforts of the World Intellectual Property Organization to facilitate and increase access to literary, artistic, and scientific materials for persons with disabilities. With our partners around the globe, we can affirm the rights of individuals with disabilities to live independently if they choose, free from the fear of discrimination, stigma, or economic insecurity.

In acknowledging the progress of the past year, we also reflect upon important milestones in America's civil rights struggle for people with disabilities. This year marks the 20th anniversary of the Americans with Disabilities Act and the 35th anniversary of the Individuals with Disabilities Education Act. These historic, bipartisan civil rights laws were clarion calls for equal access for and an end to discrimination against persons with disabilities, and they have paved the way for countless Americans with disabilities to share their talents and strengthen our communities.

We have made progress, but still have a great distance to journey before every person living with a disability can benefit from the same access and protections, in the United States and abroad. As we celebrate International Day of Persons with Disabilities, let us reinvigorate our commitment to eradicate barriers and ensure equal opportunity for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 3, 2010, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

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

[FR Doc. 2010–30998
Filed 12–7–10; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551–AA70

Dairy Import Licensing Program

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the historical license reduction provisions of the Dairy Tariff-Rate Import Quota Licensing Program 7 CFR part 6, by suspending the provisions with respect to the reduction of historical licenses based on surrenders of unused quantities until 2016.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Lord, Branch Chief, Sugar and Dairy Branch, Import and Trade Support Programs Division, Foreign Agricultural Service, Stop 1021, 1400 Independence Avenue, SW., Washington, DC 20250–1021; telephone (202) 720–6939; or e-mail at: *ronald.lord@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The final rule has been determined to be not significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This final rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988. The provisions of this final rule would not have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The final rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this final rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this final rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Public Law 104–4 requires consultation with State and local officials and Indian Tribal governments. This final rule does not impose an unfunded mandate or any other requirement on State, local, or Tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This final rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Government Paperwork Elimination Act

Foreign Agricultural Service (FAS) is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

FAS administers the Dairy Tariff-Rate Import Quota Licensing Program, 7 CFR 6.20–6.37, that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQ), as established in the Harmonized Tariff Schedule of the United States. These dairy products may only be imported into the United States at the in-quota rate, by or for the account of a person or firm to whom such licenses have been issued, and only in accordance with the terms and conditions of the program. Section 6.25(b)(1)(i) provides that if a licensee surrenders more than 50 percent of a historical license at least 3 out of the 5 prior years, that license will be permanently reduced to the average amount entered during those 5 years. Any amounts permanently reduced are transferred to the non-historical quota, which is allocated by a lottery. In 2008, the Secretary amended the regulation, suspending section 6.25(b)(1)(i) for 2 years until January 1, 2011. Subsequent market developments have caused the Department to again re-consider the license reduction provisions of the Dairy Import Licensing Program.

Summary of public comments: The Secretary published a proposed rule in the **Federal Register** (75 FR 62692–23), October 13, 2010, providing that the provisions of 7 CFR 6.25, with respect to the reduction of historical licenses, based on unused amounts would be suspended for an additional 5 years until 2016. The Department requested that public comments be submitted by November 12, 2010. Comments were submitted by 29 importing companies, 3 associations, a counsel to the Cheese Importers Association of America and several of its member companies, a customs broker, a manufacturer of dairy products, and a Congressman all in favor of the proposed 5-year suspension of the dairy import license reduction provision.

The factors cited in favor of a further 5-year suspension included the declining availability of cheese from the European Union (EU), a weaker U.S. dollar, and the general economic weakness in the United States. Some companies with historical licenses stated that the U.S. food market benefits from reliable and longer-term supply-chain relationships which may be more easily maintained by companies which have historical licenses.

Many of the companies emphasized that a 5-year suspension of the historical license reduction provision would allow additional time for license holders to adjust to economy-wide factors outside their control, including changes in the

EU's supply and demand situation for dairy products, as well as to changes in the U.S. market.

Conclusion: The quota-fill rates for Swiss, Gruyere, and low-fat type cheeses have continued to remain low even after transfer to the lottery system in recent years. Market conditions are always subject to fluctuation and change, and it is incumbent upon all license holders to adjust to these changing conditions. To allow additional time to adjust to changes in EU supply and demand, due to its long-term dairy policy changes, the Department will again temporarily suspend the historical license reduction provisions for a period of 5 years, commencing January 1, 2011. Historical license reductions will again be implemented beginning 2016, as set forth in the proposed rule. In 2016, historical license reductions will be based on import data from years 2011 through 2015.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, and Imports.

■ For the reasons set out in the preamble, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart—Dairy Tariff-Rate Import Quota Licensing

■ 1. The authority citation for part 6 subpart—Dairy Tariff-Rate Import Quota Licensing, continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23, and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Section 6.25 (b) is revised to read as follows:

§ 6.25 Allocation of Licenses.

* * * * *

(b) *Historical licenses for the 2011 and subsequent quota years (Appendix 1).*

(1) A person issued a historical license for the 2010 quota year will be issued a historical license in the same amount for the same article from the same country for the 2011 quota year and for each subsequent quota year except that:

(i) Beginning with the 2016 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior 5 quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those 5 quota years.

(ii) [Reserved]

* * * * *

Issued at Washington, DC, the 30th day of November 2010.

Robert Riemenschneider,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2010–30714 Filed 12–7–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 802

[Docket # GIPSA–2010–FGIS–0012]

RIN 0580–AB19

Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) Federal Grain Inspection Service (FGIS) is amending the regulations issued under the United States Grain Standards Act (USGSA), as amended, to incorporate by reference the applicable requirements of the 2008 edition of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," (NIST Handbook 44, issued October 2007).

DATES: This rule is effective March 8, 2011 without further action, unless adverse comments or written notice of intent to submit adverse comments are received by January 7, 2011. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of March 8, 2011.

ADDRESSES: We invite you to submit comments on this direct final rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1643–S, Washington, DC 20260–3642.
- E-mail comments to *comments.gipsa@usda.gov.*
- *Fax:* (202) 690–2173.

Instructions: All comments will become a matter of public record and should be identified as "NIST Handbook 44 IBF Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at *http://www.regulations.gov* and in the above office during regular business hours (7 CFR 1.27(b)). Please contact the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read the comments received.

FOR FURTHER INFORMATION CONTACT: Robert S. Lijewski, Director, Field Management Division by E-mail at *robert.s.lijewski@usda.gov,* or by telephone at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the USGSA (7 U.S.C. 71–87k), grain exported from the U.S. must be officially inspected and weighed. Sections 802 and 802.1 of the USGSA regulations (7 CFR 802.0–802.1) set forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y official weighing services. GIPSA management has reviewed these regulations and determined that they still serve their intended purpose, are consistent with GIPSA's statutory authority and policy, and should remain in effect. In order to update the USGSA regulations, however, GIPSA is incorporating by reference the 2008 edition of NIST Handbook 44 into the USGSA regulations (7 CFR 802.0(a)). Those provisions in NIST Handbook 44 that obviously do not pertain to GIPSA services are not being incorporated and are listed in section 802.0(b) of the USGSA regulations (7 CFR 802.0(b)).

Direct Final Action

GIPSA is revising § 802.0(a) of the USGSA regulations (7 CFR 802.0(a)) by incorporating by reference the following sections only of the 2008 edition of NIST Handbook 44:

Section 1.10	General Code
Section 2.20	Scales
Section 2.22	Automatic Bulk Weighing Systems
Section 2.23	Weights

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this

direct final rule in effect because GIPSA regularly updates this section of the USGSA regulations to incorporate by reference NIST Handbook 44. Further, GIPSA views this action as noncontroversial and anticipates no adverse public comment. This rule will be effective, as published in this document, 90 days after the date of publication in the **Federal Register**, unless GIPSA receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are considered to be those comments that suggest the rule should not be adopted or suggest the rule should be changed.

If GIPSA receives written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. GIPSA will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered thoughtfully, and a final rule addressing the comments will be published.

Executive Order 12866 and Regulatory Flexibility Act

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. GIPSA has determined that most users of the official weighing service and those entities that perform these services do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates approximately 9,000 off farm storage facilities and 57 export elevators in the United States could receive official weighing services by GIPSA, delegated States, or designated agencies. GIPSA also estimates this rule affects 18 scale manufacturing and 39 scale service companies who provide weighing equipment and service to these elevators and storage facilities. Eight GIPSA field offices, 2 Federal/State offices, 4 GIPSA sub offices, 7 delegated States, and 25 designated agencies provide official weighing service. Under provisions of the USGSA, it is not mandatory for non-export grain to be officially weighed except for grain being loaded onto ships located in export port locations. Further, most users of the official weighing services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this rule only updates regulatory requirements that make GIPSA weighing guidelines consistent with State weights and measures organizations' laws and regulations that automatically adopt NIST Handbook 44 on a yearly basis. Updating these requirements will help manufacturers of weighing equipment and grain elevators avoid making, installing, and maintaining equipment to meet two sets of design and performance requirements for commercial and official weighing to meet old as well as new specifications. Since regulated entities are required under State law to comply with NIST Handbook 44, no additional cost or burden is expected to result from this action.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this direct final rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this direct final rule.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 802 have been approved previously by OMB No. 0580–0013 which expires on April 30, 2011.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR Part 802 is amended as follows:

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

■ 1. The authority citation for Part 802 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services, official inspection services, and commercial services under the Act. All scales used for official grain weight and inspection certification services provided by FGIS must meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 2008 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NIST Handbook 105–1 (1990 Edition), "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," (Handbook 105–1). These requirements are confirmed to be met by having National Type Evaluation Program type approval. Scales used for commercial purposes will be required to meet only the applicable requirements of the 2008 edition of the NIST Handbook-44. Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b), the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This incorporation by reference was approved by the Director of the Federal Register on March 8, 2011, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The NIST Handbooks are for sale by the National Conference of Weights and Measures (NCWM), 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Information on these materials

may be obtained from NCWM by calling 402–434–4880, by E-mailing *nfo@ncwm.net,* or on the Internet at *http://www.nist.gov/owm.*

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales (2.20)

S.1.8. Computing Scales
S.1.8.2. Money-Value Computation
S.1.8.3. Customer's Indications
S.1.8.4. Recorded Representations, Point of Sale
S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
S.3.3. Scoop Counterbalance
N.1.3.2. Dairy-Product Test Scales
N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
N.1.8. Material Tests
N.3.1.2. Interim Approval
N.3.1.3. Enforcement Action For Inaccuracy
N.4. Coupled-in-Motion Railroad Weighing Systems
N.6. Nominal Capacity of Prescription Scales
T.1.2. Postal and Parcel Post Scales
T.2.3. Prescription Scales
T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product—Test Scales (all sections)
T.N.3.9. Materials Test on Customer—Operated Bulk—Weighing Systems for Recycled Materials
UR.1.4. Grain Test Scales: Value of Scale Divisions
UR.3.1. Recommended Minimum Load
UR.3.1.1. Minimum Load, Grain Dockage

Automatic Bulk Weighing Systems (2.22)

N.1.3. Decreasing-Load Test

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–30712 Filed 12–7–10; 8:45 am]

BILLING CODE 3410–KD–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA 2009–0073]

RIN 0960–AH07

Amendments to Regulations Regarding Withdrawal of Applications and Voluntary Suspension of Benefits

AGENCY: Social Security Administration.

ACTION: Final rule with request for comments.

SUMMARY: We are modifying our regulations to establish a 12-month time limit for the withdrawal of old-age benefits applications, allow one withdrawal per lifetime, and limit the voluntary suspension of benefits for purposes of receiving delayed retirement credits to months for which you have not received a payment. We are making these changes to revise current policies that have the potential for misuse.

DATES: This final rule will be effective December 8, 2010. To ensure that your comments are considered, we must receive them no later than February 7, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0073 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2009–0073. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Deidre Bemister, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, Office of Applications and Electronic Services Support Policy, 2500 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–966–6223. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

In 1935, Congress passed the Social Security Act (Act), which established and funded the Social Security program. In his Presidential signing statement, President Franklin D. Roosevelt affirmed that the lawmakers intended the Act to "give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age." [1] Due to concerns about the solvency of the Social Security program, in 1977 Congress passed amendments to the Act designed to restore the long-term balance of the program. Among the changes enacted was a delayed retirement credit (DRC) that increased benefits for those who delay retirement past full retirement age (FRA).[2]

Workers choose when to apply for old-age benefits. Workers who apply for old-age benefits at FRA will receive full benefit rates. Workers may also choose to apply before or after FRA. Workers who apply between age 62 and FRA will receive benefit amounts reduced by a certain percentage for each month they collect benefits before FRA. Workers who apply between FRA and age 70 will receive amounts increased by a certain percentage for each month they forego benefit payments after FRA. Workers who live to their average life expectancies will receive about the same amount in lifetime benefits, regardless if they began receiving benefits at age 62, FRA, age 70, or any age in between.

Benefit Application Withdrawal

Workers occasionally reconsider their having applied for old-age benefits. Continued work is a common reason for such reconsideration. The income from continued work may bring workers earnings over the annual earnings limit and require us to withhold benefits. Although the Act does not include a specific provision concerning

[1] *Presidential Statement Signing the Social Security Act, August 14, 1935.* Available at: *http://www.ssa.gov/history/fdrstmts.html#signing.*

[2] Section 216(l) of the Act provides for a gradual increase in the full retirement age from age 65 to age 67. The change first affected those workers born in 1938. By 2027, the incremental increases will be complete and a full retirement age of 67 will be applicable to all workers born in 1960 or later. These provisions do not change the age at which a worker can take early retirement at a reduced benefit amount, which remains age 62.

withdrawal of an application, we have a longstanding policy that allows workers to withdraw benefit applications.

Our current regulations permit living applicants or beneficiaries to withdraw benefit applications for any reason. Applicants or beneficiaries need simply submit written requests for withdrawal, and beneficiaries must repay benefits received. Our program experience has shown that most workers withdraw their applications within one year of application.

Recent media articles have promoted the use of our application withdrawal process as a means for retired beneficiaries to increase their benefits or acquire an "interest-free loan." [3] Our current policy permits retirement beneficiaries to apply for old-age benefits prior to FRA, begin receiving reduced benefits, withdraw their applications, repay benefits, and reapply for full or increased benefits later. Under this policy, the payment of monthly benefits ceases until the beneficiary reapplies, at which time the beneficiary receives a higher monthly benefit amount than before.

Reacting to this media attention, the Center for Retirement Research at Boston College published an article titled, *Strange but True: Free Loan from Social Security* that discussed this "unconventional claiming strateg[y]." [4] The authors very astutely observed that our current withdrawal policy has the potential to "pay higher lifetime benefits to some individuals and increase system costs." [5]

This "free loan" is not free. It denies the Trust Fund and the Federal Government the use of these monies and the potential returns on the use of those funds. Moreover, the processing of withdrawal applications uses resources that we could use to serve others. Our Nation faces significant challenges resulting from the potential number of future retirees. Current market and economic conditions have exacerbated these challenges.

Additionally, our current withdrawal policy has the potential to benefit those with the least need. Because a worker must repay previously awarded benefits in one lump sum, without interest, it is unlikely that the average retired beneficiary is in a position to reverse this earlier decision. Those who have the means to take advantage of our current policy do so at the expense of the Trust Fund.

Our field offices have noticed an increase in the number of application withdrawals. We anticipate that the number of withdrawals will continue to rise if this policy is not changed. The current economic climate may lead many current retirees to return to work in order to obtain a higher future benefit. Current retirees with the means to repay benefits received could decide to do so in order to start collecting higher benefits immediately.

Benefit Suspension

We currently allow beneficiaries to suspend past, current, and future old-age benefit payments. Beneficiaries who suspend past payments must repay benefits received during the period of suspension. This policy also has the potential for misuse. Our current policy allows workers to apply for old-age benefits prior to FRA, begin receiving reduced benefits, suspend the benefits retroactively, repay benefits, and earn DRCs for the period of suspension. Workers earn DRCs for each month retirement is delayed past FRA up to age 70. As a result, workers who retroactively suspend old-age benefits to earn DRCs receive a higher monthly benefit amount. Because beneficiaries could use retroactive voluntary suspension as a vehicle to repay benefits and then reapply for higher benefits at a later age, we are revising this policy.

Regulatory Changes

We are under a clear congressional mandate to protect the Trust Funds. It is crucial that we change our current policies that have the effect of allowing beneficiaries to withdraw applications or suspend benefits and use benefits from the Trust Funds as something akin to an interest-free loan. At the same time, we also need to ensure that beneficiaries who experience an unforeseen change of circumstances and who may need to withdraw an application or suspend benefits are able to do so. Establishing limitations on the number and scope of application withdrawals and on the period for which you can voluntarily suspend your benefits for purposes of receiving delayed retirement credits will help prevent abuse and maintain flexibility for beneficiaries.

In our experience, we have not found that survivor and disability beneficiaries withdraw their applications and repay the benefits they have received. Applications for old-age benefits are most prone to manipulation for personal financial gain by our current policies. For these reasons, these changes will be limited solely to applications for old-age benefits.

We are modifying section 404.640 to limit the withdrawal of old-age applications. Under this final rule, application withdrawals will be limited to one withdrawal per lifetime. The withdrawal must occur within 12 months of the first month of entitlement. This 12-month limitation will allow flexibility for beneficiaries who experience an unexpected change in circumstances during that time. In addition, limiting the period for application withdrawals to within 12 months of the first month of entitlement will minimize the likelihood of abuse and the potential harm to the Trust Funds.

We decided to limit the withdrawal of old-age benefits to 12 months. We chose 12 months as an appropriate period because it balances giving claimant's flexibility in reconsidering their claiming benefit decisions with eliminating the "interest-free loan" loophole. First, a longer period would not appreciably increase the universe of claimants who reconsider their claiming decisions, because our data show that in recent years 85–90 percent of applicants who withdrew their applications did so in the first twelve months.

Second, the 12-month limitation period is a financial disincentive—there is little to be gained by investing benefits for only 12 months. Finally, for those cases where claimants request withdrawal after 12 months, we have other ways to address their concerns if they wish to change their date of entitlement to benefits. For example, we can revise a month of election determination using existing policies:

- Evaluating conditional month of election determinations—if individuals who are subject to the annual earnings test are due no payment for the year of entitlement, they might believe that they need to withdraw their application and re-file. However, withdrawing the application is unnecessary because we may reopen and revise the month of election. Because these claimants have earnings above the annual earnings limit, we consider their month of election as "conditional" and would automatically revise it to a later date based on the annual earnings report;
- Adjusting benefits to consider the effect of work and earnings on benefit amounts—if individuals decide to return to work, it is unnecessary for them to withdraw their application. Beneficiaries will receive credit for all months in which they do not receive a

[3] Janet Novack, *Trade in Your Social Security Check,*" *Forbes,* 7 February 2008. Available at: *http://www.forbes.com/2008/02/07/retirement-roth-taxes-pf-guru-in_jn_0207retirement_inl.html.*

[4] Munnell, Alicia H., Alex Golub-Sass, and Nadia Karamcheva, *Strange but True: Free Loan From Social Security,* Trustees of Boston College, Center for Retirement Research. March 2009, Number 9–6. Available at: *http://crr.bc.edu/images/stories/Briefs/ib_9-6.pdf.*

[5] *Id.*

full monthly benefit. When individuals reach full retirement age, SSA will increase their monthly benefits under a process called the adjustment of the reduction factor. This process removes from the calculation of the ongoing benefit at full retirement age, the actuarial reduction associated with each month for which beneficiaries do not receive a full monthly benefit; and,

• Reopening determinations under our rules of administrative finality—SSA might discover that duplicate postings result in an incorrect payment amount, causing a claimant to elect retirement benefits instead of widow's benefits. The claimant does not need to withdraw the retirement application. Instead, we can use our rules of administrative finality to reopen the prior entitlement decision.

The 12-month limitations period should have no effect on beneficiaries who wish to change their month of election because of a change in their circumstances or because of an error in the calculation of their benefits. It would, however, effectively eliminate "interest-free loans."

We are also modifying section 404.313 to limit the voluntary suspension of benefits. Under these final rules, if we have determined that you are entitled to benefits, you may voluntarily suspend benefits for any month beginning the month after the month in which you request that we voluntarily suspend your benefits. If you apply for benefits, and we have not made a determination that you are entitled to benefits, you may voluntarily suspend benefits for any month for which you have not received a payment.

Under the Act, if the beneficiary is entitled to retirement benefits, delayed retirement credits may be available if the beneficiary "did not receive benefits pursuant to a request by such individual that benefits not be paid."[6] In these rules, we are interpreting the statutory phrase "did not receive benefits pursuant to a request by such individual that benefits not be paid" to mean that the beneficiary may voluntarily suspend benefits for purposes of the DRC only on a prospective basis.

Applicants for whom we have not made an initial determination may voluntarily suspend benefits for purposes of the DRC, for any months.[7] We recognize that this is a change from our current policy. However, because the statute refers to benefits that the "individual did not receive," rather than "received and repaid," we believe that the policy we are adopting in these rules is consistent with the language of the statute and congressional intent.

The following illustrates the change in policy:

1. Example—Beneficiary currently receiving benefits:

A beneficiary is currently receiving old-age benefits and requests to voluntarily suspend retroactive, current, and future benefits and repay all benefits received during the retroactive period.

The beneficiary can suspend benefits beginning with the month after the month in which the beneficiary requests that we voluntarily suspend benefits, provided the beneficiary has not received a monthly benefit amount for those months. The beneficiary may not suspend retroactive monthly benefits for which we have made a determination or suspend retroactive monthly benefits that we have already paid.

2. Example—Applicant filing a new application:

An applicant files for old-age benefits one or more months after the month the applicant attains FRA. The applicant could potentially be due retroactive benefits. We have not yet made an initial determination about monthly benefits or entitlement. In order to earn DRCs, the applicant voluntarily requests to suspend retroactive, current, and future benefits.

The applicant can suspend past, current, and future benefits for months to which the applicant is entitled because we have not made any monthly benefit determinations or payments.

We believe these changes will not penalize applicants who require the suspension of unpaid benefits for reasons not related to misuse.

When will we start to use these rules?

We will start to use these rules on the date shown under **DATES** earlier in this preamble. However, we are also inviting public comments on the changes made by these rules. We will consider any relevant comments we receive. We plan to publish another final rule document to respond to any such comments we receive and to make any changes to the rules as appropriate based on the comments.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.[8]

We find that good cause exists for proceeding without prior public notice and comment in this instance. This final rule addresses our policies on benefit application withdrawal and retroactive benefit suspension that beneficiaries could take advantage of to obtain increased benefits. Because these policies have the potential for abuse, any delay in their modification through the revision of our regulations could result in the harm that we are trying to prevent. Providing prior public notice may act as a catalyst for more applicants and beneficiaries to request withdrawal of their applications. Accordingly, we find that prior public comment would be contrary to the public interest. However, we are inviting public comment on the final rule and will consider any substantive comments we receive within 60 days of the publication of this final rule.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this final rule.[9] We find that it is contrary to the public interest to delay the effective date of our rule changes because any delay in their modification could result in the harm that we are trying to prevent. Accordingly, we are making this final rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866 and were subject to OMB review.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and does not require Office of Management and Budget approval under the Paperwork Reduction Act.

[6] 42 U.S.C. 402(w)(2)(B)(ii).

[7] *Id.*

[8] 5 U.S.C. 553(b)(B).

[9] 5 U.S.C. 553(d)(3).

(Catalog of Federal Domestic Assistance Program No. 96.002 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Aged, Old-age, Survivors and disability insurance; Social Security.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending 20 CFR chapter III, part 404, subparts D and G as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

■ 1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

■ 2. Amend § 404.313(a) to add fifth and sixth sentences to the end of the paragraph to read as follows:

§ 404.313 What are delayed retirement credits and how do they increase my old-age benefit amount?

(a) * * * If we have determined that you are entitled to benefits, you may voluntarily suspend benefits for any month beginning with the month after the month in which you voluntarily request that we suspend your benefits. If you apply for benefits, and we have not made a determination that you are entitled to benefits, you may voluntarily have your benefits suspended for any month for which you have not received a payment.

* * * * *

Subpart G—Filing of Applications and Other Forms

■ 3. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

■ 4. Amend § 404.640 to add new paragraph (b)(4) to read as follows:

§ 404.640 Withdrawal of an application.

* * * * *

(b) * * *

(4) *Old age benefits.* An old age benefit application may be withdrawn if, in addition to the requirements of this section—

(i) The request for withdrawal is filed within 12 months of the first month of entitlement; and

(ii) The claimant has not previously withdrawn an application for old age benefits.

* * * * *

[FR Doc. 2010–30868 Filed 12–7–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2010–N–0002]

Oral Dosage Form New Animal Drugs; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Huvepharma AD. The ANADA provides for use of tylosin tartrate soluble powder in drinking water of chickens, turkeys, swine, and honey bees for the treatment or control of various bacterial diseases.

DATES: This rule is effective December 8, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, *e-mail: john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria, filed ANADA 200–473 that provides for use of PHARMASIN (tylosin tartrate) Soluble in medicated drinking water for chickens, turkeys, swine, and honey bees for the treatment or control of various bacterial diseases. Huvepharma AD's PHARMASIN Soluble is approved as a generic copy of Elanco Animal Health's TYLAN Soluble, approved under NADA 13–076. The ANADA is approved as of October 1, 2010, and the regulations in 21 CFR 520.2640 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. In § 520.2640, revise paragraphs (a), (b), and (d)(3)(ii) to read as follows:

§ 520.2640 Tylosin.

(a) *Specifications.* Each container contains tylosin tartrate equivalent to 100 grams tylosin base.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 000986 for use as in paragraph (d) of this section.

(2) No. 016592 for use as in paragraphs (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii)(B), (d)(3)(iii), and (d)(4) of this section.

* * * * *

(d) * * *

(3) * * *

(ii) *Indications for use*—(A) For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae* and for the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis.*

(B) For the treatment and control of swine dysentery associated with *B. hyodysenteriae.*

* * * * *

Dated: December 2, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–30814 Filed 12–7–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The supplemental ANADA provides for use of flunixin meglumine solution by intravenous injection in lactating dairy cows for control of pyrexia associated with acute bovine mastitis.

DATES: This rule is effective December 8, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed a supplement to ANADA 200–061 that provides for veterinary prescription use of FLU–NIX (flunixin meglumine) Injectable Solution. The supplemental ANADA provides for use of flunixin meglumine solution by intravenous injection in lactating dairy cows for control of pyrexia associated with acute bovine mastitis. The supplemental application is approved as of September 27, 2010, and the regulations are amended in 21 CFR 522.970 to reflect the approval.

A summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 522.970, revise paragraphs (b), (e)(1)(iii), and (e)(2) to read as follows:

§ 522.970 Flunixin.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) See Nos. 000061, 055529, and 061623 for use as in paragraph (e) of this section.

(2) See No. 000856 for use as in paragraph (e)(1) of this section.

(3) See Nos. 057561 and 059130 for use as in paragraphs (e)(1) and (2) of this section.

* * * * *

(e) * * *

(1) * * *

(iii) *Limitations.* Do not use in horses intended for human consumption.

(2) *Cattle*—(i) *Amounts and indications for use*—(A) Administer 1.1 to 2.2 mg/kilogram (kg) (0.5 to 1.0 mg/lb) of body weight per day intravenously, as a single dose or divided into two doses administered at 12-hour intervals, for up to 3 days for control of pyrexia associated with bovine respiratory disease and endotoxemia or for control of inflammation in endotoxemia.

(B) Administer 2.2 mg/kg (1.0 mg/lb) of body weight once intravenously for control of pyrexia associated with acute bovine mastitis.

(ii) *Limitations.* Cattle must not be slaughtered for human consumption within 4 days of last treatment. Milk that has been taken during treatment and for 36 hours after the last treatment must not be used for food. Do not use in dry dairy cows. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal.

* * * * *

Dated: December 1, 2010.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–30769 Filed 12–7–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 84, and 85

[Docket No. FR–5350–F–02]

RIN 2501–AD50

Conforming Changes to Applicant Submission Requirements; Implementing Federal Financial Report and Central Contractor Registration Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule follows publication of a July 15, 2010, interim rule that revised HUD regulations to reference the new governmentwide Federal Financial Report (FFR) approved by the Office of Management and Budget (OMB). The FFR consolidates requirements from the OMB-issued Standard Forms SF–269, SF–269A, SF–272, and SF–272A into a single governmentwide form. In incorporating reference to the new FFR in its regulations, HUD amended its regulations to remove references to old and outdated forms that are no longer in use. The July 15, 2010, interim rule also codified the requirement that applicants for HUD assistance possess an active Central Contractor Registration (CCR). HUD is adopting the interim rule without change.

DATES: *Effective Date:* January 7, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Office of Administration, Chief Human Capital Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410–0500, telephone number 202–708–0667. 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:

I. Background

On July 15, 2010 (75 FR 41087), HUD published an interim rule that revised HUD regulations to reference the new governmentwide FFR, approved by OMB. The FFR provides a uniform, governmentwide format and establishes standard reporting period end dates and due dates for the submission of cash management and financial information. The FFR also reduces the burden on grantees that are reporting using electronic systems and simplifies reporting procedures for grantees to facilitate uniformity in agencies' grantmaking process. HUD's July 15, 2010, interim rule amended 24 CFR parts 84 and 85, by removing references to old and outdated forms and substituting, where appropriate, the FFR. The interim rule also amended §§ 84.52 and 85.41 to conform to reporting requirements to those provided for by the FFR.

HUD's July 15, 2010, interim rule also revised 24 CFR part 5 to require that applicants, including private nonprofit organizations, educational organizations, and State and regional agencies, that are subject to § 5.1001 register with CCR and have an active CCR registration in order for HUD to obligate funds and in order for the applicant to receive funds from HUD. CCR collects, validates, stores, and disseminates data in support of agency missions, including Federal agency contract and assistance awards, and the electronic payment process. Codifying this registration requirement facilitates applicant and awardee use of a single public Web site that consolidates data on awards made under various types of Federal Financial Assistance, pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) (Pub. L. 109–282) (Transparency Act).

II. This Final Rule

This final rule follows publication of the July 15, 2010, interim rule. The public comment period on the interim rule closed on September 13, 2010. HUD did not receive public comment on the interim rule. HUD is adopting the interim rule without change.

III. Findings and Certifications

Executive Order 12866, 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 it was not reviewed by OMB. This rule is not significant because it conforms HUD regulations to refer to the FFR, removes outdated references to forms that are obsolete, and codifies a requirement that HUD has included for several years in its notices of funding availability.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The OMB control number for the FFR is 0348–0061.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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 final rule conforms HUD regulations to requirements applicable to all grantees that are already in place, as a result of action previously taken by OMB, and small entities were provided the opportunity for comment in connection with OMB's publications. With respect to financial reporting, this rule streamlines the financial reporting requirement by replacing, with one form, the several that have been used prior to Fiscal Year 2010 and, as a result, reducing the burden on all entities, including small entities, by simplifying the task of filing required financial reports. Similarly, CCR registration has been required of applicants and grantees for HUD's competitive programs to ensure the proper identity of applicants. This rule codifies the CCR registration requirement that HUD grantees are already meeting. Accordingly, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This final 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 (UMRA) (12 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This final rule would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grants programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loans programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 84

Accounting, Colleges and universities, Grant programs, Hospitals, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 85

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule amending 24 CFR parts 5, 84, and 85, which was published at 75 FR 41087 on July 15, 2010, is adopted as final without change.

Dated: December 1, 2010.

Shaun Donovan,

Secretary.

[FR Doc. 2010–30843 Filed 12–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9508]

RIN 1545–BJ85

Source of Income From Qualified Fails Charges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations which set forth the source of income attributable to qualified fails charges. The temporary regulations provide guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective on December 8, 2010.

Applicability Date. These regulations apply to qualified fails charges paid or accrued on or after December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy or Anthony J. Marra, Office of Associate Chief Counsel (International) (202) 622–3870 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

In response to persistent delivery failures in delivery-versus-payment transactions involving U.S. Treasury securities (Treasury securities), a trading practice governing failed deliveries of Treasury securities was published in 2008 by the Treasury Market Practices Group (TMPG) and the Securities Industry and Financial Markets Association (SIFMA). This trading practice, which was recommended by the Federal Reserve Bank of New York in addition to TMPG and SIFMA, has subsequently been voluntarily adopted by almost every participant in the Treasury securities market. Transactions that involve delivery-versus-payment include a sale, a purchase, a sale and repurchase transaction (commonly known as a "repo"), a securities lending transaction, and an option.

The trading practice addresses the problem that in certain situations, including a low interest rate environment, a party to a delivery-versus-payment transaction may lack the economic incentive to deliver Treasury securities in a timely manner. Under the trading practice, the parties to a contract that provides for delivery-versus-payment of Treasury securities agree that if one party fails to deliver Treasury securities at the time specified in the contract, the failing party will pay an amount (a "fails charge") to the party entitled to receive the Treasury securities. The fails charge is calculated using a formula that takes into account current interest rates and trade proceeds, and accrues each day that the failure to deliver continues. The trading practice is generally expected to impose a fails charge whenever the interest rate on a repo that can be settled with any of a variety of securities (referred to in the market as the "general collateral rate") falls below a certain level.

As noted in this preamble, the delivery-versus-payment market encompasses a variety of transactions, each of which can generate a fails charge. Some transactions, such as a repo, where delivery is required both at inception and at settlement, can produce more than one fails charge. In back-to-back transactions, it can also be difficult to determine whether a party that incurs a fails charge is acting as an intermediary or a principal. As a result, there is considerable uncertainty about the treatment of fails charges for purposes of sections 871 and 881, which generally impose gross-basis taxation at a rate of 30 percent on certain U.S. source income of foreign persons that is not effectively connected with the conduct of a trade or business in the United States and the withholding of such tax under sections 1441 and 1442.

Notice 2009–61, (2009 IRB 181), issued in July 2009, addressed the issue temporarily by providing that the Internal Revenue Service (IRS) will not challenge the position taken by a taxpayer or a withholding agent that a fails charge that is paid on or before December 31, 2010 is not subject to U.S. gross-basis taxation. Notice 2009–61 further announced that the Treasury Department and the IRS were considering issuing prospective guidance on the circumstances, if any, that would cause a fails charge to be subject to U.S. gross-basis taxation. These temporary regulations provide further guidance on the treatment of fails charges. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. *See* § 601.601(d)(2).

Explanation of Provisions

In order to provide certainty and consistency in the treatment of fails charges for purposes of sections 871, 881, 1441 and 1442, these temporary regulations establish source rules for qualified fails charges that arise in the delivery-versus-payment market for Treasury securities. The temporary regulations provide that the source of income from a qualified fails charge is generally determined by reference to the residence of the taxpayer that is the recipient of the qualified fails charge income, with two exceptions. Qualified fails charge income earned by a qualified business unit (QBU) of a taxpayer is sourced to the country in which the QBU is engaged in a trade or business, and qualified fails charge income that arises from a transaction that is effectively connected to a United States trade or business is sourced in the United States and treated as effectively connected to the conduct of a United States trade or business.

The temporary regulations provide a source rule only for income from a qualified fails charge. In order to be a qualified fails charge, the fails charge must satisfy two requirements. First, it must be paid pursuant to a trading practice or similar guidance approved by a U.S. government agency or the Treasury Market Practices Group (which is sponsored by the Federal Reserve Bank of New York), or published in separate guidance by the IRS. Second, the transaction that generates the fails charge must be with respect to a bill, note, or other evidence of indebtedness issued by the United States Treasury Department. These temporary regulations do not address the source of any other type of damages payment, including a fails charge that is not a qualified fails charge.

Although there is not currently a fails charge trading practice relating to securities other than Treasury securities, one may be considered in the future for agency securities (including mortgage-backed securities). If a fails charge trading practice pertaining to agency securities is endorsed by the Treasury Market Practices Group or an agency of the United States government and widely adopted, the Treasury Department and the IRS will consider

whether fails charges paid with respect to such a trading practice should be sourced under these regulations.

Effective/Applicability Date

These regulations apply to qualified fails charges paid or accrued on or after December 8, 2010.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Sheila Ramaswamy and Anthony J. Marra, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department have participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 863(a) and 7805
* * *

■ **Par. 2.** Section 1.863–10T is added to read as follows:

§ 1.863–10T Source of income from a qualified fails charge (temporary).

(a) *In general.* Unless paragraph (b) or (c) of this section applies, the source of income from a qualified fails charge shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(b) *Qualified business unit exception.* The source of income from a qualified fails charge shall be determined by reference to the residence of a qualified business unit of a taxpayer if—

(1) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(2) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(3) The qualified business unit is engaged in the conduct of a trade or business in the country where it is a resident; and

(4) The transaction to which the qualified fails charge relates is attributable to the qualified business unit. A transaction will be treated as attributable to a qualified business unit if it satisfies the principles of § 1.864–4(c)(5)(iii) (substituting "qualified business unit" for "U.S. office").

(c) *Effectively connected income exception.* Income from a qualified fails charge that arises from a transaction that under the principles described in § 1.864–4(c) is effectively connected with a United States trade or business shall be sourced in the United States and the income from the qualified fails charge shall be treated as effectively connected to the conduct of a United States trade or business to the same extent as the transaction from which it arises.

(d) *Definitions.*—(1) *Qualified fails charge.* For purposes of this section, a qualified fails charge is a payment that

(i) Compensates a party to a transaction that provides for delivery of a Treasury security in exchange for the payment of cash (delivery-versus-payment settlement) for another party's failure to deliver the specified Treasury security on the settlement date specified in the relevant agreement; and

(ii) Is made pursuant to:

(A) A trading practice or similar guidance approved or adopted by either an agency of the United States government or the Treasury Market Practices Group, or

(B) Any trading practice, program, policy or procedure approved by the Commissioner in guidance published in the Internal Revenue Bulletin.

(2) *Treasury security.* For purposes of this section, a Treasury security is any bill, note, or other evidence of indebtedness issued by the United States Treasury Department.

(e) *Effective/applicability date.* This section applies to qualified fails charges paid or accrued on or after December 8, 2010.

(f) *Expiration date.* This section expires on December 9, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 2, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury.

[FR Doc. 2010–30895 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP–1118–F]

RIN 1120–AB18

Inmate Discipline Program/Special Housing Units: Subpart Revision and Clarification

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its Inmate Discipline and Special Housing Unit (SHU) regulations. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in regulations text. We also make substantive changes to our list of prohibited acts for which disciplinary sanctions may be imposed, and alter the list of possible sanctions available to allow Discipline Hearing Officers more flexibility in adapting the sanction to fit the seriousness of the violation.

DATES: This rule is effective on March 1, 2011.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its inmate discipline and special housing unit (SHU) regulations (28 CFR part 541, subpart A and subpart B) to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in regulations text. The proposed regulation contained a detailed section-by-section analysis (published on July

26, 2005, at 70 FR 43093). This regulation finalizes the proposed regulation with only minor changes. We received only four comments containing several similar issues. We address the issues raised by the commenters below.

Comment: It is unlawful to require DNA testing while in Bureau custody. One commenter, an inmate, stated that he has a Court order to submit to a non-invasive DNA test as directed by a probation officer upon release, and therefore believes it is unlawful to "require" him to submit to DNA testing while in the Bureau's custody under prohibited act code 227 (Refusing to participate in a required physical test or examination unrelated to testing for drug abuse).

Bureau Response: The high severity level prohibited act code for refusing to participate in a required physical test or examination unrelated to testing for drug abuse (*e.g.,* DNA, HIV, tuberculosis) is necessary to comply with Federal law. On December 19, 2000, Congress enacted Public Law 106–546, commonly referred to as the DNA Analysis Backlog Elimination Act of 2000 (Act). This Act requires the Bureau to collect DNA samples from individuals convicted of qualifying Federal, military, or DC Code offenses. The FBI is required to analyze the samples and maintain the information in the Combined DNA Index System (CODIS). Although this commenter and other inmates may have court orders requiring such testing upon their release, these court orders are not inconsistent with the Bureau's authority to conduct testing during incarceration. Because we are required to do this by statute, we need to have the specific capability to discipline inmates who jeopardize the Bureau's compliance with the statute.

Comment: Code 296 could result in lawsuits for infringement of the 6th Amendment right of access to the courts. Another inmate complained that defective copying machines at her institution resulted in staff making copies of legal material for inmates on a staff copier only at times convenient for staff. The inmate then complained that she was therefore "forced" to send originals to a legal assistant to copy and file, violating code 296 (sending correspondence to an address with directions to have the correspondence sent to an unauthorized person). She concluded that code 296 should therefore exclude legal material.

Bureau Response: We do not intend to impede inmates' Constitutional right to access courts. Code 296 is intended to sanction inmate behavior designed to circumvent inmate correspondence regulations and policy. It will be used to deter correspondence with unauthorized individuals and to prohibit illegal activity. 28 CFR 540.19(d) also allows for inmates to send "legal correspondence" to legal assistants. Inmates must clearly mark the envelope as "legal mail." If inmates encounter a problem with sending legal mail to their attorneys, they should file an administrative remedy complaint according to procedures in 28 CFR part 542.

Comment: Distinction should be drawn between violation of 334 (Conducting a business) and management of pre-existing assets by a designated representative, which is allowed under the regulations. Some commenters were concerned that staff may not understand this distinction, and wanted more details about this code.

Bureau response: In response to this commenter, we have amended this code to clarify that inmate activities related to conducting a business that are authorized by staff, such as those the commenter refers to, will not violate the prohibited act code. We revise this code to prohibit only "Conducting a business; conducting or directing an investment transaction without staff authorization."

Also, in corresponding policy guidance to staff, the Bureau will ensure that staff are aware of the distinction between violation of this prohibited act code and management of pre-existing assets by a designated representative. Staff are currently aware that inmates are permitted limited opportunities to protect personal assets (*see* 28 CFR 540.14(d)(4)) or engage in an approved special visit for the purpose of addressing a business matter (*see* 28 CFR 540.45(a)).

Comment: Codes 199, 299, 399 and 499 ("Conduct most like" codes) are too vague.

Bureau response: The Bureau gives guidance to its Discipline Hearing Officers (DHOs) that they are to use this charge only when another charge of the same severity level is not applicable. These codes, along with codes 198, 298, 398 and 498 (Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another prohibited act in the same severity level) give the Bureau flexibility to address unique situations.

Currently, the DHO or Unit Disciplinary Committee (UDC) must indicate in its findings a specific finding of the severity level of the conduct and a comparison to the offense in that severity level which the DHO/UDC finds is most comparable. Therefore, whenever these codes are used, reference will be made to another code which is most like the inmate's present problematic conduct, making the DHO/UDC finding as specific as possible.

Also, courts have consistently upheld this type of prison regulation, particularly where the act committed is similar to a specifically defined prohibited act. *See Landman* v. *Royster,* 333 F.Supp. 621, 655–56 (E.D.Va.1971) (For prisoners, "the law requires less in the way of notice, and places a greater burden on the individual to make inquiry or ask permission before acting."); *Meyers* v. *Allderedge,* 492 F.2d 296, 309 (3rd Cir. 1974) ("It is nearly impossible for prison authorities to anticipate, through a narrowly drawn regulation, every conceivable form of misconduct which threatens prison security."); *Schenck* v. *Edwards,* 921 F. Supp 679 (E.D. Wash 1996) ("One cannot realistically expect prison officials to make and be bound by an exclusive list of every item constituting contraband. Prison officials must have some flexibility to address situations as they arise."). *See also Coffman* v. *Trickey,* 884 F.2d 1057 (8th Cir. 1989), in which an inmate was charged with violating a prohibition on violating a published rule. The court found that because prison officials could not point to which rule the inmate actually violated, there was insufficient notice to the inmate of the prohibited act and therefore a violation of due process. As mentioned above, however, DHOs do not use prohibited act codes 199, 299, 399, or 499 without referring to another code which is most like the inmate's present problematic conduct.

Comment: It is unfair to impose monetary fines. One commenter was concerned about what happens if a monetary fine is not paid. That commenter opined that monetary fines are discriminatory and arbitrary in that inmates don't have the ability to pay and those that do have an advantage.

Bureau response: We made this change to provide DHOs with the flexibility to sanction inmates by imposing monetary fines as a punishment and deterrent to committing prohibited acts. Additionally, by providing another sanctioning option, DHOs are better able to tailor the discipline of individual inmates in a manner best suited to affect behavioral changes.

We also clarify that the sanctions of "make monetary restitution" and "monetary fine" may only be imposed by DHOs after providing the inmate with due process procedures. DHOs will have the benefit of seeing the total circumstances and situation of the

inmate, and if, for example, the inmate is indigent, the DHO may choose instead to impose a different sanction. DHOs are trained to sanction effectively based on each inmate's circumstances and the punitive value of the sanction for that particular inmate.

If a monetary fine imposed as a sanction by a DHO is not paid, the DHO will have the authority to order that the amount of the fine be "frozen" in that inmate's deposit fund account so that the amount of the fine would not be available for spending by the inmate. Non-payment of a fine is not a prohibited act and will not be a factor for an inmate's placement or continuation in SHU.

Comment: Forfeiture of good time is unfair. One commenter states that, before 1996, there was no forfeiture of good time, or good time could be recouped. The commenter wrote: "Is it not discriminatory if those inmates who were sentenced before 1996 must now face additional punishments that were not part of the scheme when they were originally sentenced?"

Bureau response: The sanction of forfeiture of good conduct time appeared in the previous regulations. We do not intend to alter its application through this rulemaking. Under previous regulations, which will be incorporated into the Bureau's Inmate Discipline policy, an inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed.

However for crimes committed on or after September 13, 1994, and before April 26, 1996, credit toward an inmate's service of sentence will not vest unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree, or has been exempted from participation because of a learning disability or other status.

In imposing this sanction, the DHO will consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time in a non-discriminatory fashion. Disallowance of good conduct time is not an "additional punishment."

Comment: The increased disciplinary segregation sanction time is unfair. One commenter believed that increasing the amount of time an inmate can potentially be placed in disciplinary segregation status as a sanction has a "deleterious effect on inmates and puts the inmate in jeopardy of permanent psychological damage." The commenter recommended that these increases be available only for "new criminal behavior and not for incident reports that are minor in nature."

Bureau response: This change allows us to more effectively discipline and more accurately reflects the serious nature of all of the prohibited acts. There are several reasons that this time frame was chosen for the maximum amount of disciplinary segregation:

Current disciplinary segregation (DS) sanctions have been in place since January 5, 1988. In the past 16 years, the inmate population has increased dramatically, most recently to include DC Code felony offenders. Likewise, because the population has also changed dramatically, the nature and severity of prohibited acts committed has intensified.

Specifically, the Bureau has seen an increase in offenses related to gang-related activity, firearms, and drugs. Also, Federal offenses have expanded to include use of firearms, new drug-related offenses, conspiracies, and higher penalties for homicides.

In addition, because sentence length has generally increased, the current sanctions of 60–90 days of disciplinary segregation accounts for a much smaller percentage of the typical sentence. Therefore, current DS sanctions no longer effectively function as a deterrent. We increase this sanction to reflect the needs and the nature of the changing and expanding inmate population.

Under the current disciplinary regulations, approximately 16% of inmates committing prohibited acts were repeat offenders who were sanctioned to the maximum amount of disciplinary segregation sanction multiple times, resulting in 12 months or more of total disciplinary segregation time. Again, the current maximum DS sanction is not functioning as an effective deterrent. Finally, it is important to note that this regulation increases the maximum amount of the disciplinary segregation sanction available to DHOs. DHOs will only impose the maximum amount of disciplinary segregation in the most egregious circumstances for the most serious offenses.

Also, with regard to the commenter's concern about the psychological effects on inmates placed in SHU, we note that § 541.32 requires health services staff to visit inmates in SHU daily to provide necessary medical care. That regulation also indicates that, after every 30 calendar days of continuous placement in SHU, mental health staff will examine the inmate, including a personal interview. Emergency medical and mental health care is always available.

Comment: Special Housing Unit (SHU) conditions are substandard. Two commenters complained about SHU conditions, and one opined that inmates in Administrative Detention (AD) status should have the same amenities as those in general population status. Specifically, the commenter believes that "AD food should be the same as that provided in general population," "AD inmates should be allowed the same amount of personal property as permitted for inmates in general population," and "AD inmates should not have telephone calls limited."

Bureau response: With regard to the commenters concerns about sub-standard conditions in Special Housing Units (SHU) for inmates in Administrative Detention or Disciplinary Segregation status, the Bureau's policies for conditions in SHU continue to exist and are applicable nationwide to ensure uniformity.

Also, § 541.31 provides that conditions in SHU will "meet or exceed standards for healthy and humane treatment," and subsection (d) provides that food will be nutritionally adequate. The staff-inmate ratio and other unique circumstances of each institution may render it impractical to have food provided to inmates in SHU be exactly the same as that provided in general population.

With regard to personal property, subsection (h) provides that personal property may be limited for reasons of fire safety or sanitation, but that inmates in AD status will ordinarily be allowed a reasonable amount of personal property and access to the commissary. Inmates in DS status have been placed there as a disciplinary sanction, will have their personal property impounded, with the exception of limited reading/writing materials, and religious articles, and their commissary privileges may be limited. These provisions regarding personal property are not substantively different from the previous regulation or its application.

Telephone calls will be allowed in accordance with 28 CFR part 540, subpart I. Inmates in AD status may have telephone calls limited by the staff-inmate ratio and unique circumstances of that institution. For example, staff may not be available at all times to provide an AD inmate with access to a telephone and may, therefore, have to schedule times to place calls. However, inmates in AD status will have telephone privileges consistent with the

available resources and security needs of the institution.

Comment: Inmates should be allowed to attend the 3-day review of their placement in AD, and staff information relevant to the AD placement should be presented then.

Bureau response: Section 541.26 states that a Segregation Review Officer (SRO) will review supporting records within three work days of an inmate's placement in administrative detention (AD) status. This is a paper-review by the SRO, not a hearing that can be attended by the inmate. The inmate has an opportunity to attend a formal review hearing both within seven days of placement in AD status and every thirty days thereafter.

Comment: Table 4 (Sanctions) should not be eliminated because it provides directions for DHOs and without it, DHOs will not follow these processes.

Bureau response: The table describing how DHOs are to impose sanctions will not be eliminated, but rather moved from Federal regulations language to Bureau policy implementing text. It will continue to exist as instruction to staff in the Bureau's Inmate Discipline policy. The Bureau's policies constitute mandatory staff procedures and guidance imposed by the Director. DHOs also receive extensive training and continual guidance regarding imposition of sanctions.

Comment: Possession of cell phones should be under Code 297 instead of in the greatest severity category, unless the cell phone is used for criminal activity.

Bureau response: The Bureau chooses to make possession of a cellular telephone or other electronic device a Greatest level prohibited act for the following reasons:

Rapid technological advances have resulted in smaller cell phones which are easier to introduce into Bureau facilities. They may be purchased with very little accountability at a very low cost by those seeking to introduce them into Bureau facilities. Also, new wireless communications devices are being introduced to the market with increasing frequency, and are likewise small and easy to introduce. This is causing an increase in the number of electronic devices being introduced into Bureau facilities.

When the Bureau first began investigating the potential problem in 2003, we discovered that during that calendar year, institutions reported confiscating 270 cellular telephones from inmates. At least two inmates escaped from minimum security facilities while in possession of cellular telephones. We therefore increased the severity level for possession of a cellular telephone or other electronic device to reflect the potential seriousness of the conduct, which may result in aiding escape, continuing criminal activity, facilitating terrorism, and a host of other potential threats to the safety, security, and orderly operation of correctional facilities, and for the protection of the public.

Other changes: The Bureau also makes the following minor changes to the prohibited act codes to amend the parenthetical lists of examples of contraband often found in inmates' possession:

Code 331 prohibits possession, manufacture, introduction, or loss of a non-hazardous tool, equipment, supplies, or other non-hazardous contraband. Following this prohibited act code in the table in § 541.03, there is a parenthetical description listing examples of non-hazardous contraband. We amend this list to include smoking apparatus and tobacco in any form where prohibited, and unauthorized nutritional/dietary supplements.

28 CFR 551.162(b)(2) indicates that Wardens may, with the Regional Director's concurrence, prohibit inmate smoking other than for authorized religious activities. We therefore make this conforming amendment to clarify that smoking apparatus and tobacco are non-hazardous contraband and are prohibited in institutions where Wardens have prohibited inmate smoking.

We also include unauthorized nutritional/dietary supplements in the list of examples of non-hazardous contraband for the following reasons: The Bureau has been finding inmates in possession of various types of herbal/dietary supplement items. However, these items do not fall under the same Food and Drug Administration (FDA) rules and regulations, including quality assurance measures, as medications. This has resulted in negative health outcomes for those taking such herbal/dietary supplements. These supplements have not passed through the same rigorous trials as FDA-approved medication in regards to safety, efficacy, adverse reactions, good manufacturing practices, *etc.*

The FDA has made several announcements regarding the dangerous effects of dietary supplements. Some of these announcements, which can be found at *http://www.fda.gov,* include warnings against "nicotene water," kava associated with severe liver injury, PC/SPES and SPES (which contain the harmful compounds warfarin and alprazolam), LipoKietix (which causes serious liver injuries), nettle (which has high lead content), and many others. For these reasons, the Bureau has determined that such items constitute non-hazardous contraband and are unauthorized for possession by inmates.

Code 108 prohibits possession, manufacture, introduction, or loss of a hazardous tool, and also gives a parenthetical list of examples of hazardous tools. The list begins with a description of hazardous tools: "tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others." We amend this list to include body armor, maps, handmade rope, or other escape paraphernalia. This adds more specificity to this prohibited act code and serves to put inmates on greater notice of items considered hazardous.

These are minor amendments to the parenthetical lists of examples of contraband often found in inmates' possession. The lists of examples are intended to be illustrative, not exhaustive.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this regulation is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this regulation has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this regulation does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This regulation is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not cause State, local and Tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 541

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 541 as follows.

Subchapter C—Institutional Management

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

■ 1. Revise the authority citation for part 541 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise Subpart A to Part 541 to read as follows:

Subpart A—Inmate Discipline Program

Sec.

Subpart A—Inmate Discipline Program

§ 541.1 Purpose.

This subpart describes the Federal Bureau of Prisons' (Bureau) inmate discipline program. This program helps ensure the safety, security, and orderly operation of correctional facilities, and the protection of the public, by allowing Bureau staff to impose sanctions on inmates who commit prohibited acts. Sanctions will not be imposed in a capricious or retaliatory manner. The Bureau's inmate discipline program is authorized by 18 U.S.C. 4042(a)(3).

§ 541.2 Application.

This program applies to sentenced and unsentenced inmates in Bureau custody. It also applies to sentenced and unsentenced inmates designated to any prison, institution, or facility in which persons are held in custody by direction of, or under an agreement with, the Bureau of Prisons.

§ 541.3 Prohibited acts and available sanctions.

(a) *Prohibited acts.* The list of prohibited acts are divided into four separate categories based on severity: Greatest; High; Moderate; and Low. We describe the prohibited acts in Table 1—Prohibited Acts and Available Sanctions. Aiding, attempting, abetting, or making plans to commit any of the prohibited acts is treated the same as committing the act itself.

(b) *Available sanctions.* The list of available sanctions for committing prohibited acts is listed in Table 1—Prohibited Acts and Available Sanctions. If you commit repetitive prohibited acts, we can impose increased sanctions, as listed in Table 2—Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS

100	Killing.
101	Assaulting any person, or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or accomplished).
102	Escape from escort; escape from any secure or non-secure institution, including community confinement; escape from unescorted community program or activity; escape from outside a secure institution.
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, *e.g.,* in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, ammunition, or any instrument used as a weapon.
105	Rioting.
106	Encouraging others to riot.
107	Taking hostage(s).
108	Possession, manufacture, introduction, or loss of a hazardous tool (tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; *e.g.,* hack-saw blade, body armor, maps, handmade rope, or other escape paraphernalia, portable telephone, pager, or other electronic device).
109	(Not to be used).
110	Refusing to provide a urine sample; refusing to breathe into a Breathalyzer; refusing to take part in other drug-abuse testing.
111	Introduction or making of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
112	Use of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
113	Possession of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
114	Sexual assault of any person, involving non-consensual touching by force or threat of force.
115	Destroying and/or disposing of any item during a search or attempt to search.
196	Use of the mail for an illegal purpose or to commit or further a Greatest category prohibited act.
197	Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS—Continued

198	Interfering with a staff member in the performance of duties most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest severity prohibited acts.
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest severity prohibited acts.
	Available Sanctions for Greatest Severity Level Prohibited Acts
A.	Recommend parole date rescission or retardation.
B.	Forfeit and/or withhold earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
B.1.	Disallow ordinarily between 50% and 75% (27–41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
C.	Disciplinary segregation (up to 12 months).
D.	Make monetary restitution.
E.	Monetary fine.
F.	Loss of privileges (*e.g.,* visiting, telephone, commissary, movies, recreation).
G.	Change housing (quarters).
H.	Remove from program and/or group activity.
I.	Loss of job.
J.	Impound inmate's personal property.
K.	Confiscate contraband.
L.	Restrict to quarters.
M.	Extra duty.
	High Severity Level Prohibited Acts
200	Escape from a work detail, non-secure institution, or other non-secure confinement, including community confinement, with subsequent voluntary return to Bureau of Prisons custody within four hours.
201	Fighting with another person.
202	(Not to be used).
203	Threatening another with bodily harm or any other offense.
204	Extortion; blackmail; protection; demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.
205	Engaging in sexual acts.
206	Making sexual proposals or threats to another.
207	Wearing a disguise or a mask.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.
209	Adulteration of any food or drink.
210	(Not to be used).
211	Possessing any officer's or staff clothing.
212	Engaging in or encouraging a group demonstration.
213	Encouraging others to refuse to work, or to participate in a work stoppage.
214	(Not to be used).
215	(Not to be used).
216	Giving or offering an official or staff member a bribe, or anything of value.
217	Giving money to, or receiving money from, any person for the purpose of introducing contraband or any other illegal or prohibited purpose.
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00, or destroying, altering, damaging life-safety devices (*e.g.,* fire alarm) regardless of financial value.
219	Stealing; theft (including data obtained through the unauthorized use of a communications device, or through unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored).
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized by staff).
221	Being in an unauthorized area with a person of the opposite sex without staff permission.
222	(Not to be used).
223	(Not to be used).
224	Assaulting any person (a charge at this level is used when less serious physical injury or contact has been attempted or accomplished by an inmate).
225	Stalking another person through repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct.
226	Possession of stolen property.
227	Refusing to participate in a required physical test or examination unrelated to testing for drug abuse (*e.g.,* DNA, HIV, tuberculosis).
228	Tattooing or self-mutilation.
229	Sexual assault of any person, involving non-consensual touching without force or threat of force.
296	Use of the mail for abuses other than criminal activity which circumvent mail monitoring procedures (*e.g.,* use of the mail to commit or further a High category prohibited act, special mail abuse; writing letters in code; directing others to send, sending, or receiving a letter or mail through unauthorized means; sending mail for other inmates without authorization; sending correspondence to a specific address with directions or intent to have the correspondence sent to an unauthorized person; and using a fictitious return address in an attempt to send or receive unauthorized correspondence).
297	Use of the telephone for abuses other than illegal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.
298	Interfering with a staff member in the performance of duties most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS—Continued

299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.
	Available Sanctions for High Severity Level Prohibited Acts
A.	Recommend parole date rescission or retardation.
B.	Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
B.1	Disallow ordinarily between 25% and 50% (14–27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
C.	Disciplinary segregation (up to 6 months).
D.	Make monetary restitution.
E.	Monetary fine.
F.	Loss of privileges (*e.g.,* visiting, telephone, commissary, movies, recreation).
G.	Change housing (quarters).
H.	Remove from program and/or group activity.
I.	Loss of job.
J.	Impound inmate's personal property.
K.	Confiscate contraband.
L.	Restrict to quarters.
M.	Extra duty.
	Moderate Severity Level Prohibited Acts
300	Indecent Exposure.
301	(Not to be used).
302	Misuse of authorized medication.
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.
304	Loaning of property or anything of value for profit or increased return.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.
306	Refusing to work or to accept a program assignment.
307	Refusing to obey an order of any staff member (may be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed, *e.g.,* failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered as part of a drug-abuse test would be charged as 110).
308	Violating a condition of a furlough.
309	Violating a condition of a community program.
310	Unexcused absence from work or any program assignment.
311	Failing to perform work as instructed by the supervisor.
312	Insolence towards a staff member.
313	Lying or providing a false statement to a staff member.
314	Counterfeiting, forging, or unauthorized reproduction of any document, article of identification, money, security, or official paper (may be categorized in terms of greater severity according to the nature of the item being reproduced, *e.g.,* counterfeiting release papers to effect escape, Code 102).
315	Participating in an unauthorized meeting or gathering.
316	Being in an unauthorized area without staff authorization.
317	Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).
318	Using any equipment or machinery without staff authorization.
319	Using any equipment or machinery contrary to instructions or posted safety standards.
320	Failing to stand count.
321	Interfering with the taking of count.
322	(Not to be used).
323	(Not to be used).
324	Gambling.
325	Preparing or conducting a gambling pool.
326	Possession of gambling paraphernalia.
327	Unauthorized contacts with the public.
328	Giving money or anything of value to, or accepting money or anything of value from, another inmate or any other person without staff authorization.
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less.
330	Being unsanitary or untidy; failing to keep one's person or quarters in accordance with posted standards.
331	Possession, manufacture, introduction, or loss of a non-hazardous tool, equipment, supplies, or other non-hazardous contraband (tools not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety) (other non-hazardous contraband includes such items as food, cosmetics, cleaning supplies, smoking apparatus and tobacco in any form where prohibited, and unauthorized nutritional/dietary supplements).
332	Smoking where prohibited.
333	Fraudulent or deceptive completion of a skills test (*e.g.,* cheating on a GED, or other educational or vocational skills test).
334	Conducting a business; conducting or directing an investment transaction without staff authorization.
335	Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.
336	Circulating a petition.
396	Use of the mail for abuses other than criminal activity which do not circumvent mail monitoring; or use of the mail to commit or further a Moderate category prohibited act.
397	Use of the telephone for abuses other than illegal activity which do not circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a Moderate category prohibited act.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS—Continued

398	Interfering with a staff member in the performance of duties most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be charged as "most like" one of the listed Moderate severity prohibited acts.
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be charged as "most like" one of the listed Moderate severity prohibited acts.
	Available Sanctions for Moderate Severity Level Prohibited Acts
A.	Recommend parole date rescission or retardation.
B.	Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
B.1	Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
C.	Disciplinary segregation (up to 3 months).
D.	Make monetary restitution.
E.	Monetary fine.
F.	Loss of privileges (*e.g.,* visiting, telephone, commissary, movies, recreation).
G.	Change housing (quarters).
H.	Remove from program and/or group activity.
I.	Loss of job.
J.	Impound inmate's personal property.
K.	Confiscate contraband.
L.	Restrict to quarters.
M.	Extra duty.
	Low Severity Level Prohibited Acts
400	(Not to be used).
401	(Not to be used).
402	Malingering, feigning illness.
403	(Not to be used).
404	Using abusive or obscene language.
405	(Not to be used).
406	(Not to be used).
407	Conduct with a visitor in violation of Bureau regulations.
408	(Not to be used).
409	Unauthorized physical contact (*e.g.,* kissing, embracing).
498	Interfering with a staff member in the performance of duties most like another Low severity prohibited act. This charge is to be used only when another charge of Low severity is not accurate. The offending conduct must be charged as "most like" one of the listed Low severity prohibited acts.
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Low severity prohibited act. This charge is to be used only when another charge of Low severity is not accurate. The offending conduct must be charged as "most like" one of the listed Low severity prohibited acts.
	Available Sanctions for Low Severity Level Prohibited Acts
B.1	Disallow ordinarily up to 12.5% (1–7 days) of good conduct time credit available for year (to be used only where inmate found to have committed a second violation of the same prohibited act within 6 months); Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (to be used only where inmate found to have committed a third violation of the same prohibited act within 6 months) (a good conduct time sanction may not be suspended).
D.	Make monetary restitution.
E.	Monetary fine.
F.	Loss of privileges (*e.g.,* visiting, telephone, commissary, movies, recreation).
G.	Change housing (quarters).
H.	Remove from program and/or group activity.
I.	Loss of job.
J.	Impound inmate's personal property.
K.	Confiscate contraband.
L.	Restrict to quarters.
M.	Extra duty.

TABLE 2—ADDITIONAL AVAILABLE SANCTIONS FOR REPEATED PROHIBITED ACTS WITHIN THE SAME SEVERITY LEVEL

Prohibited act severity level	Time period for prior offense (same code)	Frequency of repeated offense	Additional available sanctions
Low Severity (400 level)	6 months	2nd offense	1. Disciplinary segregation (up to 1 month). 2. Forfeit earned SGT or non-vested GCT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
		3rd or more offense	Any available Moderate severity level sanction (300 series).
Moderate Severity (300 level)	12 months	2nd offense	1. Disciplinary segregation (up to 6 months).

TABLE 2—ADDITIONAL AVAILABLE SANCTIONS FOR REPEATED PROHIBITED ACTS WITHIN THE SAME SEVERITY LEVEL—Continued

Prohibited act severity level	Time period for prior offense (same code)	Frequency of repeated offense	Additional available sanctions
			2. Forfeit earned SGT or non-vested GCT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3rd or more offense.	Any available High severity level sanction (200 series).
High Severity (200 level)	18 months	2nd offense	1. Disciplinary segregation (up to 12 months). 2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3rd or more offense	Any available Greatest severity level sanction (100 series).
Greatest Severity (100 level)	24 months	2nd or more offense.	Disciplinary Segregation (up to 18 months).

§ 541.4 Loss of good conduct sentence credit as a mandatory sanction.

(a) You will lose good conduct sentence credit as a mandatory disciplinary sanction if you are in one of the following two groups:

(1) *VCCLEA-violent inmates.* The date of your U.S. Code offense was on or after September 13, 1994, but before April 26, 1996, and you committed a "crime of violence" as defined by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA); or

(2) *PLRA inmates and DC Code offenders.* The date of your U.S. Code offense was on or after April 26, 1996, and, therefore, under the Prison Litigation Reform Act (PLRA), or the date of your District of Columbia (DC) Code offense was on or after August 5, 2000.

(b) If you are an inmate in one of the above groups and commit a prohibited act, you will lose good conduct sentence credit as a mandatory disciplinary sanction. The amount of good conduct sentence credit you will lose depends on the severity level of the prohibited act(s) committed, as follows:

(1) *Greatest Severity Level Offenses.* You will lose at least 41 days, or 75% of available credit if less than 54 days are available for the prorated period, for each act committed.

(2) *High Severity Level Offenses.* You will lose at least 27 days, or 50% of available credit if less than 54 days are available for the prorated period, for each act committed.

(3) *Moderate Severity Level Offenses.* You will lose at least 14 days, or 25% of available credit if less than 54 days are available for the prorated period, after committing two or more Moderate severity acts during the current year of your good conduct sentence credit availability.

(4) *Low Severity Level Offenses.* You will lose at least 7 days, or 12.5% of available credit if less than 54 days are available for the prorated period, after committing three or more Low severity acts during the current year of your good conduct sentence credit availability.

§ 541.5 Discipline process.

(a) *Incident report.* The discipline process starts when staff witness or reasonably believe that you committed a prohibited act. A staff member will issue you an incident report describing the incident and the prohibited act(s) you are charged with committing. You will ordinarily receive the incident report within 24 hours of staff becoming aware of your involvement in the incident.

(b) *Investigation.* After you receive an incident report, a Bureau staff member will investigate it.

(1) *Information:* The investigator will specifically inform you:

(A) of the charge(s) against you; and

(B) that you may remain silent at all stages of the discipline process, but that your silence may be used to draw an adverse inference against you at any stage of the process. Your silence alone, however, cannot be the basis for finding you committed the prohibited act(s).

(2) *Statement:* When the investigator asks for your statement, you may give an explanation of the incident, request any witnesses be interviewed, or request that other evidence be obtained and reviewed. However, the staff investigation of the incident report may be suspended before requesting your statement if it is being investigated for possible criminal prosecution.

(3) *Informally resolving the incident report.* The incident report may be informally resolved at any stage of the disciplinary process, except for prohibited acts in the Greatest and High severity levels, or as otherwise required by law or these regulations. If the incident report is informally resolved, it will be removed from your records.

§ 541.6 Mentally ill inmates.

If it appears you are mentally ill at any stage of the discipline process, you will be examined by mental health staff.

(a) *Competency to Participate in Disciplinary Proceedings.* If evidence indicates that you cannot understand the nature of the disciplinary proceedings, or cannot help in your own defense, disciplinary proceedings may be postponed until you are competent to participate. The Unit Disciplinary Committee or Discipline Hearing Officer will make this decision based on evidence, including evidence presented by mental health staff.

(b) *Responsibility for Conduct.* You will not be disciplined for conduct committed when, as the result of a severe mental disease or defect, you were unable to appreciate the nature and quality, or wrongfulness of the act. The UDC or DHO will make this decision based on evidence, including evidence presented by mental health staff.

§ 541.7 Unit Discipline Committee (UDC) review of the incident report.

A Unit Discipline Committee (UDC) will review the incident report once the staff investigation is complete. The UDC's review involves the following:

(a) *Available dispositions.* The UDC will make one of the following decisions after reviewing the incident report:

(1) You committed the prohibited act(s) charged, and/or a similar prohibited act(s) as described in the incident report;

(2) You did not commit the prohibited act(s) charged; or

(3) The incident report will be referred to the Discipline Hearing Officer (DHO) for further review, based on the seriousness of the prohibited act(s) charged.

(4) If you are charged with a Greatest or High severity prohibited act, or are an inmate covered by § 541.04, the UDC will automatically refer the incident report to the DHO for further review.

(b) *UDC members.* The UDC ordinarily consists of two or more staff. UDC members will not be victims, witnesses, investigators, or otherwise significantly involved in the incident.

(c) *Timing.* The UDC will ordinarily review the incident report within five work days after it is issued, not counting the day it was issued, weekends, and holidays. UDC review of the incident report may also be suspended if it is being investigated for possible criminal prosecution.

(d) *Inmate appearance.* You are permitted to appear before the UDC during its review of the incident report, except during UDC deliberations or when your presence would jeopardize institution security, at the UDC's discretion. Also:

(1) You may appear either in person or electronically (for example, by video or telephone conferencing) at the UDC's discretion.

(2) You may waive your appearance before the UDC. If you waive your appearance, the UDC will review the incident report in your absence.

(3) If you escape or are otherwise absent from custody, the UDC will conduct a review in your absence at the institution where you were last confined.

(e) *Evidence.* You are entitled to make a statement and present documentary evidence to the UDC on your own behalf. The UDC will consider all evidence presented during its review. The UDC's decision will be based on at least some facts and, if there is conflicting evidence, on the greater weight of the evidence.

(f) *Sanctions.* If you committed a prohibited act(s), the UDC can impose any of the available sanctions listed in Tables 1 and 2, except loss of good conduct sentence credit, disciplinary segregation, or monetary fines.

(g) *Referral to the DHO.* If the UDC refers the incident report to the DHO for further review, the UDC will advise you of your rights at the upcoming DHO hearing, as detailed in § 541.08.

(h) *Written report.* You will receive a written copy of the UDC's decision following its review of the incident report.

(i) *Appeals.* You may appeal the UDC's action(s) through the Administrative Remedy Program, 28 CFR part 542, subpart B.

§ 541.8 Discipline Hearing Officer (DHO) hearing.

The Discipline Hearing Officer (DHO) will only conduct a hearing on the incident report if referred by the UDC. The DHO's hearing involves the following:

(a) *Available dispositions.* The DHO will make one of the following decisions after a hearing on the incident report:

(1) You committed the prohibited act(s) charged, and/or a similar prohibited act(s) as described in the incident report;

(2) You did not commit the prohibited act(s) charged; or

(3) The incident report will be referred back for further investigation, review, and disposition.

(b) *Discipline Hearing Officer.* The DHO will be an impartial decision maker who was not a victim, witness, investigator, or otherwise significantly involved in the incident.

(c) *Timing.* You will receive written notice of the charge(s) against you at least 24 hours before the DHO's hearing. You may waive this requirement, in which case the DHO's hearing can be conducted sooner.

(d) *Staff Representative.* You are entitled to have a staff representative during the DHO hearing process as follows:

(1) *How to get a staff representative.* You may request the staff representative of your choice, so long as that person was not a victim, witness, investigator, or otherwise significantly involved in the incident. If your request(s) cannot be fulfilled, and you still want a staff representative, the Warden will appoint one. The Warden will also appoint a staff representative if it appears you are unable to adequately represent yourself before the DHO, for example, if you are illiterate or have difficulty understanding the charges against you.

(2) *How the staff representative will help you.* Prior to the DHO's hearing, the staff representative will be available to help you understand the incident report charges and potential consequences. The staff representative may also assist you by speaking with and scheduling witnesses, obtaining written statements, and otherwise helping you prepare evidence for presentation at the DHO's hearing. During the DHO's hearing, you are entitled to have the staff representative appear and assist you in understanding the proceedings. The staff representative can also assist you in presenting evidence during the DHO's hearing.

(3) *How the staff representative may appear.* Your staff representative may appear either in person or electronically (for example, by video or telephone conferencing) at the DHO's discretion. If your staff representative is not available for the scheduled hearing, you may either select another staff representative, request the hearing be postponed for a reasonable amount of time until your staff representative can appear, or proceed without a staff representative.

(e) *Inmate appearance.* You are permitted to appear before the DHO during the hearing on the incident report as follows:

(1) You may appear either in person or electronically (for example, by video or telephone conferencing), at the DHO's discretion.

(2) Your appearance may be prohibited during DHO deliberations or when your presence would jeopardize institution security, at the DHO's discretion.

(3) You may waive your appearance before the DHO. If you waive your appearance, the DHO hearing will be conducted in your absence.

(4) If you escape or are otherwise absent from custody, the DHO will conduct a hearing in your absence at the institution where you were last confined.

(f) *Evidence and witnesses.* You are entitled to make a statement and present documentary evidence to the DHO on your own behalf. The DHO will consider all evidence presented during the hearing. The DHO's decision will be based on at least some facts and, if there is conflicting evidence, on the greater weight of the evidence. Witnesses may appear at the DHO's hearing as follows:

(1) Witnesses may appear before the DHO either in person or electronically (for example, by video or telephone conferencing) at the DHO's discretion.

(2) The DHO will call witnesses who have information directly relevant to the charge(s) and who are reasonably available. However, the DHO need not call witnesses adverse to you if their testimony is adequately summarized in the incident report or other investigation materials.

(3) You or your staff representative may request witnesses appear at the hearing to testify on your behalf. Your requested witnesses may not appear if, in the DHO's discretion, they are not reasonably available, their presence at the hearing would jeopardize institution

security, or they would present repetitive evidence.

(4) If your requested witnesses are unavailable to appear, written statements can be requested by either the DHO or staff representative. The written statements can then be considered during the DHO's hearing.

(5) Only the DHO may directly question witnesses at the DHO's hearing. Any questions by you or your staff representative must be submitted to the DHO, who will present the question to the witness in his/her discretion.

(6) The DHO may consider evidence provided by a confidential informant (CI) that the DHO finds reliable. You will not be informed of the CI's identity. You will be informed of the CI's testimony to the extent it will not jeopardize institution security, at the DHO's discretion.

(g) *Sanctions.* If you committed a prohibited act(s), the DHO can impose any of the available sanctions listed in Tables 1 and 2.

(h) *Written Report.* You will receive a written copy of the DHO's decision following the hearing. The DHO is not required to prepare a verbatim record of the hearing. The DHO's written report will document the following:

(1) Whether you were advised of your rights during the DHO process;

(2) The evidence relied on by the DHO;

(3) The DHO's decision;

(4) The sanction imposed by the DHO; and

(5) The reason(s) for the sanction(s) imposed.

(i) *Appeals.* You may appeal the DHO's action(s) through the Administrative Remedy Program, 28 CFR part 542, subpart B.

■ 3. Revise subpart B to read as follows:

Subpart B—Special Housing Units

Sec.

Subpart B—Special Housing Units

§ 541.20 Purpose.

This subpart describes the Federal Bureau of Prisons' (Bureau) operation of special housing units (SHU) at Bureau institutions. The Bureau's operation of SHUs is authorized by 18 U.S.C. 4042(a)(2) and (3).

§ 541.21 Special Housing Units (SHUs).

Special Housing Units (SHUs) are housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone or with other inmates. Special housing units help ensure the safety, security, and orderly operation of correctional facilities, and protect the public, by providing alternative housing assignments for inmates removed from the general population.

§ 541.22 Status when placed in the SHU.

When placed in the SHU, you are either in administrative detention status or disciplinary segregation status.

(a) *Administrative detention status.* Administrative detention status is an administrative status which removes you from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public. Administrative detention status is non-punitive, and can occur for a variety of reasons.

(b) *Disciplinary segregation status.* Disciplinary segregation status is a punitive status imposed only by a Discipline Hearing Officer (DHO) as a sanction for committing a prohibited act(s).

§ 541.23 Administrative detention status.

You may be placed in administrative detention status for the following reasons:

(a) *Pending Classification or Reclassification.* You are a new commitment pending classification or under review for Reclassification.

(b) *Holdover Status.* You are in holdover status during transfer to a designated institution or other destination.

(c) *Removal from general population.* Your presence in the general population poses a threat to life, property, self, staff, other inmates, the public, or to the security or orderly running of the institution and:

(1) *Investigation.* You are under investigation or awaiting a hearing for possibly violating a Bureau regulation or criminal law;

(2) *Transfer.* You are pending transfer to another institution or location;

(3) *Protection cases.* You requested, or staff determined you need, administrative detention status for your own protection.

(4) *Post-disciplinary detention.* You are ending confinement in disciplinary segregation status, and your return to the general population would threaten the safety, security, and orderly operation of a correctional facility, or public safety.

§ 541.24 Disciplinary segregation status.

You may be placed in disciplinary segregation status only by the DHO as a disciplinary sanction.

§ 541.25 Notice received when placed in the SHU.

You will be notified of the reason(s) you are placed in the SHU as follows:

(a) *Administrative detention status.* When placed in administrative detention status, you will receive a copy of the administrative detention order, ordinarily within 24 hours, detailing the reason(s) for your placement. However, when placed in administrative detention status pending classification or while in holdover status, you will not receive an administrative detention order.

(b) *Disciplinary segregation status.* When you are to be placed in disciplinary segregation status as a sanction for violating Bureau regulations, you will be informed by the DHO at the end of your discipline hearing.

§ 541.26 Review of placement in the SHU.

Your placement in the SHU will be reviewed by the Segregation Review Official (SRO) as follows:

(a) *Three day review.* Within three work days of your placement in administrative detention status, not counting the day you were admitted, weekends, and holidays, the SRO will review the supporting records. If you are in disciplinary segregation status, this review will not occur.

(b) *Seven day reviews.* Within seven continuous calendar days of your placement in either administrative detention or disciplinary segregation status, the SRO will formally review your status at a hearing you can attend. Subsequent reviews of your records will be performed in your absence by the SRO every seven continuous calendar days thereafter.

(c) *Thirty day reviews.* After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation status, the SRO will formally review your status at a hearing you can attend.

(d) *Administrative remedy program.* You can submit a formal grievance

challenging your placement in the SHU through the Administrative Remedy Program, 28 CFR part 542, subpart B.

§ 541.27 Protection case—placement in Administrative Detention status.

You may be placed in administrative detention status as a protection case in the following circumstances.

(a) *Victim of inmate assault or threats.* You were the victim of an inmate assault, or are being threatened by other inmates, including threats of harm if you do not act in a certain way, for example, threats of harm unless you engage in sexual activity.

(b) *Inmate informant.* Your safety is threatened because you provided, or are perceived as having provided, information to staff or law enforcement authorities regarding other inmates or persons in the community.

(c) *Inmate refusal to enter general population.* You refuse to enter the general population because of alleged pressures or threats from unidentified inmates, or for no expressed reason.

(d) *Staff concern.* Based on evidence, staff believe your safety may be seriously jeopardized by placement in the general population.

§ 541.28 Protection case—review of placement in the SHU.

(a) *Staff investigation.* Whenever you are placed in the SHU as a protection case, whether requested by you or staff, an investigation will occur to verify the reasons for your placement.

(b) *Hearing.* You will receive a hearing according to the procedural requirements of § 541.26(b) within seven calendar days of your placement. Additionally, if you feel at any time your placement in the SHU as a protection case is unnecessary, you may request a hearing under this section.

(c) *Periodic review.* If you remain in administrative detention status following such a hearing, you will be periodically reviewed as an ordinary administrative detention case under § 541.26.

§ 541.29 Staff verification of need for protection.

If a staff investigation verifies your need for placement in the SHU as a protection case, you may remain in the SHU or be transferred to another institution where your status as a protection case may not be necessary, at the Warden's discretion.

§ 541.30 Lack of verification of need for protection.

If a staff investigation fails to verify your need for placement in the SHU as a protection case, you will be instructed to return to the general population. If you refuse to return to the general population under these circumstances, you may be subject to disciplinary action.

§ 541.31 Conditions of confinement in the SHU.

Your living conditions in the SHU will meet or exceed standards for healthy and humane treatment, including, but not limited to, the following specific conditions:

(a) *Environment.* Your living quarters will be well-ventilated, adequately lighted, appropriately heated, and maintained in a sanitary condition.

(b) *Cell Occupancy.* Your living quarters will ordinarily house only the amount of occupants for which it is designed. The Warden, however, may authorize more occupants so long as adequate standards can be maintained.

(c) *Clothing.* You will receive adequate institution clothing, including footwear, while housed in the SHU. You will be provided necessary opportunities to exchange clothing and/or have it washed.

(d) *Bedding.* You will receive a mattress, blankets, a pillow, and linens for sleeping. You will receive necessary opportunities to exchange linens.

(e) *Food.* You will receive nutritionally adequate meals.

(f) *Personal hygiene.* You will have access to a wash basin and toilet. You will receive personal items necessary to maintain an acceptable level of personal hygiene, for example, toilet tissue, soap, toothbrush and cleanser, shaving utensils, *etc.* You will ordinarily have an opportunity to shower and shave at least three times per week. You will have access to hair care services as necessary.

(g) *Exercise.* You will receive the opportunity to exercise outside your individual quarters at least five hours per week, ordinarily on different days in one-hour periods. You can be denied these exercise periods for a week at a time by order of the Warden if it is determined that your use of exercise privileges threatens safety, security, and orderly operation of a correctional facility, or public safety.

(h) *Personal property.* In either status, your amount of personal property may be limited for reasons of fire safety or sanitation.

(1) In administrative detention status you are ordinarily allowed a reasonable amount of personal property and reasonable access to the commissary.

(2) In disciplinary segregation status your personal property will be impounded, with the exception of limited reading/writing materials, and religious articles. Also, your commissary privileges may be limited.

(i) *Correspondence.* You will receive correspondence privileges according to part 540, subpart B.

(j) *Telephone.* You will receive telephone privileges according to part 540, subpart I.

(k) *Visiting.* You will receive visiting privileges according to part 540, subpart D.

(l) *Legal Activities.* You will receive an opportunity to perform personal legal activities according to part 543, subpart B.

(m) *Staff monitoring.* You will be monitored by staff assigned to the SHU, including program and unit team staff.

(n) *Programming Activities.* In administrative detention status, you will have access to programming activities to the extent safety, security, orderly operation of a correctional facility, or public safety are not jeopardized. In disciplinary segregation status, your participation in programming activities, *e.g.,* educational programs, may be suspended.

(o) *Administrative remedy program.* You can submit a formal grievance challenging any aspect of your confinement in the SHU through the Administrative Remedy Program, 28 CFR part 542, subpart B.

§ 541.32 Medical and mental health care in the SHU.

(a) *Medical Care.* A health services staff member will visit you daily to provide necessary medical care. Emergency medical care is always available.

(b) *Mental Health Care.* After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation status, mental health staff will examine you, including a personal interview. Emergency mental health care is always available.

§ 541.33 Release from the SHU.

(a) *Administrative detention status.* You will be released from administrative detention status when the reasons for your placement no longer exist.

(b) *Disciplinary segregation status.* You will be released from disciplinary segregation status after satisfying the sanction imposed by the DHO. The SRO may release you earlier if it is determined you no longer require disciplinary segregation status.

[FR Doc. 2010–30525 Filed 12–7–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0171]

RIN 1625–AA01

Anchorage Regulations; Long Island Sound

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In this rule the Coast Guard establishes seven anchorage grounds in Long Island Sound. These anchorages are located in Connecticut and New York State waters. This action is necessary to aid in facilitating the safe and secure anchoring and transiting of vessels, particularly deep draft vessels, transiting Long Island Sound or awaiting entry to a port or facility in New York and Connecticut.

DATES: This rule is effective January 7, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0171 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–0171 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Judson Coleman, Prevention Department, Coast Guard Sector Long Island Sound: telephone 203–468–4596, e-mail *Judson.Coleman@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations; Long Island Sound" in the **Federal Register** (74 FR 27948). We received four letters commenting on the proposed rule. No request for a public meeting was made. No public meeting was held.

Basis and Purpose

This rule establishes seven anchorage grounds in accordance with 33 CFR 109.05 and 110.1(b). This action is necessary to aid in facilitating the safe and secure anchoring and transiting of vessels, particularly deep draft vessels, through Long Island Sound or while awaiting entry to a port or facility in New York or Connecticut. The anchorage grounds are designated for general purposes, but are intended primarily for use by commercial vessels of 300 gross tons and greater and all tank vessels, including tank barges.

Creating official anchorage grounds will cause more vessels to anchor in these grounds, in addition to the large number that already do so, thereby providing the Captain of the Port (COTP) with increased options for vessels needing to anchor while awaiting authorization to enter port. The designation of anchorage grounds will provide for the safety of navigation in that it provides designated locations for anchorage of deep draft vessels throughout Long Island Sound, in close proximity to the major ports of Bridgeport, New Haven, and New London, Connecticut; and Riverhead, Northport, and Port Jefferson, New York. Vessels transiting Long Island Sound will now see charted anchorage grounds, thus improving safety of navigation.

Background

We consulted with several agencies in the development of these anchorage grounds, including: The Army Corps of Engineers New England District, the Army Corps of Engineers New York District, the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), the Connecticut Department of Environmental Protection—Office of Long Island Sound Programs, the New York Department of State and the New York Department of Conservation. Additionally, the licensed marine pilots' organizations of both Connecticut and New York were consulted due to their extensive knowledge of the usage and need for anchorage grounds in Long Island Sound.

In determining the need for, and appropriate location of, the anchorage grounds, we considered several factors, including: The commercial need for anchorage grounds, proximity to ports, safety of navigation, potential impact on commercial fishing, location of dredged material disposal sites, maritime security, environmental implications and location of known underwater obstructions, cables, pipelines and wrecks.

The location of several submarine cables and pipelines carrying electricity and natural gas are de facto limitations on anchoring as these are hazards for vessels anchoring elsewhere in the Sound. Past anchor snags of submarine cables have not only interrupted use of the cable, but also present potential hazards to the stability of vessels as well as to the marine environment, should the housing of the cable contain any environmentally harmful materials. There are no cable or pipeline areas running through any of the seven anchorage grounds. Establishment of these anchorage grounds provides for protection of the environment in that vessels may anchor in an area free from cables. This would provide protections against anchor strikes of submarine cables and pipelines. Designation of these anchorage grounds will help guide the installation of future cables or pipelines so that they are located outside of the anchorage grounds.

This rule does not exclude fishing activity or the transit of vessels in the anchorage grounds, but only requires that all vessels maintain a distance of 500 yards from an anchored vessel that is conducting bunkering or lightering operations. Anchored vessels conducting bunkering or lightering operations are readily identified as they must display a red flag as required by 46 CFR 35.30–1 in addition to the navigation lights and shapes required by 33 U.S.C. 2001–2038. We anticipate the designation of these anchorage grounds may increase the number of anchored vessels in the area; however, such increase will cause only minimal interference to transiting vessels as the areas have historically been utilized for anchoring. The anchorage grounds have been configured so they do not overlap with leased shellfish beds.

The NOAA Navigation Manager for the Northeast Region has provided information regarding the location of wrecks within Long Island Sound. No historical wrecked vessels are located within any of the anchorage grounds.

As discussed below, the anchorage grounds established by this final rule do not overlap dredge disposal sites.

Discussion of Comments and Changes

Of the four comment letters received, two expressed support for the regulation and two expressed concerns about specific provisions. We revised the regulation in response to these comments, and we discuss those changes below.

The Army Corps of Engineers commented that three of the proposed

anchorage grounds overlapped with dredge disposal sites. The Army Corps expressed concern that anchoring activities could disturb potentially contaminated sediment at these dredge disposal sites. After further consultation with the Army Corps, therefore, the Coast Guard reconfigured the proposed Bridgeport, New Haven South, and New London anchorage grounds to avoid dredge disposal sites. The Bridgeport anchorage ground is in the same location but slightly smaller than proposed in the NPRM. We also removed a portion of the northwest side of the New Haven South anchorage ground, reducing the overall size slightly so not to intrude into the Dumping Ground nearby. The New London site remained the same size, but we shifted it two and one half (2.5) nautical miles to the southwest. These changes are minor and do not affect the general location or use of the anchorages as proposed in the NPRM.

In paragraph (b)(2), we revised the notification requirement to affect vessels anchoring in the anchorage area, rather than entering the anchorage area. The new language is more narrowly tailored to the safety purpose of that notification requirement.

In paragraph (b)(4), for the convenience of the reader we noted the restrictions already in place as the result of an existing Regulated Navigation Area. We also simplified the proposed prohibition on fishing and navigation within 500 yards of certain vessels to, simply, navigation within 500 yards of anchored vessels conducting bunkering or lightering operations. The revised provision is clearer, and preserves safety precautions while avoiding confusion about which vessels are carrying petroleum or other flammable cargo. We then moved proposed paragraph (b)(14), discussing the identification of vessels conducting lightering or bunkering, to immediately follow (b)(4), and renumbered all subsequent paragraphs accordingly. These minor organizational changes are intended to make the regulation clearer and easier to read.

One comment letter expressed concern regarding paragraph (b)(5) (previously paragraph (b)(14) of the proposed rule), which addresses light signals for vessels engaged in lightering or bunkering within an anchorage. The commenter correctly pointed out that 46 CFR 35.30–1 does not permit a vessel to display a red light while at anchor, because such a light could be confused with a running light. Common practice is to illuminate the red "Bravo" flag with a spotlight at night. Accordingly, we have revised the text of paragraph (b)(5) to require that a vessel conducting lighting or bunkering operations in the anchorage ground display a red flag by day and illuminate the flag by spotlight at night. We also added reference to the existing requirements for day signals, lights, and whistles set forth in Title 33 of the U.S. Code.

In paragraph (b)(6) (previously proposed paragraph (b)(5)) we clarified that the COTP permission must be in writing. In paragraph (b)(10) (previously proposed paragraph (b)(9)) we added a recommendation that anchored vessels maintain a radio watch on VHF channel 13 in addition to the required radio watch on VHF channel 16, to maintain bridge to bridge radio capability as an additional safety measure. In paragraph (b)(13) (previously proposed paragraph (b)(12)) we clarified sentence structure and corrected a typographical error to show that a vessel requests permission "from" the COTP. We also standardized the use of the term "anchorage grounds" throughout the section, replacing various terms such as "zones" and "areas."

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule is not significant because there are no fees, permits, or specialized requirements for the maritime industry to utilize these anchorage grounds. The regulation is solely for the purpose of advancing the safety of maritime commerce. We anticipate no negative impact to the fishing community, including dragging, lobstering and shellfishing. This rule does not exclude fishing activity or the transit of vessels in the anchorage grounds. The Coast Guard anticipates the anchorage grounds would cause minimal transit interference, by way of increased vessel anchorage, as these areas have historically been utilized for anchoring with no reports of significant interference with vessel transits through the area.

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: Commercial vessels wishing to transit or fish in the portions of Long Island Sound covered by this regulation. This rule should only have a minimal economic impact on lobster fishing vessels, small commercial vessels and recreational boaters. This conclusion is based upon the fact that the only restriction for entry or use of the anchorages is for all vessels to maintain a distance of 500 yards from an anchored vessel conducting lightering or bunkering operations. The regulation creates seven new anchorage grounds. These areas historically have been, and routinely are, used for anchorage by both deep draft and smaller vessels. The anchorage grounds do not interfere with existing ferry routes between Connecticut and Long Island, New York. The NPRM sought comments from small entities that may be affected by this rulemaking. No comments were received concerning small entities.

Assistance for Small Entities

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

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction. This rule involves the establishment of general anchorage grounds. 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 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.146 to read as follows:

§ 110.146 Long Island Sound.

(a) *Anchorage grounds.*

(1) *Bridgeport Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°04′52″ N	73°14′04″ W; thence to
41°03′45″ N	73°14′04″ W; thence to
41°03′45″ N	73°11′39″ W; thence to
41°02′50″ N	73°12′08″ W; thence to
41°02′50″ N	73°16′18″ W; thence to
41°04′52″ N	73°16′18″ W; returning to point of origin.

(2) *New Haven North Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°12′18″ N	72°52′36″ W; thence to
41°12′18″ N	72°49′36″ W; thence to
41°10′12″ N	72°48′18″ W; thence to
41°10′12″ N	72°52′12″ W; thence to
41°11′06″ N	72°53′06″ W; returning to point of origin.

(3) *New Haven South Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°09′30″ N	72°47′48″ W; thence to
41°08′36″ N	72°47′24″ W; thence to

Latitude	Longitude
41°08′36″ N	72°51′24″ W; thence to
41°09′30″ N	72°51′24″ W; returning to point of origin.

(4) *New London Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°14′11″ N	072°15′38″ W; thence to
41°15′05″ N	072°16′02″ W; thence to
41°15′39″ N	072°13′21″ W; thence to
41°14′45″ N	072°12′57″ W; returning to point of origin.

(5) *Northport Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
40°58′48″ N	073°16′30″ W; thence to
40°57′42″ N	073°11′42″ W; thence to
40°56′30″ N	073°13′30″ W; thence to
40°57′36″ N	073°18′12″ W; returning to point of origin.

(6) *Port Jefferson Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°01′48″ N	073°04′54″ W; thence to
41°01′48″ N	073°00′00″ W; thence to
41°00′18″ N	073°00′00″ W; thence to
41°00′18″ N	073°04′54″ W; returning to point of origin.

(7) *Riverhead Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°03′00″ N	072°42′00″ W; thence to
41°04′00″ N	072°36′00″ W; thence to
41°02′00″ N	072°35′24″ W; thence to
41°01′24″ N	072°41′24″ W; returning to point of origin.

(8) All coordinates referenced use datum: NAD 83.

(b) *General regulations.*

(1) These anchorages are designated for general purposes, but are intended primarily for use by commercial vessels of 300 gross tons and greater and all tank vessels including tank barges. Except in emergencies, commercial vessels of 300 gross tons and greater and all tank vessels, including tank barges, anchoring in the Captain of the Port Long Island Sound Zone inside the line of demarcation shall anchor in the anchorage grounds described above.

(2) Prior to anchoring in the anchorage area, all vessels shall notify the Coast Guard Captain of the Port via VHF–FM Channel 16.

(3) In anchorages where lightering and bunkering operations are authorized, the Captain of the Port must be notified at least four hours in advance of a vessel conducting lightering or bunkering operations, as required by 156.118 of this title. In addition, all lightering and bunkering operations must be done in accordance with 156.120 of this title.

(4) Within an anchorage, navigation is prohibited within 500 yards of an anchored vessel that is conducting bunkering or lightering operations. In accordance with the "Regulated Navigation Area: Long Island Sound Marine Inspection and Captain of the Port Zone," 33 CFR 165.153(d)(7), navigation also is prohibited within 100 yards of a vessel engaged in commercial service.

(5) Any vessel conducting lightering or bunkering operations shall display by day a red flag at its mast head or at least 10 feet above the upper deck if the vessel has no mast, and by night the flag must be illuminated by spotlight. These signals shall be in addition to day signals, lights, and whistle signals required by rules 30 (33 U.S.C. 2030) and 35 (33 U.S.C. 2035) of the Inland Navigation Rules when at anchor in a general anchorage area.

(6) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains written permission from the Captain of the Port.

(7) If a request is made for the long-term lay up of a vessel, the Captain of the Port may establish special conditions with which the vessel must comply in order for such a request to be approved.

(8) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorage grounds described in this section, pursuant to 33 CFR 109.05. These conditions may include, but are not limited to: The number and location of anchors; scope of chain; readiness of the engineering plant and equipment; use of tugs; and requirements for maintaining communication guards on selected radio frequencies.

(9) No vessel in such condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels shall occupy an anchorage, except in cases where unforeseen circumstances create conditions of imminent peril to personnel, and then only for such period as may be authorized by the Captain of the Port.

(10) All vessels anchored within the designated anchorage grounds shall comply with the regulations found in 33 CFR 164.19 and shall maintain a continuous bridge watch by a licensed deck officer proficient in English, monitoring VHF–FM Channel 16. This individual shall confirm that the ship's crew performs frequent checks of the vessel's position to ensure the vessel is not dragging anchor. A second VHF–FM radio monitoring Channel 13 is strongly recommended.

(11) Anchors shall be placed well within the anchorage grounds so that no portion of the hull or rigging will at any time extend outside of the anchorage area.

(12) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety and security.

(13) Any vessel anchored in these grounds must be capable of getting underway if ordered by the Captain of the Port and must be able to do so within two (2) hours of notification by the Captain of the Port. If a vessel will not be able to get underway within two (2) hours of notification, permission must be requested from the Captain of the Port to remain in the anchorage. No vessel shall anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(14) Fixed moorings, piles or stakes are prohibited.

Dated: September 17, 2010.

D.A. Neptun,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 2010–30741 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1058]

Drawbridge Operation Regulation; Upper Mississippi River, Burlington, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Burlington Railroad Drawbridge across the Upper Mississippi River, mile 403.1, at Burlington, Iowa. The deviation is necessary to allow the bridge owner time to replace the swing span with a lift span and to construct the right descending tower. This deviation allows the bridge to be maintained in the closed-to-navigation position for sixty-two days.

DATES: This deviation is effective from 6 a.m., December 15, 2010 to 6 a.m. February 15, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1058 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1058 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, e-mail *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company requested a temporary deviation for the Burlington Railroad Drawbridge, across the Upper Mississippi River, mile 403.1, at Burlington, Iowa to remain in the closed-to-navigation position for 62 days from 6 a.m., December 15, 2010 to 6 a.m., February 15, 2011 to allow the bridge owner time to complete the Truman-Hobbs alteration. The new lift span will be set in place and the right descending tower will be completed. The Burlington Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Burlington Railroad Drawbridge, in the closed-to-navigation position, will provide a vertical clearance of 19.3 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will not be able to open for emergencies during the construction period. This temporary deviation has been coordinated with waterway users.

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

Dated: November 26, 2010.

Eric A. Washburn,

Bridge Administrator.

[FR Doc. 2010–30744 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1073]

Drawbridge Operation Regulation; James River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the SR 156 Benjamin Harrison Memorial Bridge, across the James River, mile 65.0, at Hopewell, VA. The deviation is necessary to facilitate mechanical repairs to the vertical lift span. This deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from 9 a.m. to 9 p.m. on December 16, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2010–1073 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–1073 in the "Keywords" box, and then clicking "Search". This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District; telephone (757) 398–6422, e-mail *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renne V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates this vertical-lift type bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5, which requires the bridge to open promptly and fully when a request to open is given. In the closed to navigation position the SR 156 Benjamin Harrison Memorial Bridge across the James River, mile 65.0, at Hopewell, VA has a vertical clearance of 50 feet above mean high water. The purpose of the deviation is to facilitate structural repairs.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position to facilitate repairs to the skew couplings that keep the vertical lift portion of the bridge balanced. The lift span will be closed from 9 a.m. to 9 p.m. on December 16, 2010.

Typical vessel traffic on the James River includes a variety of vessels from freighters, tug and barge traffic, and recreational vessels. Vessels that can pass under the bridge without a bridge opening may continue to do so at anytime. There are no alternate routes for vessels transiting this section of the James River and the drawbridge will be unable to open in the event of an emergency.

The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway

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

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

Dated: November 24, 2010.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2010–30745 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0747]

RIN 1625–AA11

Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) on portions of the Thea Foss and Wheeler-Osgood Waterways in Commencement Bay, Tacoma, Washington. The RNA will protect the seabed in portions of those waterways that are subject to the U.S. Environmental Protection Agency's (EPA's) Commencement Bay Nearshore/Tideflats superfund cleanup remediation efforts. This RNA will prohibit activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding or other activities that involve disrupting the integrity of the cap. It would not affect transit or navigation of the area.

DATES: This rule is effective January 7, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0747 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–0747 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Ashley Wanzer, Waterways Management, Sector Puget Sound, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 2, 2010, we published a supplemental notice of proposed rulemaking (SNPRM) entitled Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA in the **Federal Register** (75 FR 105). We received no comments on the proposed rule. We did not receive any comments requesting a public meeting and we did not hold a public meeting.

Basis and Purpose

The basis for this rulemaking is the Coast Guard's authority, as delegated by the Secretary of Homeland Security, to establish RNAs under 33 U.S.C. 1226, 1231; 46 U.S.C. 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; DHS Delegation No. 0170.1. The purpose of this RNA is to preserve the integrity of the clean sediment caps placed over certain areas of the Thea Foss and Wheeler-Osgood Waterways as part of the EPA's Commencement Bay Nearshore/Tideflats superfund cleanup remediation process in those waters. These caps consist of approximately three feet of sand and gravel, designed to withstand activities common to a working waterfront, covering approximately 30 acres of sediment in the waterway.

This RNA would prohibit activities that could disturb the seabed or the sediment caps, such as anchoring, dragging, trawling, or spudding. It would not affect transit or navigation of the area.

Background

On August 20, 2008, we published a notice of proposed rulemaking (NPRM; 73 FR 162) to establish a regulated navigation area on a portion of the Thea Foss and Wheeler-Osgood Waterways, Commencement Bay, Tacoma, WA. On June 2, 2010, we published an SNPRM which revised the coordinates for this regulated navigation area and incorporated revisions for waiver requests per public comment on the initial notice of proposed rulemaking.

Discussion of Comments and Changes

We received no comments on the NPRM or SNPRM.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule is not a significant regulatory action because this RNA encompasses a small area and does not impact commercial or recreational traffic, and prohibited activities are not routine for the designated areas.

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 anchor, dredge, spud, lay cable or disturb the seabed in any fashion in any of the areas outlined by this regulation. The RNA would not have a significant economic impact on small entities due to its minimal restrictive area and ample opportunities for avoiding this region.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves a regulated navigation area which prevents activities which would disturb the seabed within the areas outlined in this regulation. 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 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. 1226, 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 § 165.1329 to read as follows:

§ 165.1329 Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following areas are regulated navigation areas:

(1) All waters of the Thea Foss Waterway bounded by a line connecting the following points: Point 1: 47°15′43.49″ N, 122°26′23.29″ W; Point 2: 47°15′44.59″ N, 122°26′19.89″ W; Point 3: 47°15′39.01″ N, 122°26′15.99″ W; Point 4: 47°15′37.91″ N, 122°26′19.39″ W. [Datum: NAD 1983].

(2) All waters of the Thea Foss Waterway bounded by a line connecting the following points: Point 1: 47°15′22.74″ N, 122°25′57.15″ W; Point 2: 47°15′22.52″ N, 122°26′0.18″ W; Point 3: 47°15′18.05″ N, 122°25′59.48″ W; Point 4: 47°15′18.26″ N, 122°25′56.45″ W. [Datum: NAD 1983].

(3) All waters of the Thea Foss and Wheeler-Osgood Waterways south of a line bounded by connecting the following points: Point 1: 47°15′13.94″ N, 122°26′05.56″ W; Point 2: 47°15′15.01″ N, 122°25′55.14″ W. [Datum: NAD 1983].

(b) *Regulations.* (1) All vessels and persons are prohibited from activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and others in the Thea Foss and Wheeler-Osgood Waterways EPA superfund cleanup site. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Thea Foss or Wheeler-Osgood Waterways superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the EPA.

(c) *Waiver.* Upon written request stating the need and proposed conditions of the waiver, and any proposed precautionary measures, the COTP may authorize a waiver from this section if the COTP determines that the activity for which the waiver is sought can take place without undue risk to the remediation efforts described in paragraph (b)(1) of this section. The COTP will consult with EPA in making this determination when necessary and practicable.

Dated: October 11, 2010.

G.T. Blore,

Rear Admiral, U.S. Coast Guard Commander, Thirteenth Coast Guard District.

[FR Doc. 2010–30742 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Domestic Shipping Services Pricing and Mailing Standards Changes

AGENCY: Postal Service™.

ACTION: Final rule; correction.

SUMMARY: The Postal Service published in the **Federal Register** of November 8, 2010 (75 FR 68430–68447), a document revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to reflect changes to prices and mailing standards for the following Shipping Services: Express Mail®, Priority Mail®, Parcel Select®, and Recipient Services. This document clarifies and amends mailing standards and shipping package information.

DATES: *Effective Date:* January 2, 2011.

FOR FURTHER INFORMATION CONTACT: John Gullo at 202–268–8057, or Carol Lunkins at 202–268–7262.

SUPPLEMENTARY INFORMATION: The Postal Service published a document in the **Federal Register** on November 8, 2010, (75 FR 68430–68447), citing the standards for the January 2, 2011, Shipping Services price change. Under this correction, the Postal Service amends the final rule to make revisions to the standards for determining single-piece weight; to clarify how to order Critical Mail envelopes; and to clarify the eligibility standards for Priority Mail Commercial Plus prices.

Determining Single-Piece Weight

In the original final rule, the Postal Service outlined the procedure for determining single-piece weight for all mail classes. We felt this may cause some confusion when, in fact, the intent was to show the procedure for determining single-piece weight for Shipping Services mailpieces only. The corrected language is shown below and in the applicable DMM reference sections.

To determine single-piece weight for Shipping Services products, express all single-piece weights in decimal pounds rounded off to two decimal places for all pieces mailed at Express Mail, Priority Mail (except for Critical Mail), and Parcel Select prices. Additionally, express all single-piece weights in decimal pounds rounded off to two decimal places for parcels mailed at Parcel Post, Bound Printed Matter, Media Mail, and Library Mail prices. Mailers using the Electronic Verification System (eVS) may round off to two or four decimals, because eVS automatically rounds to the appropriate decimal place. For all other mailpieces, express all single-piece weights in decimal pounds rounded off to four decimal places.

Critical Mail

In the preamble of the original final rule, the Postal Service indicated that mailers could order the new Critical Mail envelopes from the USPS Web site by logging on to *http://www.usps.com/shop.* The Web site is not to be used for ordering the new Critical Mail products, because the Postal Service has established a toll-free phone number dedicated to authorized Critical Mail customers.

Critical Mail envelopes are provided free of charge by USPS and must be used only for Critical Mail. Authorized customers may order these envelopes only by calling Expedited Packaging Supplies at 1–800–610–8734. These envelopes are not available online or at retail Post Office locations.

Additionally, the original final rule indicated that for Critical Mail prices, customers must meet the account volume threshold of 5,000 barcoded, automation-compatible letter-size and flat-size pieces. This amended final rule clarifies that Critical Mail prices are available to customers who mail a combined total of 5,000 barcoded, automation-compatible Critical Mail and Priority Mail letters and flats in the previous calendar year. As well, all new Critical Mail customers must have a customer commitment agreement with the Postal Service.

Priority Mail Commercial Plus Account Volume Thresholds

In the original final rule, the Postal Service provided standards indicating that the Priority Mail Commercial Plus account volume threshold was reduced from 100,000 pieces to 75,000 total pieces of Priority Mail. This correction clarifies that the Priority Mail Commercial Plus account volume threshold of 75,000 total pieces include Critical Mail.

Additionally, a new alternative threshold was established that permits Commercial Plus prices for customers who exceed 5,000 Priority Mail letters and flats. Again, to clarify, the Priority Mail Commercial Plus account volume threshold includes Critical Mail letters and flats, but does not include the Priority Mail Padded Flat Rate Envelope, and requires a combined total of 5,000 Priority Mail and Critical Mail barcoded, automation-compatible letters and flats in the previous calendar year.

The above corrections are being made to the following DMM sections: 223.1.3.1, 223.1.8, 223.3.1, 313.1.9, 323.1.3.1, 323.1.8, 413.1.9, 423.1.3.1, 423.1.10, 423.3.1, 453.1.4.1, and 604.7.1.1.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

200 Commercial Letters and Cards

* * * * *

220 Priority Mail

223 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.3 Commercial Plus Prices

1.3.1 Basic Eligibility

[Revise introductory paragraph of 1.3.1 to include Critical Mail as follows:]

For prices, see *Notice 123—Price List.* Commercial plus prices are available to Priority Mail (including Critical Mail) customers who qualify for commercial base prices and whose cumulative account volume exceeds a combined total of 5,000 letter-size and flat-size pieces or 75,000 total pieces (see 423) in the previous calendar year (except Priority Mail Open and Distribute) or who have a customer commitment agreement with USPS, and are:

* * * * *

[Renumber current 1.4 through 1.7 as 1.5 through 1.8 and add new 1.4 as follows:]

1.4 Critical Mail Prices

1.4.1 Basic Eligibility

Critical Mail letter-size pieces are charged a flat rate regardless of domestic destination or weight for barcoded, automation-compatible letters up to 3 ounces. Critical Mail letter-size pieces that exceed 3 ounces in weight, exceed ¼ inch thickness, or are not barcoded according to 3.2.1, will be charged the Priority Mail Commercial Plus Flat Rate Envelope price (volume thresholds apply). Critical Mail letter prices are commercial plus prices available to Critical Mail customers whose Priority Mail and Critical Mail volume exceeds a combined total of 5,000 letter-size and flat-size pieces (including Flat Rate Envelopes, but not the Padded Flat Rate Envelope), in the previous calendar year or who have a customer commitment agreement (see 1.3.4) with USPS, and that are:

a. Registered end-users of USPS-approved PC Postage products when using a qualifying shipping label managed by the PC Postage system used.

b. Permit imprint customers.

* * * * *

1.8 Determining Single-Piece Weight

[Revise the current last sentence of renumbered 1.8 and add a new last sentence as follows:]

* * * Except Critical Mail, express all single-piece weights in decimal pounds rounded off to two decimal places except mailers using eVS. Mailers using eVS may round off to two or four decimals, because eVS automatically rounds to the appropriate decimal place. If a customer is using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

* * * * *

3.0 Basic Standards for Priority Mail

3.1 Definition

[Revise 3.1 to add DMM reference numbers to Critical Mail as follows:]

Priority Mail is an expedited service and may contain any mailable matter weighing no more than 70 pounds. Lower weight limits apply to some commercial mail parcels under 423.1.0; Critical Mail letters and flats under 223.1.4 and 323.1.4; APO/FPO mail subject to 703.2.0 and 703.4.0 and Department of State mail subject to 703.3.0.

* * * * *

300 Commercial Flats

* * * * *

310 Express Mail

313 Prices and Eligibility

1.0 Prices and Fees

* * * * *

[Add new 1.9 as follows:]

1.9 Determining Single-Piece Weight

When determining single-piece weight, express all weights in decimal pounds rounded off to two decimal places except mailers using eVS. Mailers using eVS may round off to two or four decimals, because eVS will automatically round to the appropriate decimal place. When using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

* * * * *

320 Priority Mail

323 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.3 Commercial Plus Prices

1.3.1 Basic Eligibility

[Revise text of 1.3.1 to include Critical Mail as follows:]

For prices, see *Notice 123—Price List.* Commercial plus prices are available to Priority Mail (including Critical Mail) customers who qualify for commercial base prices and whose cumulative account volume exceeds a combined total of 5,000 letter-size and flat-size pieces or 75,000 total pieces (see 423) in the previous calendar year (except Priority Mail Open and Distribute) or who have a customer commitment agreement with USPS, and are:

* * * * *

[Renumber current 1.4 through 1.7 as 1.5 through 1.8 and add new 1.4 as follows:]

1.4 Critical Mail Prices

1.4.1 Basic Eligibility

Critical Mail flat-size pieces are charged a flat rate regardless of domestic destination or weight for barcoded, automation flats up to 13 ounces. Critical Mail flat-size pieces that exceed 13 ounces in weight or exceed ¾ inch thickness, or are not barcoded according to 3.2.1, will be charged the Priority Mail Commercial Plus Flat Rate Envelope price (volume thresholds apply). Critical Mail prices for flats are available to Critical Mail customers whose Priority Mail and Critical Mail volume exceeds a combined total of 5,000 letter-size and flat-size pieces (including Flat Rate Envelopes, but not the Padded Flat Rate Envelope), in the previous calendar year or who have a customer commitment agreement (see 1.4.2) with USPS, and that are:

a. Registered end-users of USPS-approved PC Postage products when using a qualifying shipping label managed by the PC Postage system used.

b. Permit imprint customers.

* * * * *

1.8 Determining Single-Piece Weight

[Revise the last sentence of renumbered 1.8 and add a new last sentence as follows:]

* * * Except for Critical Mail, express all single-piece weights in decimal pounds rounded off to two decimal places except mailers using eVS. Mailers using eVS may round off to two or four decimals, because eVS will automatically round to the

appropriate decimal place. If a customer is using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

413 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.9 Determining Single-Piece Weight

[Delete current item 1.9 in its entirety and add new 1.9 as follows:]

When determining single-piece weight, express all weights in decimal pounds rounded off to two decimal places except mailers using eVS. Mailers using eVS may round off to two or four decimals, because eVS automatically rounds to the appropriate decimal place. When using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

* * * * *

420 Priority Mail

423 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.3 Commercial Plus Prices

[Revise the title and text of 1.3.1 to include Critical Mail as follows:]

1.3.1 Commercial Plus Price Eligibility

For prices, see *Notice 123—Price List.* Commercial plus prices are available to Priority Mail (including Critical Mail) customers who qualify for commercial base prices and whose cumulative account volume exceeds 75,000 pieces or a combined total of 5,000 letter-size and flat-size pieces in the previous calendar year (except Priority Mail Open and Distribute) or who have a customer commitment agreement with USPS, and are:

a. Registered end-users of USPS-approved PC Postage products.

b. Permit imprint customers.

c. Priority Mail Open and Distribute (PMOD) customers whose account volume exceeds 600 PMOD containers (see 705.16.5.1).

d. Permit holders using MRS for Priority Mail items.

e. Customers using USPS-approved IBI postage meters that print the IBI with the appropriate price marking (see 402.2.1) and electronically transmit transactional data daily to USPS for all mailpieces and mail categories.

* * * * *

1.10 Determining Single-Piece Weight

[Revise the last sentence of renumbered 1.10 as follows:]

* * * Express all single-piece weights in decimal pounds rounded off to two decimal places except mailers using eVS. Mailers using eVS may round off to two or four decimals, because eVS automatically rounds to the appropriate decimal place. If a customer is using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

* * * * *

3.0 Basic Standards for Priority Mail

3.1 Definition

[Revise text of 3.1 to change Critical Mail reference numbers as follows:]

* * * Lower weight limits apply to commercial plus cubic (see 1.4); Regional Rate Boxes (see 1.2.2); Critical Mail (see 223.1.4 and 323.1.4); APO/FPO mail subject to 703.2.0 and 703.4.0; and Department of State mail subject to 703.3.0.

* * * * *

450 Parcel Select

453 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.4 Computing Postage

1.4.1 Determining Single-Piece Weight

[Revise the last sentence of 1.4.1 as follows:]

* * * Except for mailers using eVS, when determining single-piece weight for Parcel Select mailpieces, express all weights in decimal pounds rounded off to two decimal places. Mailers using eVS may round off to two or four decimals, because eVS automatically rounds to the appropriate decimal place. If a customer is using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

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7.0 Computing Postage

7.1 General Standards

7.1.1 Determining Single-Piece Weight for Retail and Commercial Mail

[Revise the last sentence of 7.1.1 as follows:]

* * * Express all single-piece weights in decimal pounds rounded off to two decimal places for the following mailpieces: Express Mail, Priority Mail (except Critical Mail), Parcel Select, Parcel Post, Bound Printed Matter, Media Mail, and Library Mail prices. Mailers using eVS may round off to two or four decimals, because eVS automatically rounds to the appropriate decimal place. For all other mailpieces, express all single-piece weights in decimal pounds rounded off to four decimal places.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–30668 Filed 12–7–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0766; FRL–8853–8]

RIN 2070–AJ28

Pesticide Tolerance Crop Grouping Program II; Revisions to General Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule makes revisions to the current pesticide tolerance crop grouping regulations which allow establishment of tolerances for multiple related crops, based on data from a representative set of crops. The final rule creates a new crop group for oilseeds, expands existing crop groups by adding new commodities, establishes new crop subgroups, and revises the representative crops in some groups. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes and promote global harmonization of food safety standards. EPA anticipates that more lower-risk pesticides will be able to be utilized for registration on minor crops, including many fruits and vegetables, because of availability of crop grouping tolerances. EPA determines whether

residues of a pesticide can be permitted once the required safety finding is made to establish a crop group tolerance. This is the second in a series of planned crop group updates expected to be promulgated over the next several years.

DATES: This final rule is effective February 7, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0766. 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.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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 Docket Facility is open 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: Rame Cromwell, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–9068; fax number: (703) 305–5884; *e-mail address: cromwell.rame@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer or food manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), *e.g.,* agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112).
- 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 under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What action is the agency taking?

This final rule, under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), amends EPA's regulations governing crop group tolerances for pesticides. Specifically, the rule: (1) Creates a new crop group for oilseeds; (2) expands existing crop groups by adding new commodities; (3) establishes new crop subgroups for two groups; (4) changes the representative crops for two groups; and (5) deletes 40 CFR 180.1(h), which addresses when tolerances apply to post-harvest uses.

The crop grouping concept leads to an estimate of the maximum residue that could occur on any crop within the group. The minimum data required for a group tolerance consists of residue data for all representative commodities for a group. This action is intended to promote more extensive use of crop group tolerances and, in particular, will assist in making available lower-risk pesticides for minor crops both domestically and in countries that export food to the United States.

This final rule is the second in a series of planned crop group updates expected to be promulgated in the next several years.

B. What is the agency's authority for taking this action?

EPA is authorized to establish tolerances for pesticide chemical residues in food under FFDCA section 408. EPA establishes tolerances for each pesticide based on the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural produce and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. Crop group regulations are promulgated under section 408(e)(1)(C) which authorizes EPA to establish "general procedures and requirements to implement [section 408]." 21 U.S.C. 346a(e)(1)(C).

III. The Proposed Rule

EPA published a notice of proposed rulemaking in the **Federal Register** of January 6, 2010 (75 FR 807). Written comments were solicited and were received from five parties in response to the proposal. Comments were received from Bayer CropScience, a commercial applicator, The National Sunflower Association, The California Citrus Quality Council and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China.

IV. Response to Comments

In this section EPA describes the major provisions of the proposed rule, the comments received on each provision, and EPA's responses to those comments, including EPA's determination if any modification of the proposed rule is warranted.

A. Crop Group 8–10: Fruiting Vegetable Group

The final rule retains the pre-existing Crop Group 8 and adds a new group titled "Crop Group 8–10 Fruiting Vegetable Group."

1. *Add commodities.* Newly added Crop Group 8–10, expands the fruiting vegetable crop group from the existing 6 commodities in Crop Group 8 to 21 commodities.

2. *Change the name.* The final rule changes the name of "Crop Group 8 Fruiting Vegetables (Except Cucurbits)" by dropping the parenthetical "(Except Cucurbits)" from the name.

3. *Change the name of representative commodities.* The final rule changes the name of the representative commodities for the revised crop group from "one cultivar of non-bell pepper" to "one cultivar of small nonbell pepper" by designating a small variety of nonbell pepper and by deleting the hyphen from the term non-bell.

4. *Create new subgroups.* The final rule retains the proposed addition of three subgroups to crop group 8–10.

i. *Tomato subgroup 8–10A—Representative crop.* Tomato, standard size and one cultivar of small tomato. Eleven commodities are included in this subgroup.

ii. *Pepper/Eggplant subgroup 8–10B—Representative crop.* Bell pepper and one cultivar of small nonbell pepper. Ten commodities are included in this subgroup.

iii. *Nonbell Pepper/Eggplant subgroup 8–10C—Representative crop.* One cultivar of small nonbell pepper or one cultivar of small eggplant. Nine commodities are included in this subgroup.

One comment was received regarding whether residue data are being collected on only bell pepper. The commenter asked whether tolerances should be

established for the crop subgroup 8–10B except nonbell pepper.

EPA believes that in order to obtain a tolerance for the Pepper/Eggplant subgroup 8–10B, residue data are required for both of the representative commodities, bell pepper and one cultivar of small nonbell pepper. Of these two commodities, small nonbell pepper is the commodity that will typically result in the higher residues and therefore, best represents expected residues for all of the commodities in subgroup 8–10B. However, bell pepper is included as a representative commodity since it is more widely grown and consumed. Therefore, if residue data for only bell pepper are submitted, EPA will not recommend a tolerance for crop subgroup 8–10B except nonbell pepper, but will only recommend for a tolerance on pepper, bell.

The People's Republic of China asked EPA to clarify whether the "goji berry" that is being included in Crop Group 8–10 is intended to cover fresh goji berry, dried goji berry, or both. China expressed the view that the pesticide tolerance level should be different between fresh and dried berry due to the different moisture contents. China requested that EPA specify the coefficient of conversion between dried and fresh goji berry if both are put into Crop Group 8–10. According to China, the coefficient between fresh and dried berry is approximately 6:1 based on producing and processing practice.

The United States generally establishes tolerances for raw agricultural commodities, which also apply to all processed forms of the same commodity. A separate tolerance for the processed commodity is only necessary when residues in the processed commodity may be higher than the raw agricultural commodity tolerance. In most cases, separate tolerances for processed commodities are not needed. Adding goji berry to Crop Group 8–10 means that future tolerances established for this group will apply to goji berry in all its forms, including dehydrated (dry) goji berry. EPA is not including in the rule the coefficient of conversion between dried and fresh goji berries. The information is not included in any U.S. tolerances and such information is unnecessary for the enforcement of tolerances.

EPA adopts this proposal as final without change.

B. Crop Group 10–10: Citrus Fruit Group

The final rule adds a new citrus crop group, but retains pre-existing Crop Group 10 and titles it "Crop Group 10–10 Citrus Fruit Group."

1. *Add commodities.* Added Crop Group 10–10 expands from the existing 12 commodities in Crop Group 10 to 28 commodities.

2. *Change the crop group name.* The final rule changes the name of "Crop Group 10: Citrus Fruits Group (*Citrus spp., Fortunella spp.*)" to "Crop Group 10: Citrus Fruit Group.

3. *Create crop subgroups.* The final rule retains the proposed addition of three new subgroups to newly added Crop Group 10–10.

i. *Orange Subgroup 10–10A.* Representative commodities. Orange or Tangerine/Mandarin. Twelve commodities are included in this subgroup.

ii. *Lemon/Lime Subgroup 10–10B.* Representative commodities. Lemon or Lime. Twelve commodities are included in this subgroup.

iii. *Grapefruit Subgroup 10–10C.* Representative commodities. Grapefruit. Five commodities are included in this subgroup.

EPA received no comments on this section and adopts the proposed changes as final without change.

C. Crop Group 11–10: Pome Fruit Group

The final rule adds a new pome fruit crop group which is titled "Crop Group 11–10 Pome Fruit Group." Newly added crop group 11–10 expands the pome fruit crop group, but retains pre-existing Crop Group 11.

Add commodities. Newly added Crop Group 11–10 expands from the existing 7 commodities in Crop Group 11 to 12 commodities.

EPA received no comments on this section and adopts its proposed changes as final without change.

D. New Crop Group 20 Oilseed Group

EPA received no comments on the addition of a new group, Crop Group 20 Oilseed Group, and adopts its proposed addition without change.

E. Amendment to Definitions and Interpretations

EPA proposed to revise the commodity definition in 40 CFR 180.1(g) for Citrus Group as follows:

Tangerine = Tangerine (mandarin or mandarin orange), Clementine, Mediterranean mandarin, Satsuma mandarin, Tangelo, Tangor, cultivars, varieties and/or hybrids of these.

No comments were submitted on this section and EPA adopts the change as proposed without change.

F. Amendment to 40 CFR 180.1(h)

The final rule deletes 40 CFR 180.1(h) that reads: "Unless otherwise specified, tolerances and exemptions established under the regulations in this part apply to residues from only preharvest application of the chemical."

One comment was received concerning how a person would know if a tolerance is based on pre-harvest or post-harvest use. The commenter asserted that growers need to know what residues they should expect from pre-harvest use in order to compare maximum residue limits (MRLs, the international term for residue standards comparable to tolerance regulations under U.S. law) abroad to know if such commodities may be exported.

Given the enforcement concerns articulated in the proposed rule, EPA does not think that the commenter has provided a sufficient rational for maintaining 40 CFR 180.1(h). EPA does not believe that the issue raised by the commenter—the need to determine whether pre-harvest residues comport with international MRLs—will often be a problem. The overwhelming majority of pesticide tolerances are set based on pre-harvest use of a pesticide. Further, EPA attempts to harmonize tolerances with foreign MRLs, and generally, harmonization is not a problem. Thus, in most cases, comparing the U.S. tolerance level with the international MRL will indicate to a grower that pre-harvest treatment of a commodity will not be inconsistent with international MRLs. If a grower comes across an instance where a U.S. tolerance is higher than a MRL and the grower thinks that a higher U.S. tolerance is due to a post-harvest use, the grower may contact EPA for more information about that particular tolerance. EPA currently collects valuable information about tolerances on its Web site. (*http://www.epa.gov/opp00001/regulating/part-180.html#info*). If information on what tolerances are driven by post-harvest uses turns out to be critical information EPA will consider adding that information to its Web site.

EPA is adopting its proposal without change.

G. Other Comments

One comment was received concerning the new crop group and crop subgroups; the commenter asked whether the residue chemistry guidelines will be updated or an EPA memorandum issued to address the number of trials and locations needed?

EPA does not believe that the residue chemistry guidelines need to be updated at this time or a separate memorandum issued to address the number of trials and locations. EPA plans to update these guidelines when more of the crop groups are revised, as this is an ongoing

effort. For the present, the current residue chemistry guidelines which address the number of field trials and locations should still be used for the newly added crop groups and crop subgroups.

The People's Republic of China suggested that this crop group rule should be regarded as a measure under the Agreement on Application of Sanitary and Phytosanitary Measures (SPS Agreement) because this crop grouping regulation has a direct relation on the establishment of pesticide tolerances. According to the WTO/SPS agreement, the U.S. should submit a notification to WTO. The commenter hoped that the U.S. will fulfill its transparency obligation and provide other members notice of the measure and an opportunity to comment on it.

EPA notes that the WTO was notified of the proposed rule as of March 17, 2010, under the SPS Agreement. The notification, WTO Document G/SPS/N/USA/1980, included a link to the public docket, where the proposed rule can be found in its entirety.

The People's Republic of China inquired as to the next steps after this revision, since the proposed revision did not specify the pesticide tolerances for the products. The commenter hoped that the U.S. would provide a timetable for the establishment of MRLs for the products in the revision, especially goji berry. Additionally the commenter asked if EPA would notify the WTO in a timely fashion and provide other members with a 60-day comment period when EPA establishes MRLs. Finally, the People's Republic of China indicated that it will continue to follow this issue closely and hopes to comment on any future tolerances for goji berry.

No specific tolerances are established by this rule revising the crop group. Tolerances for pre-existing crop groups continue in effect and do not apply to the revised crop group.

As discussed in Unit II.C. of the Proposed Rule (75 FR 807), tolerances established for revised crop groups will include the new crop group number (and new name, if applicable) so that it is apparent on the face of the tolerance regulation what commodities are covered. EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups, but EPA will not establish new tolerances for the pre-existing groups. EPA plans to eventually convert tolerances for any pre-existing crop groups to tolerances with the coverage of the revised crop group. This conversion will be effected both through the registration review process and in the course of establishing new tolerances for a pesticide. Therefore, no specific fruiting vegetable group 8 pesticide tolerances will be converted to tolerances for fruiting vegetable group 8–10, including goji berry, upon codifying the revised fruiting vegetable crop group 8–10 in the CFR. Pesticide residues on any additional members of a revised crop group will not be legal until the EPA establishes a new tolerance for that pesticide on the revised crop group.

EPA will propose new tolerances for the revised crop group in the **Federal Register** and provide an opportunity for public comment, consistent with U.S. law. The U.S. also plans to continue to notify the WTO of proposed tolerance actions, consistent with the WTO/SPS Agreement. If commenters believe that any of the tolerances that are proposed in the future will not be adequate for any form of a commodity that is in the crop group, they should submit comments and supporting data on the specific tolerances when they are proposed and notified.

Another commenter noted that it would be beneficial for the European Union (E.U.) and North American Free Trade Agreement (NAFTA) crop groups to be harmonized, in much the same way as the U.S. and Canada are working with the Codex Committee on Pesticide Residues (CCPR) to harmonize NAFTA crop groups with those being developed as part of the revision of the Codex Classification of Foods and Feeds.

EPA recognizes the benefits of internationally harmonized crop groups, and notes that the E.U. has been involved in the efforts to develop the Codex crop groups and to revise the NAFTA crop groups.

Petitions submitted to the EPA to revise crop groups are developed by the International Crop Groupings Consulting Committee (ICGCC), which is an international body that includes NAFTA, Codex, and E.U. members. The ICGCC workgroup members provide valuable international perspectives, including commodity and MRL information, in developing crop group proposals to be submitted to the EPA. Beyond the NAFTA partner involvement in developing Codex crop groups, other CCPR delegations from the E.U. and around the world provide international input and participate in the process. Through the partnership with the CCPR, the EPA believes that the NAFTA crop group revisions are being harmonized with Codex to the extent possible at this time; the E.U. will have to ultimately determine to what degree it will align with the Codex crop groups that are established.

Finally, EPA received a comment concerning "zero tolerance" being unachievable.

The purpose of the crop revisions is to provide a vehicle to establish tolerances for residues of pesticides on food commodities. Therefore, the comment regarding "zero tolerance" does not apply to this action.

V. The Final Rule

After fully considering all comments, EPA is promulgating the rule as proposed.

VI. Implementation

When a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will (1) retain the pre-existing crop group in 40 CFR 180.41; (2) insert the revised crop group immediately after the pre-existing crop group in the Code of Federal Regulations; and (3) title the revised crop group in a way that clearly differentiates it from the pre-existing crop group.

The revised crop group will retain roughly the same name and number as the pre-existing group except the number will be followed by a hyphen and the final digits of the year established. (*e.g.,* Crop Group 8–10).

EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups. EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop group to tolerances with coverage under the revised crop group. This conversion will be effected both through the registration review process and in the course of evaluating new uses for a pesticide. EPA requests that petitioners for tolerances address this issue in their petitions.

For existing petitions for which a Notice of Filing has been published, the Agency will attempt to conform these petitions to this rule.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has designated this proposed rule as a not-significant regulatory action under section 3(f) of the Executive Order.

This action is one in a series of planned crop group updates. EPA prepared an analysis of the potential costs and benefits related to its pesticide tolerance crop grouping regulations for

the first crop grouping final rule, published December 7, 2007 (72 FR 69150). This analysis is contained in "Economic Analysis of the Expansion of the Crop Grouping Program." A copy of the analysis is available in the docket and is briefly summarized here.

This is a burden-reducing regulation. Crop grouping has saved money by allowing the results of pesticide exposure studies for one crop to be applied to other, similar crops. This regulation exploits this opportunity for saving money by expanding certain existing crop groups and adding one new crop group. Crop groupings will assist in making available lower risk pesticides for minor crops both domestically and in countries that export food to the U.S. Minor crop and specialty crop producers will benefit because lower registration costs will encourage pesticide manufacturers to register more pesticides for use on minor and/or specialty crops, providing these growers with additional lower-risk pesticide options. The increased coverage of tolerances to imported commodities may result in a larger supply of imported and domestically produced specialty produce at potentially lower costs and treated with lower-risk pesticides which also benefit consumers. EPA believes that data from representative crops will not underestimate the public exposure to pesticide residues through the consumption of treated crops. EPA and the Interregional Research Project Number 4 (IR–4), will more efficiently use resources as a result of the rule. EPA will conserve resources if, as expected, new or expanded crop groups result in fewer emergency pesticide use requests from specialty crop growers. Further, new and expanded crop groups will likely reduce the number of separate risk assessments and tolerance rulemakings that EPA will have to conduct. Further benefits come from international harmonization of crop classification and nomenclature, harmonized commodity import and export standards and increased potential for resource sharing between EPA and pesticide regulatory agencies in other countries. Revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, minor crop producers, specialty crop producers, pesticide registrants, the environment, or human health. No crop group tolerance for a pesticide can be established unless EPA determines that it is safe.

An example of the benefits of crop groupings can be shown through the impact of changes to Crop Group 3 in a prior rulemaking (72 FR 69150, December 7, 2007). That rulemaking expanded Crop Group 3, Bulb Vegetables from 7 to 25 crops, an increase of 18 from the original crop group. Prior to the expansion of the subgroup, adding tolerances for the 18 new crops would have required at least 18 field trials at a cost of approximately $5.4 million (assuming $300,000 per field trial), whereas after promulgation of the expanded group these 18 new crops could obtain coverage under a Crop Group 3–07 tolerance with no field trials in addition to those required on the representative commodities (which did not change with the expansion of the group). Fewer field trials means a greater likelihood that these commodities will obtain tolerance coverage under the FFDCA, aiding growers, and the administrative costs of both the IR–4 testing process and the EPA review process will be reduced.

No comments were received on the costs or burdens. The Economic Analysis was not revised.

B. Paperwork Reduction Act

This rule does not contain any new information collection requirements that would need approval by OMB under the provisions of the Paper Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* However, the rule is expected to reduce mandatory paperwork due to a reduction in required studies. The rule will have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme, than would otherwise be required.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule does not have any direct adverse impacts on small businesses, small non-profit organizations, or small local governments.

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

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the final rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burdens, or otherwise has positive economic effects on all of the small entities subject to the rule.

This rule provides regulatory relief and regulatory flexibility because the new or expanded crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops and make it likely that pesticides will be more widely available to growers for use on crops, particularly specialty crops.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, EPA has determined that 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 1 year. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this rule does not have federalism implications, because 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 the Order. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this rule does not have Tribal implications because it will not have any affect on Tribal governments, 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, as specified in the Order. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this rule because this action is not designated as an economically significant regulatory action as defined by Executive Order 12866 (*see* Unit II.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This 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) because it is not designated as a regulatory action as defined by Executive Order 12866 (*see* Unit II.A.), nor is it likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (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 impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. This rule does not impose any technical standards that would require EPA to consider any voluntary consensus standards.

J. Executive Order 12898

Under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues because this rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures pesticides and pest.

Dated: December 1, 2010.

Stephen A. Owens,

Assistant Administrator for Chemical Safety and Pollution Prevention.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.1 is amended as follows:

■ a. Revise the entry for tangerine in the table in paragraph (g).

■ b. Remove paragraph (h).

■ c. Redesignate paragraphs (i) through (o) as paragraphs (h) through (n), respectively.

The revised text reads as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) * * *

A	B
* * * * * * *	
Tangerine	Tangerine (mandarin or mandarin orange); clementine; Mediterranean mandarin; satsuma mandarin; tangelo; tangor; cultivars, varieties, and/or hybrids of these.
* * * * * * *	

* * * * *

■ 3. Section 180.41 is amended as follows:

■ a. Remove the term "okra," from paragraph (b).

■ b. Revise the paragraph heading for paragraph (c)(9).

■ c. Redesignate paragraphs (c)(10) through (c)(22) as paragraphs (c)(11) through (c)(23), and add a new paragraph (c)(10).

■ d. Revise the heading for newly redesignated paragraph (c)(12).

■ e. Redesignate newly redesignated paragraphs (c)(13) through (c)(23) as paragraphs (c)(14) through (c)(24), respectively, and add a new paragraph (c)(13).

■ f. Redesignate newly redesignated paragraphs (c)(15) through (c)(24) as paragraphs (c)(16) through (c)(25), respectively, and add new paragraph (c)(15).

■ g. Redesignate newly redesignated paragraph (c)(25) as paragraph (c)(26) and add new paragraph (c)(25).

The amendments read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(9) *Crop Group 8.* Fruiting Vegetables Group.

* * * * *

(10) *Crop group 8–10.* Fruiting Vegetable Group.

(i) *Representative Commodities.* Tomato, standard size, and one cultivar of small tomato; bell pepper and one cultivar of small nonbell pepper.

(ii) *Commodities.* The following is a list of all commodities included in the Crop group 8–10.

TABLE 1—CROP GROUP 8–10: FRUITING VEGETABLE GROUP

Commodities	Related crop subgroups
African eggplant, *Solanum macrocarpon* L	8–10B, 8–10C

TABLE 1—CROP GROUP 8–10: FRUITING VEGETABLE GROUP—Continued

Commodities	Related crop subgroups
Bush tomato, *Solanum centrale* J.M. Black	8–10A
Cocona, *Solanum sessiliflorum* Dunal	8–10A
Currant tomato, *Lycopersicon pimpinellifolium* L	8–10A
Eggplant, *Solanum melongena* L	8–10B, 8–10C
Garden huckleberry, *Solanum scabrum* Mill	8–10A
Goji berry, *Lycium barbarum* L	8–10A
Groundcherry, *Physalis alkekengi* L., *P. grisea* (Waterf.) M. Martinez, *P. peruviana* L., *P. pubescens* L	8–10A
Martynia, *Proboscidea louisianica* (Mill.) Thell	8–10B, 8–10C
Naranjilla, *Solanum quitoense* Lam	8–10A
Okra, *Abelmoschus esculentus* (L.) Moench	8–10B, 8–10C
Pea eggplant, *Solanum torvum* Sw.	8–10B, 8–10C
Pepino, *Solanum muricatum* Aiton	8–10B, 8–10C
Pepper, bell, *Capsicum annuum* L. var. *annuum, Capsicum* spp	8–10B
Pepper, nonbell, *Capsicum chinese* Jacq., *C. annuum* L. var. *annuum, C. frutescens* L., *C. baccatum* L., *C. pubescens* Ruiz & Pav., *Capsicum spp.*	8–10B, 8–10C
Roselle, *Hibiscus sabdariffa* L	8–10B, 8–10C
Scarlet eggplant, *Solanum aethiopicum* L	8–10B, 8–10C
Sunberry, *Solanum retroflexum* Dunal	8–10A
Tomatillo, *Physalis philadelphica* Lam	8–10A
Tomato, *Solanum lycopersicum* L., *Solanum lycopersicum* L. var. *lycopersicum*	8–10A
Tree tomato, *Solanum betaceum* Cav	8–10A
Cultivars, varieties and/or hybrids of these	

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 8–10, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 8–10. SUBGROUP LISTING

Representative commodities	Commodities
Crop subgroup 8–10A. Tomato subgroup	
Tomato, standard size, and one cultivar of small tomato	Bush tomato; cocona; currant tomato; garden huckleberry; goji berry; groundcherry; naranjilla; sunberry; tomatillo; tomato; tree tomato; cultivars, varieties, and/or hybrids of these.
Crop subgroup 8–10B. Pepper/Eggplant subgroup	
Bell pepper and one cultivar of small nonbell pepper	African eggplant; bell pepper; eggplant; Martynia; nonbell pepper; okra; pea eggplant; pepino; roselle; scarlet eggplant; cultivars, varieties, and/or hybrids of these.
Crop subgroup 8–10C. Nonbell pepper/Eggplant subgroup	
One cultivar of small nonbell pepper or one cultivar of small eggplant	African eggplant; eggplant; martynia; nonbell pepper; okra; pea eggplant; pepino; roselle; scarlet eggplant; cultivars, varieties, and/or hybrids of these.

* * * * *

(12) *Crop Group 10.* Citrus Fruit Group. * * *

(13) *Crop Group 10–10.* Citrus Fruit Group.

(i) *Representative commodities.* Orange or Tangerine/Mandarin, Lemon or Lime, and Grapefruit.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 10–10.

TABLE 1—CROP GROUP 10–10: CITRUS FRUIT GROUP

Commodities	Related crop subgroups
Australian desert lime, *Eremocitrus glauca* (Lindl.) Swingle	10–10B
Australian finger lime, *Microcitrus australasica* (F. Muell.) Swingle	10–10B
Australian round lime, *Microcitrus australis* (A. Cunn. Ex Mudie) Swingle	10–10B
Brown River finger lime, *Microcitrus papuana* Winters	10–10B
Calamondin, *Citrofortunella microcarpa* (Bunge) Wijnands	10–10A
Citron, *Citrus medica* L	10–10A
Citrus hybrids, *Citrus spp. Eremocitrus* spp., *Fortunella* spp., *Microcitrus* spp., and *Poncirus* spp	10–10A
Grapefruit, *Citrus paradisi* Macfad	10–10C
Japanese summer grapefruit, *Citrus natsudaidai* Hayata	10–10C
Kumquat, *Fortunella* spp	10–10B
Lemon, *Citrus limon* (L.) Burm. f	10–10B
Lime, *Citrus aurantiifolia* (Christm.) Swingle	10–10B

TABLE 1—CROP GROUP 10–10: CITRUS FRUIT GROUP—Continued

Commodities	Related crop subgroups
Mediterranean mandarin, *Citrus deliciosa* Ten	10–10A
Mount White lime, *Microcitrus garrowayae* (F.M. Bailey) Swingle	10–10B
New Guinea wild lime, *Microcitrus warburgiana* (F.M. Bailey) Tanaka	10–10B
Orange, sour, *Citrus aurantium* L	10–10A
Orange, sweet, *Citrus sinensis* (L.) Osbeck	10–10A
Pummelo, *Citrus maxima* (Burm.) Merr	10–10C
Russell River lime, *Microcitrus inodora* (F.M. Bailey) Swingle	10–10B
Satsuma mandarin, *Citrus unshiu* Marcow	10–10A
Sweet lime, *Citrus limetta* Risso	10–10B
Tachibana orange, *Citrus tachibana* (Makino) Tanaka	10–10A
Tahiti lime, *Citrus latifolia* (Yu. Tanaka) Tanaka	10–10B
Tangelo, *Citrus x tangelo* J.W. Ingram & H.E. Moore	10–10A, 10–10C
Tangerine (Mandarin), *Citrus reticulata* Blanco	10–10A
Tangor, *Citrus nobilis* Lour	10–10A
Trifoliate orange, *Poncirus trifoliata* (L.) Raf	10–10A
Uniq fruit, *Citrus aurantium* Tangelo group	10–10C
Cultivars, varieties and/or hybrids of these.	

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 10–10, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 10–10: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 10–10A. Orange subgroup	
Orange or tangerine/mandarin	Calamondin; citron; citrus hybrids; mediterranean mandarin; orange, sour; orange, sweet; satsuma mandarin; tachibana orange; tangerine (mandarin); tangelo; tangor; trifoliate orange; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 10–10B. Lemon/Lime subgroup	
Lemon or lime	Australian desert lime; Australian finger lime; Australian round lime; brown river finger lime; kumquat; lemon; lime; mount white lime; New Guinea wild lime; Russell River lime; sweet lime; Tahiti lime; cultivars , varieties, and/or hybrids of these.
Crop Subgroup 10–10C. Grapefruit subgroup	
Grapefruit	Grapefruit; Japanese summer grapefruit; pummelo; tangelo; uniq fruit; cultivars, varieties, and/or hybrids of these.

* * * * *

(15) *Crop group 11–10.* Pome Fruit Group.

(i) *Representative commodities.* Apple and Pear

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 11–10.

CROP GROUP 11–10: POME FRUIT GROUP—COMMODITIES

Apple, *Malus domestica* Borkh.
Azarole, *Crataegus azarolus* L.
Crabapple, *Malus sylvestris* (L.) Mill., *M. prunifolia* (Willd.) Borkh.
Loquat, *Eriobotrya japonica* (Thunb.) Lindl.
Mayhaw, *Crataegus aestivalis* (Walter) Torr. & A. Gray, C. *opaca* Hook. & Arn., and *C. rufula* Sarg.
Medlar, *Mespilus germanica* L.
Pear, *Pyrus communis* L.
Pear, Asian, *Pyrus pyrifolia* (Burm. f.) Nakai var. *culta* (Makino) Nakai
Pseudocydonia sinensis (Thouin) C.K. Schneid.
Quince, *Cydonia oblonga* Mill.
Quince, Chinese, *Chaenomeles speciosa* (Sweet) Nakai,
Quince, Japanese, *Chaenomeles japonica* (Thunb.) Lindl. ex Spach
Tejocote, *Crataegus mexicana* DC.
Cultivars, varieties and/or hybrids of these.

* * * * *

(25) *Crop Group 20.* Oilseed Group.

(i) *Representative commodities.* Rapeseed (canola varieties only); sunflower, seed and cottonseed.

(ii) *Table.* The following Table 1 lists all the commodities listed in Crop Group 20 and identifies the related crop subgroups and includes cultivars and/or varieties of these commodities.

TABLE 1—CROP GROUP 20: OILSEED GROUP

Commodities	Related crop subgroups
Borage, *Borago officinalis* L	20A
Calendula, *Calendula officinalis* L	20B
Castor oil plant, *Ricinus communis* L	20B
Chinese tallowtree, *Triadica sebifera* (L.) Small	20B
Cottonseed, *Gossypium hirsutum* L. *Gossypium* spp	20C
Crambe, *Crambe hispanica* L.; *C. abyssinica* Hochst. ex R.E. Fr	20A
Cuphea, *Cuphea hyssopifolia* Kunth	20A
Echium, *Echium plantagineum* L	20A
Euphorbia, *Euphorbia esula* L	20B
Evening primrose, *Oenothera biennis* L	20B
Flax seed, *Linum usitatissimum* L	20A
Gold of pleasure, *Camelina sativa* (L.) Crantz	20A
Hare's ear mustard, *Conringia orientalis* (L.) Dumort	20A
Jojoba, *Simmondsia chinensis* (Link) C.K. Schneid	20B
Lesquerella, *Lesquerella recurvata* (Engelm. ex A. Gray) S. Watson	20A
Lunaria, *Lunaria annua* L	20A
Meadowfoam, *Limnanthes alba* Hartw. ex Benth	20A
Milkweed, *Asclepias* spp	20A
Mustard seed, *Brassica hirta* Moench, *Sinapis alba* L. subsp. *Alba*..	20A
Niger seed, *Guizotia abyssinica* (L.f.) Cass	20B
Oil radish, *Raphanus sativus* L. var. *oleiformis* Pers	20A
Poppy seed, *Papaver somniferum* L. subsp. *Somniferum*	20A
Rapeseed, *Brassica* spp.; *B. napus* L	20A
Rose hip, *Rosa rubiginosa* L	20B
Safflower, *Carthamus tinctorious* L	20B
Sesame, *Sesamum indicum* L., *S. radiatum* Schumach. & honn	20A
Stokes aster, *Stokesia laevis* (Hill) Greene	20B
Sunflower, *Helianthus annuus* L	20B
Sweet rocket, *Hesperis matronalis* L	20A
Tallowwood, *Ximenia americana* L	20B
Tea oil plant, *Camellia oleifera* C. Abel	20B
Vernonia, *Vernonia galamensis* (Cass.) Less	20B
Cultivars, varieties, and/or hybrids of these.	

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 20, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 20: SUBGROUP LISTING

Representative commodities	Commodities
Crop subgroup 20A. Rapeseed subgroup	
Rapeseed, canola varieties only	Borage; crambe; cuphea; echium; flax seed; gold of pleasure; hare's ear mustard; lesquerella; lunaria; meadowfoam; milkweed; mustard seed; oil radish; poppy seed; rapeseed; sesame; sweet rocket cultivars, varieties, and/or hybrids of these.
Crop subgroup 20B. Sunflower subgroup	
Sunflower, seed	Calendula; castor oil plant; chinese tallowtree; euphorbia; evening primrose; jojoba; niger seed; rose hip; safflower; stokes aster; sunflower; tallowwood; tea oil plant; vernonia; cultivars, varieties, and/or hybrids of these.
Crop subgroup 20C. Cottonseed subgroup	
Cottonseed	Cottonseed; cultivars, varieties, and/or hybrids of these.

* * * * *

[FR Doc. 2010–30852 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–1510–CN]

RIN 0938–AP88

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices; Correction

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

ACTION: Correction of final rule.

SUMMARY: This document corrects a technical error in an amendatory instruction of the regulations text in the final rule that appeared in the November 17, 2010 **Federal Register** entitled "Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices" final rule (75 FR 70372).

DATES: *Effective Date:* This correction is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Annette Brewer, (410)786–6580.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–27778 of November 17, 2010 (75 FR 70372), there was a technical error that is identified and corrected in this document. The provisions of this notice are effective as if they had been included in the Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices" final rule. Accordingly, the corrections are effective January 1, 2011.

II. Summary of Errors

On page 70465 of the November 17, 2010 final rule, we made a technical error in the amendatory instruction for § 424.550. In the amendatory instruction #11, the phrase "adding paragraphs (b)(1) and (b)(2)" is corrected to read "revising paragraph (b)(1) and adding paragraph (b)(2)".

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive the notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the rule.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This action merely corrects a technical error in the amendatory instruction for the regulations text in the November 17, 2010 final rule that was promulgated through notice and comment rulemaking. We are in no way changing the policy contained in that rule. For this reason, we find that both notice and comment and the 30-day delay in effective date for this action are unnecessary.

IV. Correction of Errors

In FR Doc. 2010–27778 of November 17, 2010 (75 FR 70372), make the following correction:

§ 424.550 [Corrected]

■ On page 70465, in the 1st column; amendatory instruction #11, the phrase "adding paragraphs (b)(1) and (b)(2)" is corrected to read "revising paragraph (b)(1) and adding paragraph (b)(2)".

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 1, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–30651 Filed 12–7–10; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2212; MB Docket No. 09–204; RM–11580]

Radio Broadcasting Services; Peach Springs, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Cochise Media Licenses LLC, allots FM Channel 281C3 at Peach Springs, Arizona, in order to maintain a first local service at that community. Channel 281C3 can be allotted at Peach Springs, Arizona, in compliance with the Commission's minimum distance separation requirements, with a site restriction of 4.5 km (2.8 miles) northwest of Peach Springs, at the following reference coordinates: 35–33–46 North Latitude and 113–27–12 West Longitude.

DATES: Effective thirty days after date of publication in the **Federal Register**.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–204, adopted November 17, 2010, and released November 19, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.*

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the

Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 281C3 at Peach Springs.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–30853 Filed 12–7–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2236; MB Docket No. 10–108]

Radio Broadcasting Services: Pacific Junction, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff deletes FM Channel 299C2 at Pacific Junction, Iowa, because the record in this proceeding reveals that there is no site to activate this allotment that would meet Federal Aviation Administration criteria regarding electromagnetic interference to instrument landing system configurations and the Commission's spacing requirements Further, there are no other FM channels that could be substituted for Channel 299C2 at Pacific Junction and no alternate FAA frequencies to remedy this problem.

DATES: Effective January 7, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 10–108, adopted November 22, 2010, and released November 24, 2010. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

On the Commission's own motion, the *Notice of Proposed Rulemaking* in this proceeding solicited comment on deleting the Pacific Junction allotment due to difficulties encountered by Connoisseur Media LLC, the permittee of Station KGGG(FM), Channel 299C2, Pacific Junction, in overcoming objections raised by the FAA to the activation of this allotment. *See* 75 FR 30756 (June 2, 2010). No parties filed comments expressing an interest in retaining this allotment or suggested a site that would be technically feasible and meet FAA criteria. Accordingly, the allotment was deleted. In addition, Connoisseur's construction permit (File No. BNPH–20041228AAI, as modified by BMPH–20061019AAM) was cancelled and the KGGG(FM) call sign was deleted.

Although the *Notice of Proposed Rulemaking* proposed the deletion of Channel 299C2, Pacific Junction, Iowa, from Section 73.202(b), the FM Table of Allotments, the channel is no longer listed in Section 73.202(b) due to its authorization and is included instead in the Media Bureau's Consolidated Data Base System ("CDBS") as a reserved assignment for Station KGGG(FM). Accordingly, the staff deleted Channel 299C2 from the Media Bureau's CDBS instead of from Section 73.202(b).

The *Report and Order* does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of the *Report and Order* in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–30856 Filed 12–7–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2211; MB Docket No. 10–81; RM–11600]

Radio Broadcasting Services; Fairbanks, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Educational Media Foundation, LLC, allots Channels 224C2 and 232C2 at Fairbanks, Alaska, as the community's tenth and eleventh potential local FM services. Channels 224C2 and 232C2 can be allotted to Fairbanks, Alaska, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 kilometers (5.9 miles) north of Fairbanks. The coordinates for Channel 224C2 and 232C2 at Fairbanks, Alaska, are 64–55–20 North Latitude and 147–42–49 West Longitude. The Government of Canada has concurred in these allotments, which are located within 320 kilometers (199 miles) of the U.S.-Canadian border.

DATES: Effective January 7, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 10–81, adopted November 17, 2010, and released November 19, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any

proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding Fairbanks, Channels 224C2 and 232C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–30851 Filed 12–7–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 222 and 252

RIN 0750–AG70

Defense Federal Acquisition Regulation Supplement; Restrictions on the Use of Mandatory Arbitration Agreements (DFARS Case 2010–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is converting an interim rule to a final rule with changes. The interim rule implemented section 8116 of the DoD Appropriations Act for Fiscal Year 2010 to restrict the use of mandatory arbitration agreements when awarding contracts that exceed $1 million when using Fiscal Year 2010 funds appropriated or otherwise made available by the DoD Appropriations Act. It allows the Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security.

DATES: *Effective date:* December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

An interim rule was published in the **Federal Register** at 75 FR 27946 on May 19, 2010, to implement section 8116 of the DoD Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118). This section prohibits the use of funds appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or torts related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention (hereinafter the "covered areas").

This rule does not apply to the acquisition of commercial items, including commercially available off-the-shelf items. After June 17, 2010, section 8116(b) requires the contractor to certify compliance by subcontractors.

Additionally, enforcement of this rule does not affect the enforcement of other aspects of an agreement that is not related to the covered areas.

This rule allows the Secretary of Defense to waive applicability to a particular contract or subcontract, if determined necessary to avoid harm to national security.

The public comment period for the interim rule closed July 19, 2010. Four respondents submitted comments to the interim rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided below.

1. Definition of a "contractor." One respondent objected to the interim rule's application of the term "contractor" only to the entity that has the contract. In the **Federal Register** Notice, the term "contractor" was used in one of several examples provided to help determine rule applicability. In the particular example, the term "contractor" was described as being narrowly applied only to the entity that has the contract. Unless a parent or subsidiary corporation is a party to the contract, they are not affected. The respondent stated that there was no justification for using such a narrow definition of a "contractor" and there is good reason to use a broader definition. The respondent suggested that the narrow definition of "contractor" heightens the potential for contractors to establish shell companies to circumvent the law. The respondent stated that in past regulations, different contexts have led to different definitions of "contractor"—sometimes broader, sometimes narrower, and that the definition used in the **Federal Register** is not absolutely determined by fixed precedent or other controlling authority.

Response: Expanding the definition of "contractor" to include parents and subsidiaries would require a change to the language of section 8116, which by its terms, is limited to employees of the contractor who was awarded the contract. The text of the statute does not provide a basis for making a broader application. With respect to the concern regarding the potential for the establishment of shell companies as a means of circumventing the requirement, such practices would be noted in responsibility determinations. In addition, guidance will be included in Procedures Guidance and Information which cautions contracting officers that, if they believe that, in fact, there is evidence that a contractor has created a shell company for the purpose of obviating section 8116, the contracting officer shall not award the contract and shall report such a condition to the Director, Defense Procurement and Acquisition Policy.

2. Definition of a "covered contract." One respondent recommended that 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, be amended to include a definition of a "covered contract."

Response: DoD does not agree. DFARS 222.7401, Policy, and 222.7404, Contract Clause, provide sufficient detail on the use of 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, and make it clear what constitutes a "covered contract." There is no additional benefit to be derived from repeating the language set forth at either 222.7401 or 222.7404 in a separate definition of a "covered contract."

3. Definition of "subcontract." One respondent recommended that the final rule should delete the definition of "subcontract" at 222.7401, Policy. The respondent stated that since FAR 44.101 already defines the term "subcontract," an additional definition is unnecessary.

Response: DoD does not agree. It appears that the respondent incorrectly referenced 222.7401, Policy. The

interim rule at 222.7401 does not include a definition of a "subcontract." It may be that the respondent was referring to the definition of "subcontract" included in 252.222–7006(a), Restrictions on the Use of Mandatory Arbitration Agreements. DoD has determined that the definition included therein is appropriate because it makes clear that subcontracts are limited to those contracts placed by the contractor or higher-tier subcontractors that are specifically for the furnishing of supplies or services for the performance of the contract, not supplies or services a contractor or higher-tier subcontractor might purchase for other purposes.

4. Secretary of Defense waiver process. Two respondents recommended that the final rule explain how the Secretary of Defense's waiver authority is to be exercised.

Response: DoD agrees. The waiver process and the conditions under which it is to be exercised and reported to Congress as set forth in section 8116(d) are set out in the final rule at 222.7403. In the waiver process, a waiver determination must set forth the grounds for the waiver with specificity, state any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests. DFARS 222.7403, Waiver, was revised to incorporate text on the particular requirements for the waiver determination previously reserved for the DFARS companion resource, Procedures, Guidance, and Information. The text was reordered and clarified by adding paragraph numbers.

5. Applicability to task or delivery orders. One respondent recommended that the language at 222.7401(a), Policy, delete the reference to task or delivery orders and bilateral modifications adding new work.

Response: DoD does not agree. In accordance with FAR 2.101, a contract includes all types of commitments that obligate the Government to an expenditure of appropriated funds. Task orders and delivery orders obligate funding, and if they utilize funds appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 that are in excess of $1 million, the section 8116 restriction would apply.

6. Modification to the contract for latest version of clause. One respondent recommended that contractors may request, and the contracting officers provide, a modification to the contract that incorporates the latest version of the clause with no consideration to be given to the contractor.

Response: DoD does not agree. The contracting officer can agree to a bilateral modification of the contract in accordance with FAR 1.108(d), which requires consideration. However, the contracting officer has flexibility in determining what would represent adequate consideration.

7. First-tier certification. One respondent recommended that the final rule should provide that prime contractors are required to certify only their first-tier subcontractors' compliance with the rule.

Response: DoD does not agree. DoD did not find language in the DoD Appropriations Act for Fiscal Year 2010 that restricts coverage to subcontracts at the first-tier. The prohibition extends to "covered subcontracts" at all tiers.

8. Clause prescription. Two respondents recommended the addition of language to the prescription at 222.7404 (now 222.7405) that would specify the applicability dates for the use of the clause.

Response: DoD does not agree, since these dates are already set forth at 222.7402(b).

9. Certification. One respondent recommended that 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, be revised at paragraph (b)(2) by replacing the existing language "by signature of the contract, for contracts awarded after June 17, 2010" with the text "by signature of any covered contract awarded after June 17, 2010."

Response: DoD does not agree. The contracting officer will only include the clause in a covered contract, in accordance with the clause prescription at 222.7404. It is the signature of the particular contract in which the clause is included that binds the contractor.

10. Scope of section 8116. Two respondents submitted comments requesting that the final rule clearly define the scope of section 8116's applicability to how narrowly (or broadly) the anti-arbitration prohibition is intended to apply to employees and independent contractors of covered contractors and subcontractors.

Response: DoD does not agree. The **Federal Register** Notice published at 75 FR 27946 on May 19, 2010, made it clear that an entity or firm that does not have a contract in excess of $1 million appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 is not affected by the clause. The term "contractor" is narrowly applied only to the entity that has the contract. Unless a parent or subsidiary corporation is a party to the contract, the entity is not affected. Therefore, the anti-arbitration bar applies to any contractor employee of the entity, with respect to any covered claim.

II. Executive Order 12866

This is a significant regulatory action, and therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to implement section 8116 of the DoD Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118). The clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, prohibits the use of funds appropriated or otherwise made available by the DoD Appropriations Act for Fiscal Year 2010 for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or torts related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention. This rule does not apply to a contract for the acquisition of commercial items, including commercially available off-the-shelf items. It was published as an interim rule in the **Federal Register** at 75 FR 27946 on May 19, 2010. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

Most contractors should not be impacted unless they have a covered claim. A significant number of small businesses provide only commercial items to the Government, and this rule does not apply to that portion of the business community. We anticipate that there will be limited, if any, additional costs imposed on small businesses unless there is a covered claim filed against a particular contractor.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 222 and 252, which was published in the **Federal Register** at 75 FR 27946 on May 19, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 222, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

[Sections 222.7401 through 222.7404 redesignated as sections 222.7402 through 222.7405]

■ 2. Redesignate sections 222.7401 through 222.7404 as section 222.7402 through 222.7405 respectively.

■ 3. Add a new section 222.7401 to read as follows:

222.7401 Definition.

Covered subcontractor, as used in this subpart, is defined in the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements.

■ 4. Revise newly designated sections 222.7403 through 222.7405 to read as follows:

222.7403 Applicability.

This requirement does not apply to the acquisition of commercial items (including commercially available off-the-shelf items).

222.7404 Waiver.

(a) The Secretary of Defense may waive, in accordance with paragraphs (b) through (d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.

(b) The waiver determination shall set forth the grounds for the waiver with specificity, stating any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the **Federal Register**, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

222.7405 Contract clause.

Use the clause at 252.222–7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of $1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118), except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.222–7006 by:

■ a. Revising the introductory text;

■ b. Revising the clause date; and

■ c. Revising paragraphs (b)(2) and (d) to read as follows:

252.222–7006 Restrictions on the Use of Mandatory Arbitration Agreements.

As prescribed in 222.7405, use the following clause:

RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010)

* * * * *

(b) * * *

(2) Certifies, by signature of the contract, that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any existing agreements, as described in paragraph (b)(1) of this clause, with respect to any employee or independent contractor performing work related to such subcontract.

* * * * *

(d) The Secretary of Defense may waive the applicability of the restrictions of paragraph (b) of this clause in accordance with Defense Federal Acquisition Regulation Supplement 222.7404.

(End of clause)

[FR Doc. 2010–30669 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AG57

Defense Federal Acquisition Regulation Supplement; Restriction on Ball and Roller Bearings (DFARS Case 2006–D029)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD)

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the domestic source restriction on acquisition of ball and roller bearings. This final rule, which implements the DoD annual appropriations act domestic source restrictions, requires that each ball or roller bearing be manufactured in the United States, its outlying areas, or Canada, and that the cost of the bearing components manufactured in the United States, its outlying areas, or Canada, shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

DATES: *Effective Date:* December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

The current DFARS restriction on ball and roller bearings (225.7009) implemented two statutory restrictions: 10 U.S.C. 2534(a)(5) and annual appropriations act restrictions. 10 U.S.C. 2534(a)(5) required that all ball and roller bearings and bearing components, either as end items or components of end items, be wholly manufactured in the United States or Canada. The annual defense appropriations act restrictions require that all ball and roller bearings be produced by a domestic source and be of domestic origin. This restriction does not apply to the acquisition of commercial items, either as components or end products, unless the commercial bearings themselves are purchased as the end products.

II. Discussion and Analysis

A. Analysis of Public Comments

DoD published a proposed rule in the **Federal Register** on May 7, 2010 (75 FR 25167). The comment period closed on July 6, 2010. Three respondents submitted comments.

1. Nonavailablity

Comment: One respondent commented that, in some cases, it is necessary to import foreign bearings.

Response: Noted. This rule does not make any change in the existing ability to waive the restriction on a case-by-case basis by certifying that adequate domestic supplies are not available and that the acquisition must be made in order to acquire capability for national security purposes.

Comment: Another respondent was of the opinion that there is not really a shortage of bearings compliant with 10 U.S.C. 2534(a)(5), just an unwillingness on the part of distributors and wholesalers to devote the time to market research and tracking the supply chain to demonstrate the availability of compliant bearings.

Response: Commercial bearings manufacturers make business decisions based on the market. Many suppliers of commercial bearings and bearing components are unwilling to track the origin of bearings components and subcomponents because the Government does not have enough market leverage for it to be in the business interest of the manufacturers and suppliers to do so. Therefore, many bearings must be treated as nondomestic because the manufacturer is unable to certify to domestic sourcing of the components.

Comment: This respondent recommended retaining the requirement for 100 per cent domestic content for the following reasons:

a. According to the respondent, changing the rules now to allow cheaper sources after using public law to create domestic sourcing would be detrimental to the companies that have recently invested in capacity.

Response: The reason for changing the rule is statutory change. 10 U.S.C. 2534(a)(5) is no longer in effect because Congress allowed the restriction to expire.

Furthermore, the experience of Government buyers indicates that, in general, the current regulation has not prevented the loss of domestic sources, due to lack of Government leverage with regard to acquisition of commercial bearings. The Government continues to issue more and more waivers in the instances when bearings are no longer available that the manufacturer or distributor can certify as having 100 percent domestic components. Bearings manufacturers have stated that manufacture of the retainer, inner race, and outer race are not core competencies. Therefore, more and more bearings manufacturers obtain these components from foreign sources, which are significantly cheaper, and then do the complex manufacture of the bearing in this country. The advantage of changing the regulation to allow some foreign components without the need for a waiver is that fewer waivers will be required and then the requirement for manufacture in the United States and 50 percent domestic components remains in effect.

b. According to the respondent, quality of components is very critical to eliminating latent defects. The respondent stated that retaining a fully domestic source will make it easier to track the components and determine the cause of any failure.

Response: Nothing in this rule alters DoD procedures for ensuring the quality of the products it purchases.

c. The respondent considered that retaining all of this skill set is critical to maintaining a viable industrial base. According to the respondent, there is potential in the near future to have difficulty getting bearings even from qualifying countries, leaving China as the sole source of this critical component. The respondent was concerned that China may manipulate the market if there is no ready domestic supplier of bearings.

Response: DoD has existing authority under 10 U.S.C. 2304(c)(3) and implementing DFARS provisions to restrict procurements to domestic sources when it determines that a particular industrial capability must be protected for national security reasons, and can use this authority for bearings if it proves necessary.

d. The respondent stated that the fact that the rule affects any small business supplier is worthy of consideration, not just when it affects a significant number.

Response: The language in the preamble to the proposed rule relating to impact on small business entities is based on the statutory requirement to assess whether the rule will have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The analysis, however, did assess both positive and negative impact on small business entities.

2. Exemptions

Comment: One respondent was concerned that the language in 252.225–7016 is unchanged from the currently existing exemption.

a. According to the respondent, by allowing the same exemption and lowering the content requirement to 50 per cent, a bearing used in assembly for a military application may be sourced from anywhere in the world, including countries that have less sophisticated production capabilities. The respondent recommended revision of the exemptions to require manufacture of domestically nonavailable ball or roller bearings in a designated country.

b. The respondent also mentioned that when the Government needs to buy a spare or replacement foreign commercial bearing, it cannot do so without a waiver.

Response: a. This case is only concerned with the definition of what constitutes a domestic bearing, based on statutory change. The definition of a domestic bearing still requires manufacture in the United States, its outlying areas, or Canada. There was no change in the statute regarding the exemptions from these requirements.

b. The issue relating to problems of buying spare or replacement foreign commercial bearings is also a problem of the current regulation, and is a direct result of the statutory lack of exceptions when buying commercial ball or roller bearings as the end item rather than as a component.

3. Waivers

Comment: One respondent stated that waivers go too far. If there is no domestic bearing to meet the requirement, then the restriction should only be waived to allow purchase of bearings from designated countries. The respondent was concerned that the proposal may ease the restrictions beyond those found in the Buy American Act, thus opening the possibility of allowing bearings for defense purposes to include components manufactured by unreliable sources. The respondent noted that there are 2,059 FSC ball and roller bearings on the DLA FY 2010 waiver list. According to the respondent, sourcing is open to any country of origin, with price being the sole determining factor for award.

Response: This rule implements section 8065 of the DoD Appropriations Act for Fiscal Year 2002 (Pub. L. 107–117) and the same restriction in subsequent DoD appropriations acts. While DoD interprets the phrase "produced by a domestic source and of domestic origin" in a way that is comparable to the Buy American Act definition of "domestic end product", this does not imply that DoD is empowered to determine exceptions and waiver authority under this statute on any basis other than the specific provisions of the appropriations act. There is no basis provided in the appropriations act for restricting acquisitions of domestically

nonavailable items to the products of designated countries. Price is the sole determining factor for award after determination that the offered products meet the criteria of the solicitation. Nor does the respondent provide any evidence that the products of nondesignated countries are necessarily unreliable. Requiring a reliable product would be a more direct way to achieve the objective than prohibiting acquisition from nondesignated countries.

4. Confusing or Inconsistent

Comment: One respondent commented that the rules on bearings are only applied by DoD, not other Federal agencies, and that the rules are different depending on whether bearings are purchased as an end product or a component.

Response: These inconsistencies are inherent within the law. The restrictions on bearings are contained in the annual defense appropriations acts, and apply only to DoD. Further, the law provides an exception for commercial bearings purchased as components, but does not allow the same exception for bearings when purchased as end products.

5. Need for Qualified Suppliers (QSL) List and Qualified Manufacturers List (QML)

Comment: One respondent recommended that other protections should be put in place in conjunction with this change to the domestic source restriction on ball and roller bearings. The respondent also recommended that the annual defense appropriations acts should include a requirement for the use of QSLs and QMLs when acquiring ball and roller bearings.

Response: FAR subpart 9.2 addresses qualifications requirements. FAR 9.202 provides the policy criteria that must be met in order for the head of the agency to establish a qualification requirement. The head of the agency must address in writing why a qualification requirement is necessary, and address the likely costs for testing and evaluation that will be incurred for a potential offeror to become qualified. A DoD agency that purchases bearings and products that contain bearings was concerned about the impact a QSL would have on competition. In addition, although a QSL would address quality issues, the agency does not consider that the level of effort associated with a QSL would be an economical solution to pursue. With regard to a QML, the agency indicated that a QML would add very little value to the purchase of bearings. The manufacturers are usually approved by the drawings, a Qualified Producers List (QPL), or the Engineering Service Activities (ESA). The recommended statutory change is outside the scope of this case. The intent of this case is to comply with the existing statute.

B. Other Changes

DoD incorporated three editorial changes in the final rule.

1. The reference at 225.7009–2(b) to the specialty metals restriction has changed from "225.7002–1(b)" to "225.7003–2."

2. Conforming changes are required to the clause dates in 252.212–7001.

3. In paragraph (b)(2) of DFARS 252.225–7016, ", its outlying areas" was added to "in the United States or Canada" to clarify that this requirement also applies to the outlying areas of the United States. It was not necessary to add this in the text in part 225, because in FAR 25.003, "United States" is defined to include the outlying areas. It could be inferred that this also applies in the clauses prescribed in part 225 (see 52.202–1(a)). However, it is clearer to explicitly add it.

III. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, because this rule has impact on the application of domestic source restrictions, DoD has performed a final regulatory flexibility analysis, which is summarized as follows:

This rule revises the restriction on ball and roller bearings to implement the annual defense appropriations act restriction. The DFARS currently reflects the more stringent requirement of 10 U.S.C. 2534(a)(5), that the bearing and all main bearing components must be manufactured in the United States or Canada. This restriction expired on October 1, 2005. This rule interprets the annual defense appropriations act to allow a 50 percent component test similar to the Buy American Act component test.

The objective of the rule is to allow more flexibility to domestic bearings manufacturers in the acquisition of nondomestic components. The legal basis for the rule is section 8065 of the DoD Appropriations Act for Fiscal Year 2002 (Pub. L. 107–117) and the same restriction in subsequent DoD appropriations acts.

One respondent stated that the fact that the rule affects any small business supplier is worthy of consideration, not just a significant number. The analysis, however, did assess both positive and negative impact on small business entities. Generally, the impact is considered to be positive (see next paragraph). No changes were made to the rule as a result of the comment. The only alternative would be to do nothing, which would have worse results as more waivers are granted for nonavailability of domestic bearings.

The final rule affects manufacturers of bearings, bearing components, and noncommercial products that incorporate bearings.

- *Bearings.* This rule applies only to bearings purchased as end products or noncommercial bearings incorporated in noncommercial end products or noncommercial components of noncommercial end products. Because this rule allows some element of nondomestic content in ball and roller bearing components, as long as the United States- or Canadian-manufactured bearing contains less than 50 percent nondomestic bearing components, both large and small businesses may find greater numbers of sources from which to obtain ball and roller bearing components. Greater sourcing choices may enable small businesses to compete more successfully for DoD ball and roller bearing acquisitions.
- *Bearing components.* Manufacturers of domestic bearing components may face increased competition from manufacturers of nondomestic bearing components. However, many of the bearing components that are being outsourced are no longer readily available from domestic sources.
- *Manufacturers of noncommercial products incorporating bearings.* Manufacturers of noncommercial products incorporating bearings (both large and small businesses) will find it easier to acquire domestic bearings and will less frequently need to request nonavailability determinations.

There is no significant economic impact on small entities as a result of this rule. The impact of this rule on small business is expected to be predominantly positive. If this rule is not implemented, the regulations will continue to meet the statutory requirements, but more domestic nonavailability waivers would continue to be required, which would mean that there would be no requirement to manufacture such bearings in the

United States or Canada, or provide predominantly domestic components.

V. Paperwork Reduction Act

This final rule does not impose any new or modified reporting, recordkeeping, or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7009–2 to read as follows:

225.7009–2 Restriction.

(a) Do not acquire ball and roller bearings unless—

(1) The bearings are manufactured in the United States or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components mined, produced, or manufactured in the United States or Canada exceeds 50 percent of the total cost of the bearing components of that ball or roller bearing.

(b) The restriction at 225.7003–2 may also apply to bearings that are made from specialty metals, such as high carbon chrome steel (bearing steel).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(DEC 2010)"; and

■ b. In paragraph (b)(10) by removing "(MAR 2006)" and adding in its place "(DEC 2010)".

■ 4. Revise section 252.225–7016 to read as follows:

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009–5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (DEC 2010)

(a) *Definitions.* As used in this clause—

(1) *Bearing component* means the bearing element, retainer, inner race, or outer race.

(2) *Component,* other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) *End product* means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components mined, produced, or manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009–4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

[FR Doc. 2010–30670 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100510220–0598–05]

RIN 0648–AY90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Emergency Fisheries Closure in the Gulf of Mexico Due to the Deepwater Horizon MC252 Oil Spill; Amendment 4

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

ACTION: Temporary emergency rule; request for comments.

SUMMARY: NMFS issues this temporary emergency rule to prohibit royal red shrimp fishing in a specific area of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ), in response to a fishery interaction of the Gulf shrimp fishery with sub-surface oil byproducts from the Deepwater Horizon MC252 oil spill. This temporary emergency rule supersedes the temporary emergency rule published December 1, 2010 (75 FR 74648) and will remain in effect for 60 days. The intended effect of this temporary emergency rule is to assure seafood safety and consumer confidence in Gulf seafood.

DATES: This rule is effective December 3, 2010, through 12:01 a.m., local time, February 2, 2011. Comments may be submitted through January 2, 2011.

ADDRESSES: You may submit comments on this rule, identified by "0648–AY90" by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 727–824–5308; *Attention:* Anik Clemens.
- *Mail:* Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0244" in the keyword search, then select "Send a Comment or Submission." 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.

Copies of the environmental assessment, signed on June 17, 2010, may be obtained from Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505; *telephone:* 727–824–5305; *e-mail: Susan.Gerhart@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Anik Clemens, *telephone:* 727–824–5305, *fax:* 727–824–5308; *e-mail: anik.clemens@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides the legal authority for the promulgation of emergency regulations under section 305(c).

Background

NMFS responded to the April 20, 2010, Deepwater Horizon MC252 oil spill by closing a portion of the Gulf EEZ to all fishing through an emergency rule effective May 2, 2010 (75 FR 24822, May 6, 2010). Oil continued to leak from the Deepwater Horizon MC252 site and the spatial and temporal location of the oil in the Gulf EEZ continued to change. NMFS revised the closed area in a second emergency rule that became effective May 7, 2010 (75 FR 26679, May 12, 2010). The dynamic situation regarding the Deepwater Horizon MC252 oil spill required a method to respond rapidly to changing conditions. Delaying the announcement of the new fishery closed area could have led to the possible harvest of adulterated seafood products. Therefore, NMFS issued a third emergency rule, effective May 11, 2010 (75 FR 27217, May 14, 2010), that allowed NMFS to revise the closed area as needed (on a daily or weekly basis) and announce the revised closed area via NOAA Weather Radio, Fishery Bulletin, and NOAA Web site updates, without the need to announce the new closure boundary coordinates in the **Federal Register**.

Closing and Reopening Areas Affected by the Oil Spill

The third emergency rule also identified a procedure for reopening closed areas. Closed areas may be reopened if NMFS has determined that oil from the Deepwater Horizon MC252 oil spill has never been in those areas. Closed areas may also be reopened if NMFS has determined that fish and other marine species within the closed area meet Food and Drug Administration (FDA) standards for public health and wholesomeness. The procedures did not address fishery interactions with sub-surface oil, tar, or oil byproducts.

The temporary emergency rule published December 1, 2010 (75 FR 74648) revised the NMFS procedure by allowing for timely adjustment of the closed area of the Gulf as applied to royal red shrimp fishing in response to interactions of the Gulf shrimp fishery with sub-surface oil, tar, or oil byproducts. In the same temporary emergency rule, NMFS closed a specific area of the Gulf to royal red shrimp fishing only, adjacent to the area currently closed to all fishing in response to an interaction by the Gulf shrimp fishery, which occurred approximately 22 miles (35 km) from the Deepwater Horizon MC252 well head, where a royal red shrimp trawl vessel caught a large quantity of tar balls in its trawl net. The area closed to royal red shrimp fishing only included the location where the interaction occurred, the area where the majority of royal red shrimp fishing effort occurred, and the area where the majority of the *in situ* burns occurred after the Deepwater Horizon MC252 incident. The tar balls found in the royal red shrimp trawl net are believed to be the result of burn residue from the *in situ* burns that occurred in close proximity to the well head. The temporary emergency rule that published on December 1, 2010, became effective on November 24, 2010 and expires on December 4, 2010.

Need for This Temporary Emergency Rule

This temporary emergency rule supersedes the temporary emergency rule published December 1, 2010 (75 FR 74648). This rule restores the regulatory text relating to the procedures for implementing future fishery closures related to the Deepwater Horizon MC252 oil spill, promulgated through rulemaking, published May 14, 2010 (75 Fr 27217). Through this temporary emergency rule, NMFS is prohibiting royal red shrimp fishing in the area of the Gulf EEZ identified in the December 1, 2010 temporary emergency rule (also found in the second table below), for 60 days. This is a precautionary action to assure seafood safety and consumer confidence in Gulf seafood while NMFS further investigates the deepwater area where the royal red shrimp component of the Gulf shrimp fishery is concentrated. Specifically, NMFS will sample in and around the area of the Gulf where the interaction occurred to determine the extent of the tar balls. NMFS is concerned about seafood interactions with oil, tar, and oil byproducts. The FDA considers seafood that has interacted with oil, tar, or oil byproducts to be adulterated. NMFS will continue to analyze the tar balls found in the area close to the well head in an attempt to determine if they originated from the Deepwater Horizon MC252 incident.

NMFS is not aware of interactions of any Gulf fishery, other than the royal red shrimp component of the Gulf shrimp fishery, with tar balls or other sub-surface oil byproducts. The penaeid (brown, white, and pink shrimp) shrimp trawl component of the Gulf shrimp fishery occurs in shallower waters rather than in the vicinity of the *in situ* burn sites. Other deepwater fishing activities occur in the area, but bottom trawling is not used in those fishing activities. Trawls move across the bottom, collecting shrimp and other items. For this reason, tar balls and other potential oil byproducts are likely to be collected and intermingled with the shrimp catch. Therefore, NMFS will continue to sample the shrimp and other seafood in and around the area currently closed to royal red shrimp fishing to ensure the seafood is not adulterated.

The public may obtain the boundary coordinates for the area closed to all fishing by listening to NOAA Weather Radio, visiting the Southeast Regional Office Web site: *http://sero.nmfs.noaa.gov/,* reading the e-mailed or posted Fishery Bulletins, reading a tweet that the closed area has been revised, or by calling the Deepwater Horizon MC252 oil spill hotline number (1–800–627–6622) to listen to a recorded message of the updated boundary coordinates. To improve public outreach, the fishery bulletins and the recorded messages are also available in Spanish and Vietnamese.

The current area closed to all fishing related to the Deepwater Horizon MC252 oil spill, as of November 15, 2010, is bounded by rhumb lines connecting, in order, the following coordinates:

Point	North lat.	West long.
A	29°00′	88°30′.
B	29°00′	88°00′.
C	28°30′	88°00′.
D	28°30′	88°30′.
A	29°00′	88°30′.

In addition to the area closed to all fishing, the area closed to royal red shrimp fishing only continues to be bounded by rhumb lines connecting, in order, the following coordinates:

Point	North lat.	West long.
A	29°30’	LA State/EEZ boundary.
B	29°30′	87°30′.

Point	North lat.	West long.
C	29°00′	87°30′.
D	29°00′	88°30′.
E	28°30′	88°30′.
F	28°30′	89°00′.
G	LA State/EEZ boundary	89°00′.
From point G follow the state/EEZ boundary back to point A.		
A	29°30′	LA State/EEZ boundary.

This rule will remain in effect for 60 days.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c).

This rulemaking is a "significant regulatory action" under section 3(f) of Executive Order 12866. The Department of Commerce has notified the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6(a)(3)(D) of the Executive Order, and OMB/OIRA agrees, that NOAA is promulgating this action in an emergency situation and that normal Executive Order review is not practicable at this time. For this reason, OMB/OIRA has not reviewed this notice under EO 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and the opportunity for public comment would be impracticable and contrary to the public interest, as delaying this action is a seafood safety concern and could result in compromised seafood products reaching the public. This temporary emergency rule prohibits royal red shrimp fishing in the area of the Gulf EEZ identified in a temporary emergency rule published December 1, 2010 (75 FR 74648) and supersedes that temporary emergency rule. NMFS will continue to investigate the deepwater area where the majority of the royal red shrimp fishing effort occurs by sampling the area for tar balls, to determine tar ball distribution across the area and to determine if the tar balls originated from the Deepwater Horizon MC252 incident. NMFS is concerned that seafood may have interacted with the tar balls. The FDA considers such seafood to be adulterated. This temporary emergency rule is necessary to prevent the harvest of adulterated seafood products.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subject in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 2, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective December 3, 2010, all fishing is prohibited in the portion of the Gulf EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

[FR Doc. 2010–30870 Filed 12–3–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100622276–0569–02]

RIN 0648–AY98

Atlantic Highly Migratory Species; 2011 Commercial Fishing Season and Adaptive Management Measures for the Atlantic Shark Fishery

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes opening dates and adjusts quotas for the 2011 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), blacknose shark, non-blacknose small coastal shark (SCS), blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on any over- and/or underharvests experienced during the 2009 and 2010 Atlantic commercial shark fishing seasons. NMFS is taking this action to establish the 2011 adjusted fishing quotas and to open the commercial fishing seasons for the Atlantic sandbar shark, non-sandbar LCS, blacknose shark, non-blacknose SCS, and pelagic shark fisheries based on over- and underharvests from the 2009 and 2010 fishing season. This action is expected to affect commercial shark fishermen in the Atlantic and Gulf of Mexico regions. In addition to establishing opening dates and adjusting annual quotas, this final rule implements adaptive management measures, including flexible opening dates for the fishing season, as well as inseason adjustments to shark trip limits, to provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. These actions are expected to affect

commercial shark fishermen in the Atlantic and Gulf of Mexico regions.

DATES: This final rule is effective January 7, 2011. The 2011 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2011. The non-sandbar LCS in the Gulf of Mexico region will open on March 1, 2011. The non-sandbar LCS fishery in the Atlantic region will open on July 15, 2011. Each shark species/complex closes on December 31, 2011, or when landings reach, or are projected to reach, 80 percent of the respective quota, whichever occurs first. The one exception is blacknose sharks and non-blacknose SCS fisheries, where both fisheries close when landings of either fishery reach 80 percent of the quota. The 2011 Atlantic commercial shark fishing season and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Guy DuBeck at 301–713–2347 or (fax) 301–713–1917, or Jackie Wilson at 240–338–3936 or (fax) 404–806–9188.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635.

On September 20, 2010, NMFS published a rule (75 FR 57240) that proposed the 2011 opening dates of the Atlantic commercial shark fisheries and quotas based on shark landings information as of July 31, 2010. The proposed rule also considered two main alternatives regarding management of the shark fishery. One approach would maintain the status quo approach to establishing trip limits (33 non-sandbar LCS/trip), as well as consider alternatives to allow changes in shark trip limits in order to extend fishing opportunities year-round (alternative 1 and its sub-alternatives). The other approach (alternative 2 and its sub-alternatives) would allow flexibility in the opening of the season for Atlantic shark fisheries through the annual specifications process and allow inseason actions to adjust shark trip limits in either region to provide expanded fishing opportunities for constituents across the fishery, as is the intent of Amendment 2 to the 2006 Consolidated HMS FMP (Amendment 2) (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008). The proposed rule contained details regarding the alternatives considered and a brief summary of the recent management history. Those details are not repeated here. Several comments from the public were received on the proposed rule. Those comments, along with the Agency's responses, are provided below. As detailed more fully in the Response to Comments section, NMFS will open the non-sandbar LCS fishery in the Gulf of Mexico region on March 1, 2011. The other shark species/complexes will open as proposed in the September 20, 2010, rule with non-sandbar LCS in the Atlantic region opening on July 15, 2011, and all other shark species/complexes opening on January 1, 2011. This final rule serves as notification of the 2011 opening dates of the Atlantic commercial shark fisheries and 2011 quotas, based on shark landings updates as of October 31, 2010, pursuant to 50 CFR 635.27(b)(1)(vii). This action does not change the annual base and adjusted annual base commercial quotas for sandbar sharks, non-sandbar LCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) as established under Amendment 2 or the commercial quotas established for non-blacknose SCS and blacknose sharks under Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) (75 FR 30484, June 1, 2010). Any such changes would be performed through a separate action. Rather, this action adjusts the commercial quotas based on over- and/or underharvests in 2009 and 2010.

Response to Comments

During the proposed rule stage, NMFS received more than a dozen written comments from fishermen, dealers, and other interested parties. NMFS also heard numerous comments from the fishermen and dealers who attended the four public hearings. A summary of the comments received during the public comment period for the September 20, 2010, proposed rule (75 FR 57240) is shown below with NMFS' responses. All written comments can be found at *http://www.regulations.gov/* and by searching for RIN 0648–AY98.

A. Season Opening Dates

1. Non-Sandbar LCS Comments

Comment 1: The flexibility measures under sub-alternatives 2A and 2B, which allow flexibility in the opening of the season for Atlantic shark fisheries and adjusting of shark trip limits, look good in theory, but the fishery needs certainties to make good business and personal decisions.

Response: Under the preferred sub-alternatives 2A and 2B, NMFS would still conduct annual proposed and final rulemaking to establish the quotas and season opening dates. As part of this rulemaking, interested parties could provide comments and have notice of the season opening dates, as is currently the process. In addition, NMFS would provide five days' notice of changes in shark trip limits, as is currently done with the closing of a particular shark fishery when 80 percent of a given quota is harvested. Such a process would provide the same amount of notice to fishermen and associated shark industries of changes in the fishery as is currently provided. NMFS believes that five days' notice of changes provides enough time for business decisions while also providing NMFS with the ability and flexibility to manage the fishery, as appropriate.

Comment 2: NMFS does not need to extend the shark fishing season year-round since fishermen can catch other fish species the rest of the year. The economics should be considered in this rule since it is more economically beneficial to have a short season.

Response: NMFS acknowledges that shorter seasons may result in some reduced trip-related expenses. A shorter season may result in less fuel expenditures for travel, lower costs associated with changing over gear types, and reduced crew turnover. A shorter season may reduce the at-sea time associated with harvesting the shark quota, and, therefore, provide fishermen with more time to pursue other fisheries. However, there are both social and private costs potentially associated with shorter seasons. Shorter fishing seasons often result in derby-style fishing conditions, which can result in fishing under unsafe conditions, such as poor weather and long hours. Derby fishing can also result in a market glut of fish during the early part of a fishing season when there is heavy fishing if there is insufficient demand for the product during that short period. Furthermore, when fishing in other fisheries, such as snapper/grouper or mackerel fisheries, fishermen are likely to encounter sharks. If the season for sharks is closed, those sharks

caught as bycatch need to be discarded, resulting in fishing inefficiencies and increased mortality of sharks. Therefore, NMFS prefers sub-alternatives 2A and 2B, which will provide the Agency with the necessary flexibility to extend the fishing season either by delaying the opening of a shark fishery and/or adjusting shark trip limits through inseason actions to help reduce bycatch and mortality of sharks.

In addition, NMFS could not identify patterns in ex-vessel shark prices based on season length, but rather, found slighter higher prices for 2010 overall compared to 2008 and 2009. NMFS compared ex-vessel prices for non-sandbar LCS for 2008 when the fishing season was opened for almost six months compared to 2009 and 2010 where the non-sandbar LCS fishery was opened between 6 weeks to 22 weeks. Ex-vessel prices for non-sandbar LCS in 2008 and 2009 were $0.45 per pound each year. However, these prices were slightly higher for 2010 at $0.60 per pound. In addition, the sandbar shark research fishery, which has been opened for longer periods of time in 2008–2010, had similar prices in 2008 and 2009 ($0.35 and $0.40 per pound, respectively) but had higher prices in 2010 at $0.70 per pound.

Atlantic Region

Comment 3: NMFS should open the non-sandbar LCS fishery in the Atlantic region in January with a trip limit of 33 sharks/trip, lower the trip limit to 0 sharks/trip when 40 percent of the quota is achieved, and then raise the trip limit back to 33 sharks/trip in July. This approach would ensure available quota for fishermen along the Atlantic coast. However, if NMFS re-creates a bi-annual season by lowering and raising the trip limit, NMFS needs to ensure accurate and timely reporting by dealers in order to ensure that all fishermen along the coast have equal opportunities to fish the quota. Electronic reporting needs to be implemented to stop delayed dealer reporting of shark landings.

Response: NMFS considered such a scenario of creating a bi-annual fishing season for non-sandbar LCS by lowering and raising non-sandbar LCS trip limits to allow for a fishery at the beginning of the year yet reserving quota for a fishery later in the year when sharks migrate to more northern Atlantic waters. However, because of delays in dealer reporting due to the current biweekly reporting regime for shark dealers, and due to delays in the receipt of State landings data, NMFS is concerned that sufficient amounts of the quota may not be available for a fishery later in the season under the scenario described in Comment 3. Currently, dealers are required to have landings reports from the first through the 15th of each month received by NMFS no later than the 25th of the month. Landings reports from the 16th through the end of the month must be received by NMFS no later than the 10th of the following month. Therefore, dealer reports are delayed by two weeks, making landings data at least 10 days old by the time the Agency receives HMS dealer reports. If the quota is being harvested at a fast rate, then the Agency may not be able to reduce trip limits fast enough to ensure an adequate fishery later in the season. NMFS is currently working on an electronic dealer reporting rulemaking, which will require more timely dealer reporting and support real-time quota monitoring. Once this system is in place, NMFS could consider managing the shark season as described under Comment 3.

Comment 4: Some fishermen for the Florida area and related industries do not support the proposed July 15 opening for the non-sandbar LCS fishery in the Atlantic region. The delay in 2010 did not provide an equal opportunity for Florida fishermen to harvest the quota because sharks are not available in Florida waters in July and prices for sharks are higher in the winter than the summer. Because there are more shark fishermen in Florida than in other regions, NMFS should not give preference to fishermen who fish further north. However, other fishermen from North Carolina and north support the proposed July 15 opening because it offers mid- and north Atlantic fishermen an opportunity to harvest the quota.

Response: In 2008, 257,286 pounds (lb) dressed weight (dw) of non-sandbar sharks were reported from July through December on HMS dealer reports by Federally permitted dealers from the east coast of Florida. During the same time period, 10,390 lb dw of non-sandbar LCS were reported by dealers from North Carolina. In 2009, when the fishery was opened during January through July, 317,050 lb dw of non-sandbar LCS were reported by Federal dealers from the east coast of Florida whereas 4,534 lb dw of non-sandbar LCS were reported from dealers from North Carolina. Thus, 2008 dealer reports indicate that non-sandbar LCS are present in waters off the east coast of Florida during the July to December timeframe. In addition, fishermen from North Carolina landed less than half the amount of non-sandbar LCS from January through July in 2009 compared to 2008 when the fishery was open later in the year, and sharks migrated to more northern Atlantic waters. Preliminary data for 2010 from July through September indicate a similar pattern to that in 2008. Consistent with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen. Opening the non-sandbar LCS fishery later in the year (*i.e.,* July 15) would allow the furtherance of equitable fishing opportunities to all fishermen in the Atlantic region; fishermen in the south Atlantic and north Atlantic would all have the ability to harvest a portion of the non-sandbar LCS quota in the Atlantic region with such an opening date.

Finally, NMFS compared monthly ex-vessel prices based on data provided on HMS dealer reports for non-sandbar LCS from 2008 through 2010 for dealers reporting from the east coast of Florida. Median ex-vessel prices per pound ranged from $0.45–$0.75 in July through September in 2008 and 2010 (the non-sandbar LCS fishery was not open during this time period in 2009). From January through March, median ex-vessel prices per pound ranged from $0.45 to $0.50 and were similar, if not slightly lower, than summer ex-vessel prices for non-sandbar LCS. Thus, NMFS did not find higher ex-vessel prices for non-sandbar LCS during the winter months, suggesting that a summer/fall fishery for non-sandbar LCS off the east coast of Florida could generate as much revenue as a winter/spring fishery.

Comment 5: North Carolina and Florida traditional shark fisheries are composed of different species. North Carolina was mainly a sandbar shark fishery while Florida was mainly a blacktip shark fishery. NMFS should manage the fishery based on the traditional fisheries and not take away the winter non-sandbar LCS fishery from Florida fishermen.

Response: While average landing reports from 2003 to 2007 indicate that more blacktip sharks were reported, on average, from the east coast of Florida compared to North Carolina (263,405 lb dw versus 14,878 lb dw of blacktip sharks), dealers from the east coast of Florida reported higher average landings of sandbar sharks compared to dealers in North Carolina (309,640 lb dw versus 232,132 lb dw of sandbar sharks). Thus, the east coast of Florida had a substantial traditional sandbar shark fishery before the implementation of Amendment 2 to the Consolidated HMS FMP. In addition, blacktip sharks, which are currently allowed to be retained in the commercial fishery, unlike sandbar sharks, are not as prevalent in the beginning of the year

off North Carolina based on HMS dealer reports (142 lb dw of blacktip sharks from January through March). This information indicates a fishery for this species later in the year is appropriate to allow for a more equitable opportunity for all fishermen in the Atlantic region to harvest a portion of the non-sandbar LCS quota, consistent with National Standard 4.

Comment 6: Making Florida fishermen fish for sharks in the summer presents a safety-at-sea issue as it is dangerous in the Florida summer heat to have to process the sharks twice by removing fins once the sharks are offloaded and having to lift heavy sharks that cannot be cut in half.

Response: NMFS disagrees that opening the non-sandbar LCS fishery in July in the Atlantic region presents a safety-at-sea issue; NMFS has considered National Standard 10, regarding promoting the safety of human life at sea, to the extent practicable, when considering the opening dates of the shark fishing seasons. Regulations prohibiting shark fishermen from being able to cut, quarter, or fillet sharks while at sea have been in effect since 1997. In addition, landings information from HMS Dealer Form reports indicate shark fishermen have historically landed sharks in Florida during July through September, and the offloading of sharks with their fins naturally attached has been in place since the 2008 Amendment 2. Therefore, having a summer non-sandbar LCS fishery should not be a change in current fishing practices or present any new safety-at-sea concerns. Additionally, in both 2008 and 2010, the non-sandbar LCS summer fishery has continued substantially into the fall (until December 31 in 2008 and to date in 2010). As such, opening the fishery on July 15 provides shark fishermen who do not want to fish in the heat of the summer, or who fish for other species in the summer, an opportunity to fish during the cooler months.

Gulf of Mexico Region

Comment 7: Shark meat is easier to sell in the Gulf of Mexico around the religious holiday of Lent. Shark dealers and fishermen in the Gulf of Mexico supported sub-alternative 2A to allow for flexibility in the opening of the commercial fishing season so that the opening dates could be around Lent each year.

Response: Consistent with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen. Therefore, NMFS considered a season opening date that would allow the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all parts of the Gulf of Mexico region. As such, based on comments received from fishermen and dealers in different areas of the Gulf of Mexico requesting NMFS to open the season at the beginning of the year, to open the season around Lent, or to open the season around the middle of March, NMFS is opening the non-sandbar LCS on March 1, 2011. This opening should also allow for shark product to be available during Lent in 2011 as Lent begins on March 9, 2011. This is a change from the opening date in the proposed rule for this action; however, as explained in the responses to Comment 8 below, NMFS believes such an opening date would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011.

Comment 8: Louisiana shark fishermen and dealers are in favor of opening the non-sandbar LCS fishery in the Gulf of Mexico in January or February of 2011. This would allow a winter fishery when few other fisheries are open at that time. Opening the season during the cooler months would be beneficial since ice is not used on vessels in that area. NMFS should also be consistent with Louisiana State regulations and should not open the season during the pupping season (April through June of each year). Louisiana State shark fishermen supported opening the non-sandbar LCS fishery the same time as it was opened in 2010 (*i.e.,* early February) so that catch and catch rates before and after the oil spill can be compared to determine the impact on the oil spill on shark populations. There was also some support from Louisiana State fishermen to open the non-sandbar LCS fishery in the Gulf of Mexico later in the year (*i.e.,* July) when the flow of the Mississippi river is lower and sharks are easier to catch.

Response: Consistent with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen. NMFS is balancing comments received from all fishermen and dealers in the Gulf of Mexico region with regard to the opening of the non-sandbar LCS fishery in that region. Based on comments received from fishermen and dealers throughout the Gulf of Mexico, NMFS is opening the non-sandbar LCS on March 1, 2011. This is a change from the opening date in the proposed rule for this action; however, NMFS believes such an opening date would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011. This would open the fishery at the beginning of the year when it is cooler (*i.e.,* before the summer months) and when other fisheries may be closed. In addition, based on how quickly the quota was harvested in 2010 in the Gulf of Mexico region, NMFS does not anticipate the non-sandbar LCS quota lasting until the end of the year, so an overlap with the shark pupping season from April-June during 2011 should not be substantial. If any overlap does occur, since Louisiana State waters are closed from April to June of each year to protect shark pupping, overall shark fishing effort would be reduced. Additionally, the Federal shark permit holders that would be active during this time period would be fishing in offshore waters and not pupping areas. Thus, NMFS does not anticipate any significant impacts to shark populations due to fishing by Federal shark fishermen during this time. However, an opening date of March 1, 2011, would most likely not allow for a non-sandbar LCS fishery later in the season in the Gulf of Mexico region. NMFS could slow the fishery down by reducing the trip limit; however, while this action implements the criteria and authority for NMFS to make inseason changes to shark trip limits, no changes to the actual trip limits are being made at this time. Additionally, until NMFS has real-time reporting from shark dealers, NMFS is concerned that due to the delay in dealer reports, sufficient amounts of the quota may not be available for a fishery later in the season as explained in the response to Comment 3 above.

Comment 9: Louisiana fishermen questioned the need for equitable opportunities to catch the quota.

Response: As explained above, in accordance with National Standard 4, NMFS must not discriminate between residents of different States. NMFS must consider fishing opportunities that are fair and equitable to all fishermen.

Comment 10: Louisiana Department of Wildlife and Fisheries indicated that there were currently 600 State water shark permits with approximately half of those permits actively participating in the shark fishery. These fishermen derive a substantial amount of income from shark fishing; however, the State agency claimed that the proposed rule did not consider the impacts to Louisiana State fishermen, and stated that NMFS should consider the impacts

to Louisiana State fishermen when establishing shark fishing regulations.

Response: NMFS disagrees that the proposed rule did not consider impacts to Louisiana State fishermen. In both the proposed rule and this final rule, NMFS analyzed alternatives to provide equitable fishing opportunities to the extent practicable for commercial shark fishermen in all regions and areas. NMFS has not been able to quantify potential impacts to State fishermen with regard to impacts of changing trip limits as it has for Federal shark fishermen due to the lack of Federal logbooks from State fishermen and the lack of a requirement for dealers to have a Federal dealer permit and report landings of State fishermen to NMFS. However, NMFS held a public hearing in Louisiana and has taken comments from Louisiana shark fishermen into consideration on the proposed rule and draft Environmental Assessment (EA) on the opening of the commercial shark fishing seasons. In this rule, NMFS balanced comments received from all participants in the Gulf of Mexico region with regard to the opening of the non-sandbar LCS fishery in that region. As explained in responses to Comments 7 and 8, NMFS believes an opening date of March 1, 2011, would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011. This change also takes into consideration comments from some Louisiana fishermen who suggested the fishery open near the religious holiday of Lent.

Comment 11: The quota would last longer if NMFS opens the non-sandbar LCS season in the Gulf of Mexico region later in the year (such as March 1 or March 15) because, if the season opens in January, Louisiana vessels would primarily target sharks because there are no other open fisheries at that time. However, NMFS should not open the season too late in the year in the Gulf of Mexico region as there are no sharks in the Florida Keys in July, which is part of the Gulf of Mexico region.

Response: NMFS is balancing comments received from all fishermen and dealers in the Gulf of Mexico region with regard to the opening of the non-sandbar LCS fishery in that region. In Comment 8, constituents requested that the non-sandbar LCS fishery open around Lent (*i.e.,* beginning March 9, 2011) when shark product was more easily sold. Florida-based fishermen wanted the non-sandbar LCS fishery to open at the beginning to the middle of March in the Gulf of Mexico region, whereas Louisiana-based fishermen wanted the non-sandbar LCS fishery to open around January to February of 2011. Based on public comment, NMFS is opening the non-sandbar LCS fishery on March 1, 2011. This is a change from the opening date in the proposed rule for this action; however, NMFS believes such an opening date would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011. In addition, NMFS has implemented criteria and flexibility in opening the commercial shark fisheries in the future (*see* response to Comment 7 above).

Comment 12: Louisiana State fishermen are illegally fishing for sharks in Federal waters without a Federal shark permit. Once this issue is addressed, NMFS could extend the season and allow for more of the Federal quota to be caught by Federally-permitted fishermen.

Response: Due to comments such as these during the fishing season, NMFS Office of Law Enforcement (OLE) investigated the allegations and intercepted one fisherman fishing without a Federal shark permit fishing in Federal waters in 2010. If suspected illegal activities are observed in any fishery and/or region, specific information regarding such incidents can be reported to NMFS OLE. Anyone can report suspected illegal activities to NMFS OLE by calling 1–800–853–1964 or by contacting a local OLE Division Office. The location of NMFS OLE Division Offices can be found at *http://www.nmfs.noaa.gov/ole/contacts.html.*

2. SCS Comments

Comment 13: NMFS should not close the SCS fishery when 80 percent of the blacknose quota is caught. Blacknose sharks are not caught in the north Atlantic, and closing the entire SCS fishery when the blacknose shark quota reaches 80 percent could close down a healthy Atlantic sharpnose shark fishery that occurs year round in North Carolina.

Response: In the final rule of Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484, June 1, 2010), NMFS established new blacknose shark and non-blacknose SCS quotas and established that both fisheries would close when either quota reached, or was projected to reach, 80 percent. This link between quotas was implemented because the status of the blacknose shark stock is overfished with overfishing occurring. Thus, given the small blacknose quota, it is most likely that the blacknose fishery would close before the non-blacknose fishery. However, blacknose sharks could suffer additional mortality in non-blacknose SCS fisheries as bycatch. Closing both fisheries when either quota reached 80 percent helps ensure rebuilding of blacknose sharks. In addition, this offers an incentive to avoid blacknose sharks and target non-blacknose SCS so that the non-blacknose SCS fishery does not close with quota still available. During the proposed rule for Amendment 3, fishermen noted that they could target and avoid certain species of small coastal sharks. In addition, unlike blacknose sharks, any underharvest of the non-blacknose SCS quota could be added to the following year's fishing quota, since the stock status of finetooth, Atlantic sharpnose, and bonnethead sharks have all been determined to be healthy. These measures maximize the opportunity to harvest the healthy non-blacknose SCS while rebuilding and preventing overfishing on the blacknose shark stock.

B. Trip Limit Comments

Comment 14: NMFS should not lower the trip limit to extend the season. Anything less than 33 non-sandbar LCS per trip would shut the fishery down since it would not be profitable for Federal fishermen.

Response: With the implementation of Amendment 2, NMFS anticipated that setting the trip limit at 33 non-sandbar LCS would lead to non-sandbar LCS being caught in an incidental manner in other fisheries, as the reduced trip limit would no longer provide an economically viable targeted fishery for non-sandbar LCS. However, an analysis of logbook data indicates that the non-sandbar LCS fishery has harvested, on average, less than the 33 non-sandbar LCS per trip limit. Specifically, the Coastal Fisheries Logbook data indicate that since the implementation of Amendment 2, the overall average number of non-sandbar LCS landed per trip in the Gulf of Mexico and Atlantic regions was 21 and 13, for 2008 and 2009, respectively. Additionally, NMFS is aware that many shark fishermen continue to fish directly for large coastal sharks, particularly during times when other fisheries are closed. Therefore, it seems that targeted non-sandbar LCS trips have been conducted at lower harvest levels than the current trip limit. In this final rule, NMFS is not changing the trip limits. However, NMFS is implementing criteria for trip limit adjustments through inseason actions to provide fishermen more equitable access to the relevant shark resource throughout their appropriate region.

Comment 15: Federal fishermen are concerned that the trip limit reduction

would not stop the Louisiana State fishermen from continuing to harvest a large proportion of the Gulf of Mexico quota.

Response: On March 17, 2010 (75 FR 12700), after 42 days of fishing, NMFS closed the commercial non-sandbar LCS fishery in the Gulf of Mexico region. Inclement weather during this time period limited access to non-sandbar LCS by vessels fishing out of some areas of Florida, and allowed vessels from Louisiana, which were not as restrained by weather conditions, to continue to catch a majority of the non-sandbar LCS quota. In this final rule, NMFS implements regulations and criteria to lower and raise shark trip limits and allow fishermen more equitable access to the relevant shark resource throughout their appropriate region. Such flexibility should provide NMFS the opportunity to allow fishermen more equitable access to the relevant shark resource throughout their appropriate region by slowing a fishery down, as needed, if the quota is being harvested too quickly. However, NMFS is not implementing any changes in the shark trip limits at this time based on public comment. NMFS is also implementing regulations and criteria to allow flexibility in the opening dates of the commercial Atlantic shark fishing seasons in the future. Currently, NMFS will open the 2011 Gulf of Mexico non-sandbar LCS fishery on March 1, 2011. NMFS anticipates that delaying the 2011 season opening until March 1, 2011, balances comments NMFS heard from constituents throughout the Gulf of Mexico region and would provide fishermen in both the eastern and western Gulf of Mexico the ability to catch a portion of the non-sandbar LCS shark quota during 2011.

Comment 16: Extending the quota year-round would require NMFS to reduce the number of participants in the Atlantic shark fisheries. Changing the trip limits or opening dates would not change this.

Response: As described above in response to Comment 15, at this time, the data do not provide enough information for NMFS to determine what trip limit would allow for a year-round fishery. However, in this rule, NMFS is implementing regulations and criteria to provide the flexibility to change to the opening date of the shark fisheries, as well as lower and raise shark trip limits, as necessary. Although no changes to shark trip limits are being implemented at this time, NMFS believes that the combination of these two regulations should provide fishermen with more equitable access to the relevant shark resource throughout their appropriate region, even if they do not result in a year-round fishery. NMFS is also requesting comments on an advance notice of proposed rulemaking (ANPR) that looks at different visions for the future of the shark fishery and potential short- and long-term changes to the regulations (September 20, 2010, 75 FR 57235). This ANPR could result in a rulemaking that considers, among other things, the number of participants in the fishery, appropriate trip limits, and the length of the fishing seasons.

C. General Comments

Comment 17: NMFS should implement certain fishing days for sharks—such as Mondays, Wednesdays, and Fridays—in order to lengthen the fishing season, similar to what was done in the Atlantic bluefin tuna fishery.

Response: NMFS is aware of the problems being faced by the non-sandbar LCS fishery, which include short fishing seasons. To address some of these problems, on September 20, 2010, NMFS published an ANPR (75 FR 57235) to initiate broad public participation in considering potential short- and long-term changes to the regulations governing the U.S. Atlantic shark fishery. This ANPR requests comments and potential solutions regarding ongoing issues currently affecting management of the shark fishery, including commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, "derby" fishing conditions due to small quotas, and short seasons. Implementing certain fishing days to lengthen the shark fishing season could be one of the mechanisms considered in any rulemaking resulting from this ANPR. Comments on the ANPR will be accepted through January 14, 2010.

Comment 18: In 2009, the non-sandbar LCS fishery in the Gulf of Mexico was closed before the quota was reached without applying any underharvest, but NMFS is planning to take away overharvest in 2010. All of the quota underharvest and overharvest should be equally applied.

Response: The stock status for the non-sandbar LCS fishery is currently unknown. Under the regulations implemented in Amendment 2, NMFS does not transfer underharvest to the next fishing year for species whose stock status is unknown, overfished, or if overfishing is occurring. Not applying underharvest increases the likelihood that these stocks rebuild in a timely manner. However, NMFS transfers underharvest up to 50 percent of the base quota to the next fishing year for species whose stock status is not unknown, not overfished, or overfishing is not occurring. In addition, NMFS subtracts overharvests from the next fishing year for all species/complexes in order to ensure rebuilding plans are being met and fisheries remain sustainable.

Comment 19: NMFS should stop all shark fishing.

Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year and opening dates for the 2011 shark season. These quotas were established to rebuild overfished stocks, prevent overfishing, and obtain optimum yield and were based on the best available science, per the requirements of the Magnuson-Stevens Act. The final rule and accompanying documents do not reanalyze the overall management measures for sharks, which was done in Amendment 2 and Amendment 3, and is being reviewed again through the ANPR process described above.

Comment 20: NMFS needs to consider a balance between the interests of Florida and North Carolina along with the rest of the Atlantic States. NMFS should consider a north and south Atlantic region and/or bi-annual seasons.

Response: NMFS implemented one fishing season and separate regions for the non-sandbar LCS fishery in the Gulf of Mexico and Atlantic in Amendment 2. The Agency preferred measures consistent with the 2006 LCS stock assessment by maintaining two regions: A Gulf of Mexico and Atlantic region. Maintaining two regions has several advantages, including: It adheres to the stock assessment for blacktip sharks, which assessed this species separately in the Gulf of Mexico and Atlantic; it accounts for overharvests that occur in the Gulf of Mexico and Atlantic more equitably; it allows for unique quotas to be implemented in each region that account for different species composition in each region; and, maintains the flexibility to implement unique regulations in the Gulf of Mexico and Atlantic Ocean.

The shark fishery has traditionally been managed on a calendar year, and NMFS prefers to maintain this practice. As implemented in Amendment 2, NMFS has one shark fishing season, starting January 1 of each year. Opening on this date is more likely to overlap with open seasons for other BLL and gillnet fisheries and provide for fishermen a full calendar year to harvest available quota. Nonetheless, NMFS is reviewing different visions for the future of the shark fishery through an ANPR

process (*see* the response to comment 18). Changing regional boundaries could be one of the mechanisms considered in any rulemaking resulting from this ANPR.

Comment 21: Non-sandbar LCS quota from the shark research fishery should be given to the Gulf of Mexico region.

Response: Consistent with Amendment 2, underharvest of the shark research non-sandbar LCS fishery quota is not transferable to the Gulf of Mexico region. NMFS established a separate non-sandbar LCS and sandbar shark quota in the sandbar shark research fishery under Amendment 2. The sandbar shark research fishery allows for the collection of fishery-dependent data for future stock assessments while also allowing NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives for the Agency. The shark research fishery maintains time series data for stock assessments. The separate quotas allow each fishery to continue even if the non-sandbar LCS quota outside the research fishery is fulfilled. The research fishery itself continues until both the sandbar and non-sandbar LCS landings reach 80 percent of the quotas established for the research fishery (*i.e.,* if the non-sandbar LCS landings within the research fishery reached 80 percent of the quota, non-sandbar LCS retention in the research fishery ends, but sandbar sharks continue to be retained until that sandbar shark landings reached 80 percent of the sandbar quota). Transferring quota from the research fishery to the non-research shark fisheries could undermine the research objectives and the reason for the research fishery.

Comment 22: NMFS needs to increase both the quota and trip limit.

Response: NMFS implemented the current quotas and trip limits based on the latest NMFS-conducted stock assessments for blacknose, blacktip, dusky, and sandbar sharks, and the LCS complex, which represent the best available science by independent peer reviewers. The current quota and trip limits are consistent with rebuilding targets established in the latest shark stock assessments. Any changes in quotas would be based on new, future stock assessments. Implementing sub-alternative 2B would allow NMFS to adjust the trip limits (0–33 sharks per trip) via inseason actions based on certain criteria and process. This alternative anticipates that the quotas for some fisheries, such as the non-sandbar LCS fisheries, would not last the entire fishing year and builds in flexibility to try to extend the availability of the quota. The goal of the alternative is to lengthen the season to provide, to the extent practicable, furtherance of equitable fishing opportunities for commercial shark fishermen in all regions and areas while also considering the ecological needs of the different species. Recently, NMFS announced an ANPR (75 FR 57235, September 20, 2010) to gather public participation in considering potential short- and long-term changes to the regulations governing the U.S. Atlantic shark fishery. One such change could be to increasing the trip limits.

Comment 23: Fishermen fishing in the mid-Atlantic closed area cannot keep spinner or silky sharks caught on pelagic longline (PLL) gear due to the indicator species list in the regulations. The indicator species list needs to be re-visited.

Response: The purpose of this rulemaking is to adjust quotas and opening dates for the 2011 shark season. The final rule is not reanalyzing the overall management measures in the 2006 Consolidated HMS FMP. In the 2006 Consolidated HMS FMP, NMFS establish a 5 percent limit (by weight) on the allowable amount of pelagic "indicator" species that bottom longline vessels may possess or land from PLL closed areas, and establish a 5 percent limit (by weight) on the allowable amount of "indicator" demersal species that PLL vessels may possess or land from BLL closed areas (as measured relative to the total weight of all "indicator" species). The establishment of quantifiable species-based criteria to differentiate between PLL and BLL fishing gear in closed areas should help to eliminate ambiguities, because PLL gear would logically be expected to capture pelagic species and vice-versa. The indicator species list improves the monitoring and effectiveness of, and compliance with, HMS closed areas. Recently, NMFS initiated an ANPR (75 FR 57235, September 20, 2010), to gather public participation in considering potential short- and long-term changes to the regulations governing the U.S. Atlantic shark fishery. This comment can be addressed during the ANPR.

Changes From the Proposed Rule

NMFS made several changes to the proposed rule as described below.

1. NMFS changed the opening date of the non-sandbar LCS fishery in the Gulf of Mexico in the final rule from on or about January 1 to March 1, 2010. This change is being made to address public comment and in accordance with the criteria and process being finalized in this rule under sub-alternative 2A. Specifically, in the proposed rule, NMFS proposed to open the non-sandbar LCS in the Gulf of Mexico region on the effective date of the final rule. As described in the response to comments above, NMFS received many public comments from fishermen and dealers regarding a change in the opening date for the Gulf of Mexico non-sandbar LCS fishery. These comments suggested changing the opening date to around the religious holiday of Lent (*i.e.,* beginning March 9, 2011) when shark products are said to be more marketable, in the beginning to the middle of March of 2011 to have a more equitable opportunity to harvest the non-sandbar LCS quota, and around the same time as it did in 2010 (*i.e.,* February). After reviewing these comments and the criteria being finalized in this rule under sub-alternative 2A, NMFS decided to delay the opening of the non-sandbar LCS fishery in the Gulf of Mexico region until March 1, 2011. Delaying the opening of the non-sandbar LCS fishery in the Gulf of Mexico region balances the comments received from all constituents in the Gulf of Mexico region and should provide further equitable shark fishing opportunities to all participants in the Gulf of Mexico region, consistent with National Standard 4.

2. NMFS made changes in the final quotas of the Gulf of Mexico non-sandbar LCS, non-blacknose SCS, and porbeagle shark fisheries based on landings updates through October 31, 2010. At the time the proposed rule published, shark landings updates (through July 31, 2010) indicated that the commercial Gulf of Mexico non-sandbar LCS quota had been exceeded by 17.4 metric tons (mt) dw during the 2010 commercial shark fishing season. Since then, additional landings have been reported, which have the effect of reducing the final quota by a total of 38.6 mt dw. Also, landing reports indicated that, in 2010, the non-blacknose SCS fishery was underharvested by 92.9 mt dw and the porbeagle shark fishery was overharvested by 0.1 mt dw.

3. NMFS changed the names of the sub-alternative 1B (establish a new non-sandbar LCS trip limit that would extend the fishing season in the Gulf of Mexico region) and sub-alternative 1C (establish a new non-sandbar LCS trip limit that would extend the fishing season in the Atlantic region) to better describe the original intent of the alternative. Also, NMFS clarified that the changes to the trip limit would occur at the beginning of the fishing season, and would remain static for the

remainder of that season, to help ensure quotas last the whole year.

2011 Annual Quotas

This final rule adjusts the commercial quotas due to over- and/or underharvests in 2009 and 2010. The 2011 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by NMFS after October 31, 2010, will be used to adjust the 2012 quotas, as appropriate.

TABLE 1—2011 ANNUAL QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise]

Species group	Region	2010 Annual quota	Preliminary 2010 landings [1]	Overharvest/ underharvest	2011 Base annual quota [2]	2011 Quota	Season opening dates
		(A)	(B)	(C)	(D)	(D+C)	
Non-Sandbar Large Coastal Sharks.	Gulf of Mexico.	390.5 (860,896 lb dw).	429.1 (946,052 lb dw).	−38.6 (−85,156 lb dw).	390.5 (860,896 lb dw).	351.9 (775,740 lb dw).	March 1, 2011.
	Atlantic	169.7 (374,121 lb dw).	142 (312,952 lb dw).	.....	187.8 (414,024 lb dw).	190.4 [3] (419,756 lb dw).	July 15, 2011.
Non-Sandbar LCS Research Quota.	No Regional Quotas.	37.5 (82,673 lb dw).	33.3 (73,471 lb dw).	.....	37.5 (82,673 lb dw).	37.5 (82,673 lb dw).	January 1, 2011.
Sandbar Research Quota ..	.....	87.9 (193,784 lb dw).	53.8 (118,599 lb dw).	.....	87.9 (193,784 lb dw).	87.9 (193,784 lb dw).	
Non-Blacknose Small Coastal Sharks.	.....	221.6 (488,539 lb dw).	128.7 (283,821 lb dw).	92.9 (204,718 lb dw).	221.6 (488,539 lb dw).	314.4 (693,257 lb dw).	
Blacknose Sharks	.....	19.9 (43,872 lb dw).	14.5 (31,981 lb dw).	.....	19.9 (43,872 lb dw).	19.9 (43,872 lb dw).	
Blue Sharks	.....	273 (601,856 lb dw).	3.5 (7,700 lb dw).	.....	273 (601,856 lb dw).	273 (601,856 lb dw).	
Porbeagle Sharks	.....	1.5 (3,307 lb dw).	1.6 (3,576 lb dw).	−0.1 (−269 lb dw).	1.7 (3,748 lb dw).	1.6 (3,479 lb dw).	
Pelagic Sharks Other Than Porbeagle or Blue.	No Regional Quotas.	488 (1,075,856 lb dw).	116.5 (256,800 lb dw).	.....	488 (1,075,856 lb dw).	488 (1,075,856 lb dw).	January 1, 2011.

[1] Landings are from January 1, 2010, until October 31, 2010, and are subject to change.

[2] 2010 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).

[3] NMFS intends to adjust the 2011 quota for Atlantic non-sandbar LCS to account for the 2.6 mt dw that was over estimated in the landings report in 2010 after the final rule establishing the 2010 quota published.

1. 2011 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

Since no overharvests of the non-sandbar LCS and sandbar shark quotas within the shark research fishery occurred during the 2010 fishing year, pursuant to § 635.27(b)(1)(iii), the 2011 adjusted base annual quotas within the shark research fishery will be 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

2. 2011 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

Since an overharvest of 38.6 mt dw for the non-sandbar LCS quota for the Gulf of Mexico region occurred during the 2010 fishing year, pursuant to § 635.27(b)(1)(i)(A), the 2011 adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region will be 351.9 mt dw (775,740 lb dw).

3. 2011 Quotas for the Non-Sandbar LCS in the Atlantic Region

The 2011 annual quota for non-sandbar LCS in the Atlantic region is 190.4 mt dw (419,756 lb dw). In the final rule establishing the 2010 quotas (75 FR 250, January 5, 2010), NMFS accounted for an overharvest of non-sandbar LCS of 18.1 mt dw (39,903 lb dw) using data that were reported as of October 31, 2009. Between that date and December 31, 2009, the reported landings dropped by 2.6 mt dw. This decline is due to normal quality control procedures that occur when updated data are supplied. As such, in accordance with § 635.27(b)(1)(i), the amount that was deducted from the 2010 annual quota, based on preliminary numbers that were later corrected, will be added to the 2011 non-sandbar LCS quota in the Atlantic region. Thus, the 2011 annual commercial non-sandbar LCS quota will be 190.4 mt dw (419,756 lb dw) (187.8 mt dw annual base quota + 2.6 mt dw 2009 overestimated landings = 190.4 mt dw 2011 adjusted annual quota).

4. 2011 Quotas for SCS and Pelagic Sharks

Since no overharvests of blue sharks and pelagic sharks other than porbeagle or blue sharks occurred during the 2010 fishing year, pursuant to § 635.27(b)(1)(v), the 2010 annual base quotas for blue sharks and pelagic sharks other than porbeagle or blue sharks will be 273 mt dw (601,856 lb dw) and 488 mt dw (1,075,856 lb dw), respectively. NMFS does not apply underharvest to any of the pelagic sharks.

Since the 2010 underharvest of the non-blacknose SCS complex was 92.9 mt dw, pursuant to § 635.27(b)(1)(i)(B), that amount will be applied to the 2011 quota. The 2011 adjusted base annual quota for non-blacknose SCS will be 314.4 mt dw (693,257 lb dw).

Since an overharvest of 0.1 mt dw for the porbeagle shark quota occurred during the 2010 fishing year, pursuant

to § 635.27(b)(1)(i)(A), the 2011 adjusted base annual quota for porbeagle sharks will be 1.6 mt dw (3,479 lb dw).

Fishing Season Notification for the 2010 Atlantic Commercial Shark Fishing Season

Based on the criteria and processes described in sub-alternative 2A in the final EA and public comment, the 2011 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2011. The non-sandbar LCS in the Gulf of Mexico region will open on March 1, 2010. The non-sandbar LCS fishery in the Atlantic region will open on July 15, 2010.

All of the shark fisheries will remain open until December 31, 2011, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) has reached, or is projected to reach, 80 percent of the available quota. At that time, consistent with 50 CFR 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota, if any, is available, the fishery for the shark species group and, for non-sandbar LCS, region will remain closed, even across fishing years, consistent with 50 CFR 635.28(b)(2). As a reminder, the blacknose and non-blacknose SCS fisheries will close together when landings reach 80 percent of either quota.

Classification

NMFS has determined that this action is consistent with the Magnuson-Stevens Act, including the national standards, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator (AA) for Fisheries has determined that there is good cause to waive the 30-day delay in effective date for the pelagic shark, shark research, blacknose shark, and non-blacknose small coastal shark fisheries as such a delay would be contrary to the public interest. Providing a 30-day delay in effectiveness for the opening of the pelagic shark, shark research, blacknose shark, and non-blacknose small coastal shark fisheries would be contrary to the public interest due to the negative economic impact on fisherman and on the fishery resource, and the diminished opportunity for collection of scientific data needed to manage the fisheries.

Allowing for a delay in the effectiveness of this rule, which would result in the closure of the pelagic shark fishery from January 1, 2011, until the effective date of this rule, could be detrimental to the management of these species because it may lead to the discard of any sharks caught by this fishery. In addition, discarding sharks could result in lost ex-vessel revenue for fishermen. In the case of the pelagic shark fishery (which includes blue, shortfin mako, porbeagle, common thresher, and oceanic whitetip sharks), this fishery is conducted as a bycatch fishery by those fishermen targeting other species such as swordfish, yellowfin tuna, and bigeye tuna. This incidental fishery continues throughout the year with no closure date anticipated in the FMP. If the provisions in this rule are not made effective on January, 1, 2011, there would be a break in the continuity of this fishery, which would force the fishermen to discard, dead or alive, any pelagic sharks that are caught. Such discards would not be counted against the commercial quota, which could negatively affect certain species such as porbeagle sharks, which has a limited quota and is closely monitored to ensure it is not exceeded. Under the rebuilding plan for porbeagle sharks, NMFS established a total allowable catch (TAC) of 11.3 mt dw based on current commercial landings of 1.7 mt dw, current commercial discards of 9.5 mt dw, and current recreational landings of 0.1 mt dw. As described in previous documents, estimating dead discards accurately is more difficult than accounting for landings. Landing fish, rather than discarding them dead, helps NMFS monitor the TAC properly in order to rebuild the porbeagle shark. Opening the fishery would ensure that any mortality associated with landings would be counted against the quota.

Regarding the shark research fishery, NMFS selects a small number of fishermen to participate in the shark research fishery each year for the purpose of providing NMFS biological and catch data to better manage the Atlantic shark fisheries. All the trips and catches in this fishery are monitored with 100 percent observer coverage. Specifically, the shark research fishery allows for the collection of fishery-dependent data for future stock assessments, including specific biological and other data that are priorities for improving future stock assessments, and allows NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives for NMFS. Some of the shark research objectives include collecting reproductive and age data, monitoring size distribution, and tagging studies. The information collected in early January could be used for future stock assessments. Delaying the opening of the shark research fishery would not allow NMFS the ability to maintain the time-series of abundance for shark species or collect vital biological and regional data. Preventing NMFS from conducting the necessary research trips could hinder the collection of scientific data and limit the ability of NMFS to manage the shark fisheries, which would be contrary to the public good.

Regarding the blacknose shark and non-blacknose SCS fisheries, these fisheries have both a directed component, where fishermen target SCS, and an incidental component, where the fish are caught and—when the fishery is open—landed by fishermen targeting other species such as Spanish mackerel and bluefish. The incidental fishery catches SCS throughout the year. Delaying this action to allow for a 30-day delay in effectiveness would force all fishermen to discard, dead or alive, any SCS that are caught before this rule becomes effective. Such discards would not be counted against the commercial quota. Opening the fishery on January 1, 2011, would ensure that any mortality associated with landings would be counted against the quota. If these SCS fisheries did not open until the effective date of this rule, which is expected to be after January 1, 2011, the closure of the blacknose shark and non-blacknose SCS fisheries would occur during the time period when SCS fishermen typically fish for SCS species, and therefore, fishermen would experience negative economic impacts that would continue until the fisheries are opened. Additionally, fishermen who catch SCS incidental to their target catch would also experience negative economic impacts. For these reasons, the AA finds good cause to waive the 30-day delay in effectiveness.

NMFS prepared a final EA for this rule that discusses the impact on the human environment as a result of this rule. In this final action, NMFS is adding flexibility to shark management measures by establishing criteria that would allow for delays to the opening date of the different shark species/complex fisheries each year as well as

allow for inseason adjustments to the shark trip limits, as appropriate, to extend the fishing season, as necessary. These measures are consistent with National Standard 4, which NMFS must not discriminate between residents of different States. Also, NMFS must consider fishing opportunities that are fair and equitable to all fishermen. A copy of the EA is available from NMFS (*see* **ADDRESSES**).

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the impacts of adding flexibility to shark management measures and adjustments to the non-sandbar LCS, non-blacknose SCS, and porbeagle quotas based on over- and/or underharvests from the previous fishing season. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. A summary of the FRFA is below. The full FRFA and analysis of social and economic impacts are available from NMFS (*see* **ADDRESSES**).

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2011 proposed quotas for non-sandbar LCS, sandbar sharks, non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on over- and/or underharvests from the previous fishing year. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP and its Amendments. Thus, NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. An additional purpose is to provide flexibility in the regulations to allow for a delay in the opening of the fishing season, and allow inseason adjustments in the trip limits to slow the fishery down during the season, as necessary. This flexibility is intended to provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species. While there are some direct negative economic impacts associated with the measures, NMFS is delaying the 2011 non-sandbar LCS shark fishery season in the Gulf of Mexico and Atlantic regions to allow for a more equitable distribution of the available quotas among constituents. A delay in the opening of the season in the Gulf of Mexico region until March 1, 2011, could potentially result in minor economic impacts to fishermen who would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February, while shark dealers and other entities that deal with shark products would experience minor economic impacts as they may have to diversify during the beginning of the season. A delay in the opening of the season in the Atlantic region until July 15, 2011, would potentially result in minor economic impacts to shark fishermen who would have fished earlier in the season, such as in the southeast Atlantic where sharks are available early in the fishing season. These shark fishermen would be able to fish for sharks later in the season when the sharks migrate south for the winter.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the draft EA for the 2011 Atlantic Commercial Shark Season Specifications and was summarized in the proposed rule. NMFS did not receive any comments specific to the IRFA. However, NMFS did receive comments related to the overall economic impacts of the proposed rule. Those comments and NMFS' responses to them are mentioned above in the preamble for this rule. Almost all of the comments and responses relate to the comments in 1, 2, 4, 7, 8, 10, and 14.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had gross receipts less than $3.5 million for fish-harvesting, gross receipts less than $6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The commercial shark fishery is comprised of fishermen who hold a shark directed or incidental limited access permit (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. As of November 2009, there were a total of 503 commercial permit holders in the Atlantic shark fishery (221 directed and 282 incidental permits). On average, between 2008 and 2009, approximately 47 vessels with directed shark permits and 15 vessels with incidental shark permits had non-sandbar LCS landings. There were also a total of 105 Atlantic shark dealer permit holders as of November 2009. These active fishing vessels, in addition to State-owned fishing vessels, and shark dealers would be the small entities to which the final rule would apply. A more detailed description of the fisheries affected the categories and number of permit holders can be found in Chapter 6 and Chapter 3 in the FEIS for Amendment 3.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, or compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires NMFS to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act and the ESA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this

rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described in the proposed rule (75 FR 57240, September 20, 2010), NMFS analyzed two different main alternatives in this rulemaking with five sub-alternatives and provides justification for selection of the preferred alternative to achieve the desired objective.

NMFS considered two main alternatives for the shark fishery in the short-term. One approach would be to maintain the status quo approach to trip limits (33 non-sandbar LCS/trip), as well as consider alternatives to allow flexibility regarding trip limits in order to extend fishing opportunities year-round. This approach would either maintain the current 33 non-sandbar LCS trip limits (sub-alternative 1A) or consider reductions in the trip limits to ensure the fishing season extends throughout the year (sub-alternatives 1B and 1C). A second approach would be to allow flexibility in the opening of the season for Atlantic shark fisheries through the annual specifications process (sub-alternative 2A) and adjustments via inseason actions to shark trip limits in either region (sub-alternative 2B) to provide expanded opportunities for constituents across the fishery. In addition, having such flexibility would help NMFS respond throughout the management region to any future unanticipated large and small scale events.

Under alternative 1, NMFS considered three sub-alternatives. Sub-alternative 1A, the No Action alternative, would maintain the current vessel trip regulations for non-sandbar LCS. This would result in no additional impacts to small entities. Limited access directed shark permit holders would continue to be able to land up to 33 non-sandbar LCS per trip. On average, between 2008 and 2009, approximately 47 vessels with directed shark permits and 15 vessels with incidental shark permits had non-sandbar LCS landings. The estimated total trip revenue for a maximum trip of 33 sharks is estimated to be $1,920 in the Gulf of Mexico and $1,767 in the Atlantic. However, this trip limit has resulted in shortened fishing seasons in 2009 and 2010 due to regional non-sandbar LCS quotas being filled before the end of the fishing year. Fishermen in some areas, such as the North Atlantic, were not able to harvest a portion of the 2009 non-sandbar LCS quota as the quota was harvested before shark migrated to northern waters in the Atlantic in 2009. As such, sub-alternative 1A is not likely to meet the objective of this rule to provide fishery participants an equal opportunity, to the extent practicable, to harvest the shark quotas.

Sub-alternative 1B would establish a new non-sandbar LCS trip limit at the beginning of the shark fishing season, which would remain static for the remainder of the fishing season, and would extend the fishing season in the Gulf of Mexico region. On average between 2008 and 2009, approximately 20 vessels with directed shark permits and 4 vessels with incidental shark permits had non-sandbar LCS landings in the Gulf of Mexico region. The direct economic impacts to shark fishermen in the Gulf of Mexico region would depend on the reduction in the trip limit. Approximately 81 percent of the Gulf of Mexico trips retained 29 or fewer non-sandbar LCS per trip. Therefore, for a majority of trips, NMFS anticipates that a reduction in the trip limit from 33 non-sandbar LCS to 29 non-sandbar LCS would have a neutral impact on fishermen as fishing and business practices are not anticipated to change due to such a reduction. Reducing the trip limit from 33 non-sandbar LCS to 29 non-sandbar LCS would potentially reduce the maximum revenue per trip from non-sandbar LCS by on average $233 per trip in the Gulf of Mexico. This estimate is based on the average non-sandbar shark weight and 2009 median ex-vessel prices for non-sandbar LCS and shark fins in the Gulf of Mexico region. Approximately 18 percent may lose additional gross revenues on a trip basis as they were landing more than 33 non-sandbar LCS according to Coastal Fisheries data. In addition, on average, vessels in the Gulf of Mexico region retained 21 non-sandbar LCS per trip; however, the average trip landing numbers of non-sandbar LCS varied by month. If the trip limit were reduced to 21 non-sandbar LCS per trip, this could reduce gross revenues per trip from $1,920 to $1,222. While, on average, fishermen may only retain 21 non-sandbar LCS, such a reduction would preclude fishermen from being able to keep additional sharks (up to 33 non-sandbar LCS per trip). Therefore, such a reduction may change how they fish. It may also result in additional trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. All of these factors are expected to result in negative economic impacts in the short-term.

Reducing the trip limit below 21 non-sandbar LCS per trip would be expected to result in economic impacts as it would further reduce gross revenues for shark fishermen on a trip basis. The reduction in gross revenues would range from $756 to $1,920 for a trip limit of 20 to 0 non-sandbar LCS. The lowest average number of non-sandbar LCS retained was 11 non-sandbar LCS per trip during the month of September, which equates to $640 in gross revenues per trip. Such reductions in the trip limits could translate into fishermen making multiple trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. However, NMFS anticipates that at some reduced trip limit, directed shark fishermen would stop targeting sharks because it would no longer be economically viable. At this point, NMFS expects that shark fishermen would target other species and retain sharks incidentally as anticipated under Amendment 2, and, therefore, the economic impacts in terms of changes in fishing practices and diversifying fishing opportunities on other species to make up for lost shark revenues would be the same as described in Amendment 2.

Sub-alternative 1C would establish a new non-sandbar LCS trip limit at the beginning of the shark fishing season, which would remain static for the remainder of the fishing season, and would extend the fishing season in the Atlantic region. On average between 2008 and 2009, approximately 27 vessels with directed shark permits and 11 vessels with incidental shark permits had non-sandbar LCS landings in the Atlantic region. The direct impacts to shark fishermen in the Atlantic region would depend on the reduction in the trip limit. As explained above, approximately 81 percent of the Atlantic trips retained 27 or fewer non-sandbar LCS per trip. Therefore, for a majority of the trips, NMFS anticipates that a reduction in the trip limit would have minimal economic impacts on fishermen if the trip limit were reduced from the 33 non-sandbar LCS to 27 non-sandbar LCS as fishing and business practices would not be anticipated to change with such a reduction. Approximately 11 percent may lose additional gross revenues on a trip basis as they were landing more than 33 non-sandbar LCS according to Coastal Fisheries data. In addition, on average, vessels in the Atlantic region retained 13 non-sandbar LCS per trip; however, the average trip landing numbers of non-sandbar LCS varied by month. If the trip limit was reduced to 13 non-sandbar LCS per trip, this could reduce potential gross revenues per trip from $1,767 to $696. However, on average, fishermen did not retain 33 non-sandbar

LCS per trip during any month of the year. In addition, during 6 of the 12 months fishermen retained fewer than the overall monthly average retention of 13 non-sandbar LCS per trip. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

Reducing the trip limit below 13 non-sandbar LCS per trip would be expected to result in moderate adverse direct economic impacts as it would most likely reduce gross revenues for shark fishermen in the short-term. It is expected that fishermen would stop fishing for sharks as it would no longer be profitable. The reduction in gross revenues would range from $1,125 to $1,767 for 12 to 0 non-sandbar LCS per trip. The lowest average number of non-sandbar LCS retained was 8 non-sandbar LCS per trip during the month of June, which equates to $428 in gross revenues per trip. These reductions in the trip limits could translate into fishermen making multiple trips within a day to make up for lost individual trip revenues, which could result in higher fuel costs, longer fishing days, and increased time away from home. However, NMFS anticipates that at some reduced trip limit level, directed shark fishermen would stop targeting sharks because it would no longer be economically viable. At this point, NMFS expects that shark fishermen would target other species and retain sharks incidentally as anticipated under Amendment 2, and therefore, the socioeconomic impacts in terms of changes in fishing practices and diversifying fishing on other species to make up for lost shark revenues would be the same as described in Amendment 2.

Under alternative 2, NMFS preferred two sub-alternatives. Sub-alternative 2A would establish new opening dates for the shark fisheries through the annual specifications process in the Atlantic and Gulf of Mexico regions based on certain criteria and process. Sub-alternative 2A could potentially affect the 221 directed and 282 incidental shark permit holders along with the 105 shark dealers. NMFS plans to review the criteria, described in Chapter 2 of the final EA, on an annual basis to determine when to open each fishery at equitable and beneficial times for fishermen while also considering the ecological needs of the different species. The opening of the fishing season through the annual specifications process could vary based on the available annual quota, catch rates, and number of fishing participants during the year. For the 2011 fishing season, NMFS would open the shark research, blacknose shark, non-blacknose SCS, and pelagic shark fisheries upon the effective date of the final rule for this action. The direct and indirect socioeconomic impacts would be neutral on a short- and long-term basis because NMFS would not change the opening dates of these fisheries from the status quo alternative. NMFS would also delay the opening of the non-sandbar LCS in the Atlantic region until July 15, 2011, which would be the same opening date as the 2010 fishing season. The delay in the Atlantic non-sandbar LCS fishing season would result in short- and long-term, direct, minor, adverse socioeconomic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues at the beginning of the 2011 fishing season. The short- and long-term effects for delaying the season would cause indirect, minor, adverse socioeconomic impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. This would be most prevalent in areas of the southeast Atlantic where non-sandbar LCS are available early in the fishing season. The delay in the non-sandbar LCS fishing season could cause changes in ex-vessel prices. In 2009, the median ex-vessel price of LCS meat in January was approximately $0.25 per pound dress weight in the Gulf of Mexico and $0.45 in the South Atlantic region, while the median ex-vessel price in July of 2008 was $0.45 in the Gulf of Mexico and $0.75 in the South Atlantic. The median ex-vessel price for shark fins in January was $17.00 per pound in the Gulf of Mexico and $16.00 in the South Atlantic. When the LCS fishery opened in July, the average price for fins was approximately $14.00 per pound in the Gulf of Mexico and $12.00 per pound in the South Atlantic passed on 2008 prices. Since the North Atlantic had a very limited 2009 non-sandbar LCS fishing season, the ex-vessel prices for 2008 were used for the comparison.

In the North Atlantic, the delayed opening for the non-sandbar LCS would have direct, minor, beneficial socioeconomic impacts in the short- and long-term for fishermen as they would have access to the non-sandbar LCS quota in 2011. Fishermen in the North Atlantic did not have or had a limited access to the non-sandbar LCS quota in 2009. There would be indirect, minor, beneficial socioeconomic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this area as they would also have access to non-sandbar LCS products in 2011. Thus, delaying the non-sandbar LCS seasons under the preferred alternative would cause neutral cumulative socioeconomic impacts, since it would allow the furtherance of equitable fishing opportunities to the extent practicable for commercial shark fishermen in all regions and areas, which was the original intent of Amendment 2.

Based on public comment, NMFS is changing the opening date of the non-sandbar LCS fishery in the Gulf of Mexico region in this final rule according to the criteria and process described in sub-alternative 2A. In the proposed rule, NMFS proposed to open the non-sandbar LCS in the Gulf of Mexico region upon the effective date of the final rule for this action. NMFS received public comments from fishermen and dealers to change the opening date for the Gulf of Mexico non-sandbar LCS fishery. The comments received supported the non-sandbar LCS fishery opening around the religious holiday of Lent (*i.e.,* beginning March 9, 2011) when shark products are more marketable. Florida-based fishermen wanted the non-sandbar LCS fishery in the Gulf of Mexico region to open in the beginning to middle of March in 2011 to have a more equitable opportunity to harvest the non-sandbar LCS quota. However, Louisiana-based fishermen requested that the non-sandbar LCS fishery open around the same time as it did in 2010 (*i.e.,* February) as many other fisheries are closed during this time period. Based on these public comments and a review of the criteria in sub-alternative 2A, NMFS is delaying the opening of the non-sandbar LCS fishery in the Gulf of Mexico region until March 1, 2011. NMFS believes delaying the opening of the non-sandbar LCS fishery balances comments received from all fishermen and dealers throughout that region with regard to the opening of the non-sandbar LCS fishery and provides further equitable shark fishing opportunities to all participants in the Gulf of Mexico region. The delay in the Gulf of Mexico non-sandbar LCS fishing season could result in short-term direct, minor, adverse socioeconomic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February of the 2011 fishing season. The short-term effects for delaying the season could cause indirect, minor, adverse socioeconomic impacts on

shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. However, long-term direct and indirect impacts are not anticipated as the delay would only be two months for the 2011 fishing season. In addition, NMFS does not anticipate that the delay would result in changes in ex-vessel prices as 2009 median ex-vessel prices for non-sandbar LCS meat and fins in the Gulf of Mexico region ranged from $0.25–$0.35/lb dw and $17.00 to $15.00/lb dw, respectively, from January through March.

Sub-alternative 2B would establish new inseason trip limit adjustment criteria for the Gulf of Mexico and Atlantic regions. Sub-alternative 2B would allow NMFS to adjust the shark trip limit through inseason actions, but would not adjust the overall shark quotas for the Gulf of Mexico and Atlantic regions. According to Amendment 2, this sub-alternative is anticipated to have direct and indirect, short-term, neutral socioeconomic impact in the Gulf of Mexico and Atlantic regions, because changing the non-sandbar LCS trip limits inseason would not limit the overall harvest of non-sandbar LCS, but would provide the mechanism to modify the harvest spatially and temporally to allow furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. Directed fishing on non-sandbar LCS or any shark species would continue as long as the trip limit is high enough to make it economically viable. Data described in Chapter 4 of the final EA shows that since the implementation of Amendment 2, directed shark fishing trips land, on average, 21 non-sandbar LCS in the Gulf of Mexico region, and 13 non-sandbar LCS in the Atlantic region. NMFS has not been able to determine at what trip limit fishermen stop targeting non-sandbar LCS. A range of trip limits have been further analyzed in alternatives 1B and 1C, and the socioeconomic impacts associated with the range of trip limits are described above under sub-alternatives 1B and 1C. Trip limits set at levels too low for fishermen to continue targeting sharks would likely lead to shifts in effort to other fisheries, similar to effort shifts experienced during closures of the non-sandbar LCS fishery in 2009 and 2010. The criteria for changing the trip limits during the season, as outlined in Chapter 2 in the final EA, takes into account opportunities for the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas and ecological considerations of the relevant shark stock, but would not restrict or reduce the current quota. If trip limits are set in a manner that is beneficial to the ecological needs of the relevant shark species, their populations may increase in the long-term, which could allow for increased quota levels in the future. Therefore, minor, beneficial long-term direct, indirect, and cumulative socioeconomic impacts may occur based on sub-alternative 2B in the long-term.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 1, 2010.

Samuel D. Rauch III,

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

■ For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.24, paragraph (a)(8) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(8) *Inseason trip limit adjustment criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports;

(ii) The catch rates of the relevant shark species/complexes, to date, based on dealer reports;

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or

(vi) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

* * * * *

■ 3. In § 635.27:

■ A. Paragraphs (b)(1)(ii) through (b)(1)(vi) are redesignated as paragraphs (b)(1)(iii) through (b)(1)(vii), respectively.

■ B. Paragraph (b)(1)(ii) is added to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(ii) *Opening fishing season criteria.* NMFS will file with the Office of the Federal Register for publication notification of the opening dates of the shark fishery for each species/complex. Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years;

(C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years;

(D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information;

(E) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas;

(F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(G) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

* * * * *

[FR Doc. 2010–30688 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158–5262–03]

RIN 0648–AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency action; extension of effective period; request for comments.

SUMMARY: This temporary rule extends a closure of Federal waters. The FDA has determined that oceanographic conditions and alga sampling data suggest that the northern section of the Temporary Paralytic Shellfish Poison (PSP) Closure Area remain closed to the harvest of bivalve molluscan shellfish, with the exception of sea scallop adductor muscles harvested and shucked at sea, and that the southern area remain closed to the harvest of whole or roe-on scallops. The regulations contained in the temporary rule, emergency action, first published in 2005, and have been subsequently extended several times at the request of the U.S. Food and Drug Administration (FDA). NMFS is publishing the regulatory text associated with this closure in this temporary emergency rule in order to ensure that current regulations accurately reflect the codified text that has been modified and extended numerous times, so that the public is aware of the regulations being extended.

DATES: The amendments to § 648.14, in amendatory instruction 2, are effective from January 1, 2011, through December 31, 2011. The expiration date of the temporary emergency action published on November 13, 2009 (74 FR 58567), is extended through December 31, 2011. Comments must be received by January 7, 2011.

ADDRESSES: Copies of the Small Entity Compliance Guide, the emergency rule, the Environmental Assessment, and the Regulatory Impact Review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available via the Internet at *http://www.nero.noaa.gov/nero/hotnews/redtide/index.html.*

You may submit comments, identified by RIN 0648–AT48, by any one of the following methods:

- *Mail:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments on PSP Closure."
- *Fax:* (978) 281–9135.
- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, *phone:* (978) 281–9165, *fax:* (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2005, the FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption after samples of shellfish from the area tested positive for the presence of toxins (saxotoxins) that cause PSP. These toxins are produced by the alga *Alexandrium fundyense,* which can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA (*i.e.,* the Temporary PSP Closure Area). Since 2005, the closure has been extended several times and the area has been expanded and divided into northern and southern components. The Northern Temporary PSP Closure Area remained closed to the harvest of all bivalve molluscan shellfish, while the Southern Temporary PSP Closure Area was reopened to the harvest of Atlantic surfclams, ocean quahogs, and sea scallop adductor muscles harvested and shucked at sea. The current closure will expire on December 31, 2010, and this action extends this closure for one additional year, through December 31, 2011.

The boundaries of the northern component of the Temporary PSP Closure Area comprise Federal waters bounded by the following coordinates specified in Table 1 below. Under this emergency rule, this area remains closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops.

TABLE 1—COORDINATES FOR THE NORTHERN TEMPORARY PSP CLOSURE AREA

Point	Latitude	Longitude
1	43°00′ N	71°00′ W
2	43°00′ N	69°00′ W
3	41°39′ N	69°00′ W
4	41°39′ N	71°00′ W
5	43°00′ N	71°00′ W

The boundaries of the southern component of the Temporary PSP Closure Area comprise Federal waters bound by the following coordinates specified in Table 2. Under this emergency rule, the Southern Temporary PSP Closure Area remains closed only to the harvest of whole or roe-on scallops.

TABLE 2—COORDINATES FOR THE SOUTHERN TEMPORARY PSP CLOSURE AREA

Point	Latitude	Longitude
1	41°39′ N	71°00′ W
2	41°39′ N	69°00′ W
3	40°00′ N	69°00′ W
4	40°00′ N	71°00′ W
5	41°39′ N	71°00′ W

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c). Pursuant to section 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant

Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to a public health emergency, and public comment has been solicited concurrently with each of the extensions of this action, as detailed and responded to below. In addition, under section 553(d)(3) there is good cause to waive the 30-day delay in effectiveness due to a public health emergency. The original emergency closure was in response to a public health emergency. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. One comment was received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. The commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, State, and private laboratories. NOAA maintains a Red Tide Information Center (*http://oceanservice.noaa.gov/redtide/*), which can be accessed directly or through the Web site listed in the **ADDRESSES** section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further to ensure the safety of human health.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This rule is not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 2, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14, paragraphs (a)(10)(iii) and (a)(10)(iv) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(10) * * *

(iii) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43°00′ N. lat., 71°00′ W. long.;

(B) 43°00′ N. lat., 69°00′ W. long.;

(C) 41°39′ N. lat., 69°00′ W. long;

(D) 41°39′ N. lat., 71°00′ W. long.; and then ending at the first point.

(iv) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 41°39′ N. lat., 71°00′ W. long.;

(B) 41°39′ N. lat., 69°00′ W. long.;

(C) 40°00′ N. lat., 69°00′ W. long.;

(D) 40°00′ N. lat., 71°00′ W. long.; and then ending at the first point.

* * * * *

[FR Doc. 2010–30871 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 235
Wednesday, December 8, 2010

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1164; Directorate Identifier 2010–NM–057–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Model Astra SPX, 1125 Westwind Astra, and Gulfstream 100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Sponge rubber padding used to provide separation between wheel well fuel lines and electrical harnesses was discovered during fleet maintenance. Use of this type of padding for this purpose is not approved as it is liable to cause corrosion of the fuel lines. Unless steps are taken to remove this padding and install approved separation means, fuel lines may be damaged by corrosion and/or chafing resulting in an unsafe condition due to fuel leakage[, which could result in a fire] in the wheel well area.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 24, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; e-mail *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1164; Directorate Identifier 2010–NM–057–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 28–10–02–01, dated February 22, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Sponge rubber padding used to provide separation between wheel well fuel lines and electrical harnesses was discovered during fleet maintenance. Use of this type of padding for this purpose is not approved as it is liable to cause corrosion of the fuel lines. Unless steps are taken to remove this padding and install approved separation means, fuel lines may be damaged by corrosion and/or chafing resulting in an unsafe condition due to fuel leakage[, which could result in a fire] in the wheel well area.

Corrective actions include installing loop clamps to correct improper separation and removing sponge rubber padding, and repair or replacement of any corroded or chafed fuel lines found after sponge rubber padding removal. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gulfstream Aerospace LP has issued Service Bulletin 100–28–297, dated January 21, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this

AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 130 products of U.S. registry. We also estimate that it would take about 25 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $289,250, or $2,225 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Docket No. FAA–2010–1164; Directorate Identifier 2010–NM–057–AD.

Comments Due Date

(a) We must receive comments by January 24, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Astra SPX, 1125 Westwind Astra, and Gulfstream 100 airplanes, serial numbers 002 through 158 inclusive; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Sponge rubber padding used to provide separation between wheel well fuel lines and electrical harnesses was discovered during fleet maintenance. Use of this type of padding for this purpose is not approved as it is liable to cause corrosion of the fuel lines. Unless steps are taken to remove this padding and install approved separation means, fuel lines may be damaged by corrosion and/or chafing resulting in an unsafe condition due to fuel leakage[, which could result in a fire] in the wheel well area.

Corrective actions include installing loop clamps to correct improper separation, removing sponge rubber padding, and repair or replacement of any corroded or chafed fuel lines found after sponge rubber padding removal.

Compliance

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

Actions

(g) Within 24 months after the effective date of this AD, inspect for the presence of sponge rubber padding on the fuel lines in the wheel well area and inspect the fuel lines and electrical harnesses in the wheel well area for proper separation, in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–28–297, dated January 21, 2010.

(1) If any sponge rubber padding is found, before further flight, remove all sponge rubber padding from the fuel lines, inspect the fuel lines that were covered with the rubber padding for any corrosion and repair or replace as applicable any corroded or chafed fuel lines, in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–28–297, dated January 21, 2010.

(2) If any fuel lines and electrical harnesses are found to not have proper separation, before further flight, install loop clamps in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–28–297, dated January 21, 2010.

(3) If proper separation is found, and no sponge rubber padding is found, no further action is required by this paragraph.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Where Gulfstream Service Bulletin 100–28–297, dated January 21, 2010, specifies to submit a photo of any sponge rubber padding that is found to the manufacturer, this AD does not require that action.

(2) Gulfstream Service Bulletin 100–28–297, dated January 21, 2010, instructs

operators to contact Gulfstream if technical assistance is required. However, any deviation from the instructions provided in that service bulletin must be approved as an alternative method of compliance (AMOC) under the provisions of paragraph (h) of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Israeli Airworthiness Directive 28–10–02–01, dated February 22, 2010; and Gulfstream Service Bulletin 100–28–297, dated January 21, 2010; for related information.

Issued in Renton, Washington, on December 1, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30762 Filed 12–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic And Atmospheric Administration

15 CFR Part 922

[0908041219–0073–01]

RIN 0648–AX79

Amendments to National Marine Sanctuary Regulations Regarding Low Overflights in Designated Zones

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for public comments.

SUMMARY: NOAA proposes to amend the regulations of the Channel Islands, Monterey Bay, Gulf of the Farallones, and Olympic Coast national marine sanctuaries relating to sanctuary overflights. Specifically, NOAA proposes to: amend the regulations requiring that motorized aircraft maintain certain minimum altitudes above specified locations within the boundaries of the listed sanctuaries; and state that failure to comply with these altitude limits is presumed to disturb marine mammals or seabirds and is a violation of the sanctuary regulations.

DATES: Comments on this proposed rule may be made until January 7, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–AX79 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Mail:* Debra Malek, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th floor, Silver Spring, MD 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

ONMS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Debra Malek, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th floor, Silver Spring, MD 20910, (301) 713–3125 Ext. 262.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at *http://www.access.gpo.gov/su-docs/aces/aces140.html.*

I. Background

The National Marine Sanctuaries Act (NMSA) authorizes NOAA to prohibit or otherwise regulate activities to prevent or minimize the destruction of, loss of, or injury to a resource or quality of a national marine sanctuary (16 U.S.C. 1436(1)).

Regulations for the Monterey Bay, Channel Islands, Gulf of the Farallones and Olympic Coast National Marine Sanctuaries all restrict low altitude overflights within specified zones in each sanctuary (subject to certain exceptions) in order to protect marine mammals and seabirds from disturbance by aircraft. At Monterey Bay, Channel Islands, and Gulf of the Farallones, flights below 1000 feet are restricted within the designated zones. At Olympic Coast, flights below 2000 feet are restricted within one nautical mile of Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one nautical mile seaward from the coastal boundary of the sanctuary.

These restrictions vary slightly with each sanctuary. The regulations for the Monterey Bay and Olympic Coast sanctuaries prohibit overflights below a certain level within designated zones—1000 feet in Monterey Bay and 2000 feet in Olympic Coast, as noted above—without requiring a specific showing that marine mammals or seabirds have been disturbed. The regulations for the Channel Islands and the Gulf of the Farallones prohibit disturbing marine mammals or seabirds by flying below 1000 feet within specified zones of the sanctuaries.

With this proposed rule, NOAA seeks to standardize the application of these restrictions by adopting a single, consistent and clearer regulatory approach regarding overflights in these sanctuaries. As proposed, the regulations for each sanctuary would establish a rebuttable presumption that flying motorized aircraft at less than established altitudes within any of the existing zones results in the disturbance

of marine mammals or seabirds. This would mean that if a pilot were observed flying below the established altitude within a designated zone, it would be presumed that marine mammals or seabirds had been disturbed and that a violation of sanctuary regulations had been committed. This presumption of disturbance could be overcome by the introduction of contrary evidence that disturbance did not, in fact, occur (*e.g.,* evidence that no marine mammals or seabirds were present in the area at the time of the low overflight).

Adding a rebuttable presumption to these regulations is justified by ample evidence and the administrative records that were developed for the designations of these sanctuaries. The administrative records establishing the existing restrictions in all four sanctuaries describe the need to protect nearshore and offshore resources from unnecessary disturbance, and explain how low altitude overflights can disrupt various marine mammal and seabird behavior patterns including breeding and nesting. Low overflights in these sites clearly pose a risk of harmful disturbance to marine mammals and seabirds, including movement and evacuation in response to low overflights where the young (pups, chicks, eggs) are crushed during an evacuation or exposed to predation as a consequence of loss of parental protection. Indeed, given the connection between low overflights and disturbance, the Southwest Region of the National Marine Fisheries Service developed marine mammal viewing guidelines for its respective regions (which includes the three California sanctuaries), recommending that aircraft avoid flying below 1000 feet over marine mammals. Similarly, the State of California prohibits overflights less than 1000 feet above designated wildlife habitat areas within the State waters of each sanctuary off of California. In the Olympic Coast National Marine Sanctuary, offshore islands of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuges have high pinnacles that provide important habitats for 14 species of seabirds, warranting the restriction on flights below 2000 feet in this sanctuary to better protect these sanctuary resources. This restriction is further consistent with an advisory published by the Federal Aviation Administration (FAA) that applies to these same areas (FAA Advisory Circular AC 91–36D).

The existing restrictions are not depicted on current FAA aeronautical charts. The FAA has advised NOAA that if this proposed rule is promulgated, it would revise the notation on current aeronautical charts to indicate the sanctuaries' overflight regulations. NOAA expects that the revised notation would likely result in improved compliance and thereby help to ensure the protection of resources under NOAA's stewardship.

II. Summary of the Proposed Amendments

NOAA is proposing to amend ONMS regulations (15 CFR Part 922) for these four sanctuaries. The proposed amendments would clarify NOAA's long-standing regulatory provisions prohibiting low overflights over certain areas within these sanctuaries and more clearly connect the adverse impacts on marine mammals or seabirds caused by low overflights as the regulatory basis for NOAA's flight restrictions.

III. Classification

A. National Environmental Policy Act

The amendments to the sanctuary regulations in the four national marine sanctuaries identified in this notice do not have significant environmental impacts and are categorically excluded from the need to prepare an environmental assessment pursuant to the National Environmental Policy Act. Specifically, the proposed amendments to the regulations are legal in nature, establishing a rebuttable presumption regarding disturbance below a certain level and are thus categorically excluded by NOAA Administrative Order 216–6 Section 6.03c.3(i).

B. Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. Paperwork Reduction Act

This rule does not contain any new or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the regulations as proposed by this rule would not substantively change the effect or impact from the current regulations.

IV. Request for Comments

NOAA requests comments on this proposed rule to make amendments to the overflight regulations in the four national marine sanctuaries identified in this notice. In addition to any other comments on the proposed rule, NOAA invites comments on whether the Agency should prohibit flying aircraft below established minimum altitudes, as opposed to establishing a rebuttable presumption that flying aircraft at less than established altitudes within any of the existing zones results in the disturbance of marine mammals or seabirds.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Environmental protection, Fish, Harbors, Marine pollution, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Research, Water pollution control, Water resources, Wildlife, Overflights.

Dated: November 29, 2010.

David M. Kennedy,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 15 U.S.C. 1431 *et seq.*

Subpart G—Channel Islands National Marine Sanctuary

2. Amend § 922.72 by revising paragraph (a)(5) to read as follows:

§ 922.72 Prohibited or otherwise regulated activities.

(a) * * *

(5) Disturbing marine mammals or seabirds by flying motorized aircraft at

less than 1,000 feet over the waters within one nautical mile of any Island, except to engage in kelp bed surveys or to transport persons or supplies to or from an Island. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

* * * * *

Subpart H—Gulf of Farallones National Marine Sanctuary

3. Amend § 922.82 by revising paragraph (a)(8) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(8) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any ASBS, except to transport persons or supplies to or from the Islands or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

* * * * *

Subpart M—Monterey Bay National Marine Sanctuary

4. Amend § 922.132 by revising paragraph (a)(6) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(6) Disturbing marine mammals or seabirds by flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1,000 feet above any of the four zones within the Sanctuary described in Appendix B to this subpart. Failure to maintain a minimum altitude of 1,000 feet above ground level above any such zone is presumed to disturb marine mammals or seabirds.

* * * * *

Subpart O—Olympic Coast National Marine Sanctuary

4. Amend § 922.152 by revising paragraph (a)(6) to read as follows:

§ 922.152 Prohibited or otherwise regulated activities.

(a) * * *

(6) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 2,000 feet over the waters within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuges or within one nautical mile seaward from the coastal boundary of the Sanctuary, except for activities related to Tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian Tribe. Failure to maintain a minimum altitude of 2,000 feet above ground level any over such waters is presumed to disturb marine mammals or seabirds.

* * * * *

[FR Doc. 2010–30678 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132724–10]

RIN 1545–BJ78

Source of Income From Qualified Fails Charges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations (TD 9508) under section 863(a) of the Internal Revenue Code. These regulations set forth the source of income attributable to qualified fails charges. This action is necessary to provide guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 8, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–132724–10), Room 5203, 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–132724–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–132724–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sheila Ramaswamy or Anthony J. Marra, Office of Associate Chief Counsel (International) (202) 622–3870; concerning submissions of comments or a request for a public hearing, Richard Hurst at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** provide guidance for the treatment of fails charges for purposes of sections 871, 881, 1441 and 1442 by establishing source rules for qualified fails charges that arise in the delivery-versus-payment market for Treasury securities. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be 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. In addition to the specific requests for comments made elsewhere in this preamble or the preamble to the temporary regulations, the IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. A public hearing may be scheduled if requested in writing by any person who timely

submitted written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Sheila Ramaswamy and Anthony J. Marra, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department have participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 863(a) and 7805 * * *

Par. 2. Section 1.863–10 is added to read as follows:

§ 1.863–10 Source of income from a qualified fails charge.

[The text of proposed § 1.863–10 is the same as the text of § 1.863–10T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–30896 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1029]

RIN 1625–AA09

Drawbridge Operation Regulation; Fox River, Oshkosh, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish remote drawbridge operating procedures for the Canadian National Railway Bridge across the Fox River at Mile 55.72 at Oshkosh, Wisconsin. This proposed rule is intended to establish standard bridge operating conditions for both vessel and train traffic while allowing the bridge to be remotely operated.

DATES: Comments and related material must reach the Coast Guard on or before January 7, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1029 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard; telephone 216–902–6085, e-mail *lee.d.soule@uscg.mil,* or fax 216–902–6088. 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–2010–1029), 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 (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG–2010–1029" 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 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–2010–1029" 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 one 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 drawbridge owner, Canadian National Railway (CN RR), requested that the District Commander approve remote operation of the drawbridge in accordance with 33 CFR 117.42. The drawbridge has been remotely operated without specific authorization from the District Commander for approximately 3–4 years, and is currently required to open on signal year round. Vessel operators have recently informed the Coast Guard that the drawbridge formerly was left in the open-to-navigation position and only closed when a train was crossing, but this practice was no longer used and vessels have been experiencing unreasonable delays. The Coast Guard has determined that the bridge could continue to be remotely operated as long as it also provided for the reasonable needs of navigation. This rule is also necessary to comply with 33 CFR 117.42 by providing a description of the full operation of the remotely operated drawbridge. This bridge is a swing type railroad bridge that provides a horizontal clearance of 70 feet in each draw span. The vertical clearance is 6 feet in the closed position.

Discussion of Proposed Rule

Between April 15 and October 15 each year, the proposed regulation would require the bridge to remain in the open-to-navigation position unless train traffic is crossing, then reopen once train traffic has passed. The bridge would also be required to maintain and operate a marine radiotelephone, along with equipment to visually monitor the waterway and communicate with vessels using all signaling methods described in 33 CFR 117.15. The proposed light and sound signals would provide vessels with a method of warning when the bridge is expected to either close for train traffic or reopen for vessel traffic without having to establish direct communication with the remote bridge operator. The proposed regulation also establishes a permanent winter operating schedule by requiring vessels to provide at least 12-hours advance notice for a bridge opening during winter, or during the traditional non-boating season, between October 16 and April 14 each year.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is expected to improve intermodal transportation at the bridge crossing and does not exclude either vessel or train traffic.

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. The proposed regulation is expected to increase availability of the drawbridge for vessel traffic and potentially increase access by, and to, small entities on the waterway.

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 Mr. Lee D. Soule, Bridge Management Specialist, U. S. Coast Guard; telephone 216–902–6085, e-mail *lee.d.soule@uscg.mil*, or fax 216–902–6088. 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 will 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 guides 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 which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 § 117.1087 add paragraph (e) to read as follows:

§ 117.1087 Fox River.

* * * * *

(e) The draw of the Canadian National Bridge, mile 55.72, at Oshkosh, shall operate as follows:

(1) From April 15 to October 15 the draw will be remotely operated and shall remain in the open position for vessel traffic unless the following train sequence occurs; when a train is scheduled to cross the bridge, a flashing red light will be displayed when the bridge will close in 10 minutes, then a fixed red light when the bridge will close in 5 minutes, then a flashing red light and continuous ringing bell when the bridge will close in 1 minute, and during the closing sequence. After train traffic has crossed, and when the bridge again opens for vessel traffic, a flashing red light and continuous ringing bell will be displayed when the bridge will open in 1 minute, and during the opening sequence.

(2) From October 16 to April 14 the draw shall open on signal if at least a 12 hour advance notice is provided.

(3) Before the bridge opens or closes, and while the draw is in motion, the remote operator shall monitor waterway traffic by remote visual inspection to show the waterway is clear and it is safe to operate the draw. The remote operator shall also announce that the bridge is opening or closing on VHF–FM Marine Radiotelephone. The owners of the bridge shall maintain 2 board gauges in accordance with 33 CFR 118.160 of this chapter. The remote drawtender may be contacted by mariners at anytime by radiotelephone or commercial phone number; this information shall be so posted on the bridge so that they are plainly visible to vessel operators approaching the up or downstream side of the bridge.

Dated: November 23, 2010.

M.N. Parks,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 2010–30740 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1030]

RIN 1625–AA09

Drawbridge Operation Regulation; Duluth Ship Canal, Duluth-Superior Harbor, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a drawbridge opening schedule for the Duluth Aerial Lift Bridge for vessels under 300 gross tons. Scheduled drawbridge openings were requested by various local entities to help reduce traffic congestion near the drawbridge during the peak navigation and tourist season. The scheduled drawbridge openings are expected to improve traffic congestion in the area and enhance safety for all modes of transportation.

DATES: Comments and related material must reach the Coast Guard on or before January 7, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1030 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

To avoid duplication, please use only one of these four methods. *See* the

"Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902–6085, e-mail *Lee.D.Soule@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–2010–1030), 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 (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG–2010–1030" 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 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–2010–1030" 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 one 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 Duluth Aerial Bridge is located 0.25 miles from Duluth Harbor North Pier Light at the lakeward end of the Duluth Ship Canal. It is a vertical lift type bridge that provides 15 feet of vertical clearance in the down position and up to 141 feet in the open position. The bridge currently opens on signal for all vessel traffic that requires a bridge opening. Marine traffic on the waterway consists of large commercial vessels, smaller commercial vessels, and both power and sail recreational vessels.

Various entities in Duluth that requested the scheduled openings included: City of Duluth, Duluth Fire Department-Emergency Management, Duluth Police Department, Park Point Community Association, and Canal Park Business Association. The scheduled drawbridge openings were requested during the peak navigation and tourist season to improve the flow of vehicular traffic over the bridge, relieve vehicular traffic congestion near the bridge and on city streets on both sides of the bridge (Park Point and Canal Park), improve access and response times for emergency response entities, and enhance pedestrian safety in the vicinity of the bridge.

Commander, Ninth Coast Guard District, approved a temporary deviation from regulations, with request for comments, that was published in the April 22, 2010, issue of the **Federal Register** (75 FR 20918). The temporary deviation was constructed to be used as a test bridge schedule during the 2010 navigation and tourist season. The test schedule allowed for scheduled bridge openings on the hour and half-hour for all vessels under 300 gross tons between the hours of 6 a.m. and 9 p.m., seven days per week, and on signal between 9 p.m. and 6 a.m., from May 3 to October 29, 2010. The bridge continued to open at all times for all vessels over 300 gross tons and Federal, State, and local government vessels, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, vessels engaged in pilot duties, and vessels seeking shelter from severe weather. Written comments regarding the test schedule were solicited throughout the period.

The Coast Guard received four (4) comments regarding the test schedule that were successfully received by the Docket Management Facility. Three of the comments were from charter fishermen operating out of Duluth Harbor. The fourth comment was from a representative of Duluth Seaway Port Authority. The comments from charter fishermen generally cited objections to the scheduled bridge openings for their type of vessels. Among the comments were statements regarding inconsistencies by bridge operators for openings, concerns for vessel safety due to smaller power vessels operating in the canal at high speeds among vessels waiting for bridge openings, and dates and times of the day that the scheduled openings should apply; specifically, that the scheduled openings should not be in place before 7:30 a.m. each day. The Port Authority commenter stated that the scheduled openings should not apply to commercial vessels of any size

that support the commercial cargo business in the port, as well as research and survey vessels. The Port Authority comment also included a recommendation to adjust the dates and times that scheduled drawbridge openings would apply.

In addition to the written comments, a stakeholders meeting was held in Duluth on October 20, 2010, to review and evaluate the test drawbridge schedule and receive comments. The stakeholders meeting included representatives from Coast Guard, City of Duluth, Duluth Seaway Port Authority, Park Point Community Association, Canal Park Business Association, Great Lakes Towing Company, Vista Cruise Lines, Duluth Yacht Club, and Charter Fishermen.

Discussion of Proposed Rule

The City of Duluth collected data throughout the test period related to vehicular and vessel traffic counts, and the number of bridge openings. In addition to the data collected, each stakeholder had the opportunity to amplify their written comments and provide additional direct input to the Coast Guard during the October 20, 2010, meeting. During the stakeholder meeting it was generally agreed by all parties that the scheduled bridge openings appeared to improve the general flow of vehicular traffic on both sides of the bridge and reduced vehicular traffic congestion. The claim of inconsistencies by the bridge operators was discussed, and appeared to be isolated to only a few incidents. They also occurred near the beginning of the test period and can reasonably be attributed to all parties adjusting to the scheduled bridge openings. The Port Authority and Great Lakes Towing Company representatives stated their positions that towing vessels engaged in port operations should be specifically included with vessels that continue to have bridge openings at any time (on signal). The proposed rule has been adjusted to include these types of vessels for openings on signal. Research and survey vessels operating from Duluth Harbor were also requested to be specifically included in this group. This class of vessels is considered public or government vessels and may request bridge openings on signal. Only a minor adjustment to the proposed language is needed to address this statement. The comment regarding vessels operating at unsafe speeds in the canal is considered a law enforcement issue and not related to the scheduled drawbridge openings. The Coast Guard will take these reports into consideration. Regarding the time of year and hours each day that the scheduled openings would apply, it was generally agreed during the stakeholders meeting that the scheduled openings would be beneficial and effective between Memorial Day and Labor Day each year, instead of the beginning of May to the end of October, as it was implemented for the test schedule. The scheduled opening hours during the test schedule were from 6 a.m. to 9 p.m. each day. It was requested that the scheduled openings start at 7:30 a.m. instead of 6 a.m. The later start time was requested to allow for the charter fishermen to obtain bridge openings for their first trip of the day during a time when vehicular traffic is still relatively light. The data collected by the City of Duluth supports the agreed change to the dates that the scheduled openings would apply. The data also identifies that the requested time each day to start scheduled openings should be 7 a.m. instead of 6 a.m. or 7:30 a.m. In addition to the vehicular traffic data below that indicates a clear increase in rush hour traffic between 7 and 8 a.m., bridge opening logs showed that the first trip each day for most charter fishermen occurred before 7 a.m. In order to maintain an effective bridge schedule that accomplishes the purpose of managing traffic congestion while still providing for the reasonable needs of navigation, the proposed rule adjusts the times for scheduled openings from 7 a.m. to 9 p.m. The later time was also discussed and determined to remain at 9 p.m. since there is still considerable vehicular traffic departing the public park area on Minnesota Point around this hour between Memorial Day and Labor Day. Additionally, the 9 p.m. time does not adversely affect any vessel traffic. The data below collected by City of Duluth illustrates support for the agreed adjustments during the stakeholders meeting:

TOTAL VESSELS UNDER 300 GROSS TONS

	May	June	July	Aug	Sep	Oct
2009	383	1287	2015	1974	1331	212
2010	528	1066	2088	1430	1016	380
Total Bridge Openings						
2009	320	841	1097	1184	800	350
2010	300	576	860	630	752	429

TOTAL VEHICLES (BOTH DIRECTIONS)

[Vehicular counts were not collected in 2009]

	May	June	July	Aug	Sep	Oct
2010	102,564	210,539	266,000	230,668	160,591	163,110

TOTAL AVERAGE VEHICLES FOR EACH HOUR

	6 a.m.–7 a.m.	7 a.m.–8 a.m.
June	68.20	97.53
July	58.77	87.80
August	50.04	84.09

In addition to the two scheduled openings per hour, vessels will continue to have access to the harbor through the alternate Superior, Wisconsin, Entry Channel, and passage of the Aerial Bridge during unscheduled openings for commercial vessels. The proposed schedule is expected to provide for the reasonable balance of all modes of transportation and effectively accomplish the requested goal of improving traffic congestion and safety in the area of the Duluth Aerial Bridge.

This proposed regulation also adjusts the current required advance notice requirement for vessels from 24-hours to 12-hours vessels between January 1 and March 15.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is expected to improve traffic congestion and safety in the vicinity of the drawbridge and does not exclude bridge openings for vessel traffic.

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. The proposed rule continues to provide at least two drawbridge openings per hour between 7 a.m. and 9 p.m. each day, and openings at any time during all other hours, as well as during unscheduled transits of commercial vessels. The test schedule implemented this year resulted in only minor adjustments in schedules or operations for all entities. Additionally, all vessels that do not require bridge openings may transit the drawbridge at any time, and the alternate Superior, Wisconsin, Entry Channel may be used by all vessels at any time.

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 Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard, telephone 216–902–6085, e-mail *lee.d.soule@uscg.mil,* or fax 216–902–6088. 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 will 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 guides 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 which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Revise § 117.661 to read as follow:

§ 117.661 Duluth Ship Canal (Duluth-Superior Harbor).

The draw of the Duluth Ship Canal Aerial bridge, mile 0.25 at Duluth, shall open on signal; except that, from the Friday before Memorial Day through the Tuesday after Labor Day each year, between the hours of 7 a.m. and 9 p.m., seven days a week, the drawbridge shall open on the hour and half-hour for vessels under 300 gross tons, if needed; and the bridge will open on signal for all vessels from 9 p.m. to 7 a.m., seven days a week, and at all times for Federal, State, and local government vessels, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, commercial-assist towing vessels engaged in towing or port operations, vessels engaged in pilot duties, vessels seeking shelter from severe weather, and all vessels 300 gross tons or greater. From January 1 through March 15, the draw shall open on signal if at least 12 hours notice is given. The opening signal is one prolonged blast, one short blast, one prolonged blast, one short blast. If the drawbridge is disabled, the bridge authorities shall give incoming and outgoing vessels timely and dependable notice, by tug service if necessary, so that the vessels do not attempt to enter the canal.

Dated: November 23, 2010.

M.N. Parks,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 2010–30739 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1134]

RIN 1625–AA87

Security Zone; Vessels Carrying Hazardous Cargo, Sector Columbia River Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a 500 yard security zone around vessels carrying hazardous cargo, as determined by the Captain of the Port (COTP) Columbia River, when such vessels are located in the Sector Columbia River COTP Zone as defined in 33 CFR 3.65–15 and the COTP Columbia River determines that a security zone is necessary and enforcement of that security zone is practicable. The security zones will help ensure the security of the vessels themselves as well as the maritime public due to the hazardous nature of the cargo on board.

DATES: Comments and related material must be received by the Coast Guard on or before March 8, 2011. Requests for public meetings must be received by the Coast Guard on or before January 24, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2009–1134 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Columbia River; telephone 503–240–9319, e-mail *Jaime.A.Sayers@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–2009–1134), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online(via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* 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–2009–1134" 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 we 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–2009–1134" 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, system of records 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 January 24, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Vessels carrying hazardous cargo occasionally operate in the Sector Columbia River COTP Zone. Examples of hazardous cargoes include, but are not limited to, liquefied petroleum gas, ammonium nitrate and associated mixtures, anhydrous ammonia, and chlorine. The security zones that would be created by this rule will help ensure the security of the vessels themselves as well as the maritime public in general by prohibiting all persons or vessels from coming within 500 yards of such vessels while located in Sector Columbia River COTP Zone. In the past, the COTP Columbia River has issued temporary security zones to cover certain vessels carrying hazardous cargo.

Discussion of Proposed Rule

The Coast Guard proposes the establishment of a 500 yard security zone around any vessel carrying hazardous cargo, as determined by the COTP Columbia River, when such a vessel is located in the Sector Columbia River COTP Zone as defined in 33 CFR 3.65–15 and the COTP Columbia River determines that a security zone is necessary and enforcement of that security zone is practicable.

All persons and vessels would be prohibited from entering or remaining in the security zone unless authorized by the COTP Columbia River. The maritime public will be notified when a security zone is effective via the presence of one or more Coast Guard vessels to enforce the zone and a local broadcast notice to mariners.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the security zones created by this rule will only be in effect during the limited periods of time when vessels carrying hazardous cargo, as determined by the COTP Columbia River, are located in the Sector Columbia River COTP Zone. In addition, maritime traffic will be able to transit around the security zones or, if necessary, may be allowed to transit through the security zones with permission from the COTP Columbia River.

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 proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate in an area covered by a security zone created by this rule. The security zones created by this rule will not have a significant economic impact on a substantial number of small entities, however, because they will only be in effect during the limited periods of time when vessels carrying hazardous cargo, as determined by the COTP Columbia River, are located in the Sector Columbia River COTP Zone. In addition, maritime traffic will be able to transit around the security zones or, if necessary, may be allowed to transit through the security zones with permission from the COTP Columbia River.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this 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 MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Columbia River at telephone 503–240–9319. 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. We invite your comments on how this proposed rule might impact Tribal governments, even if that impact may not constitute a "Tribal implication" under the Order.

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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a security zone. Therefore, this rule would be categorically excluded under Figure 2–1, paragraph (34) (g) of Commandant Instruction M16475.1D, which addresses regulations establishing, disestablishing, or changing regulated navigable areas and security or 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. 1226, 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 § 165.1335 to read as follows:

§ 165.1335 Security Zone; Vessels Carrying Hazardous Cargo, Sector Columbia River Captain of the Port Zone.

(a) *Location.* The following area is a security zone: All waters within 500 yards, in all directions, of any vessel carrying hazardous cargo, as determined by the Captain of the Port (COTP) Columbia River, while such a vessel is located in the Sector Columbia River COTP Zone as defined in 33 CFR 3.65–15 and the COTP Columbia River determines that a security zone is necessary and enforcement of the security zone is practicable.

(b) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel may enter or remain in a security zone created by this section without the permission of the COTP Columbia River or his/her designated representative. Designated representatives are Coast Guard personnel authorized by the COTP Columbia River to grant persons or vessels permission to enter or remain in a security zone created by this section. Subpart D of 33 CFR part 165 contains additional provisions applicable to a security zone created by this section.

(2) To request permission to enter a security zone created by this section, contact Coast Guard Sector Columbia River at telephone number 503–861–

6212 or via VHF channel 16 (156.8 MHz) or VHF channel 22 (157.1 MHz).

(c) *Notification.* When a security zone is created by this section, one or more Coast Guard vessels will be present to enforce the security zone and the COTP Columbia River will issue a local broadcast notice to mariners.

Dated: November 5, 2010.

D.E. Kaup,

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

[FR Doc. 2010–30738 Filed 12–7–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2010–0683; FRL–9235–3]

Extension of Public Comment Period and Postponement of Public Hearings for Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Notice of extended public comment period and postponed public hearings.

SUMMARY: On October 19, 2010, EPA published in the **Federal Register** our proposed determination of the Best Available Retrofit Technology (BART) for the Four Corners Power Plant and requested comment by December 20, 2010. EPA is extending the public comment period until March 18, 2011, for our proposed BART determination. EPA is also postponing the open houses and public hearings announced in the **Federal Register** on November 12, 2010 and will provide additional notice and details of the rescheduled hearings at a later time.

DATES: Comments must be submitted no later than March 18, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0683, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions.

E-mail: r9air_fcppbart@epa.gov.

Mail or deliver: Anita Lee (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

FOR FURTHER INFORMATION CONTACT: If you have questions please contact Anita Lee, EPA Region IX, (415) 972–3958, *r9air_fcppbart@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 19, 2010, the Region 9 Office of the United States Environmental Protection Agency (EPA) proposed a Source Specific Federal Implementation Plan to implement the Best Available Retrofit Technology for Four Corners Power Plant, located on the Navajo Nation (75 FR 64221). The Clean Air Act's Regional Haze Rule requires the use of Best Available Retrofit Technology (BART) at older coal-fired power plants to reduce haze and improve visibility.

On November 12, 2010, EPA published in the **Federal Register** (75 FR 69373) a notice of three sets of open houses and public hearings to be held at three locations in the Four Corners Area on December 6–9, 2010. EPA is postponing the open houses and public hearings and will provide additional notice and details of the rescheduled hearings at a later time.

EPA published notices of open houses and public hearings, to be held December 7–9, 2010 in Shiprock, NM, Farmington, NM, and Durango, CO, in the Farmington Daily Times and the Durango Herald on November 3, 2010 and the Navajo Times on November 4, 2010. Notice of these hearings was additionally published in the **Federal Register** on November 12, 2010 (75 FR 69373). On Thursday, November 11, 2010, EPA published notice in the Navajo Times of an additional open house and public hearing to be held at the Nenahnezad Chapter House in Fruitland, NM. The public comment period for the proposal was scheduled to close on December 20, 2010.

EPA proposed requiring the Four Corners Power Plant to meet a plant-wide limit of 0.11 lb/MMBtu, representing an 80% reduction in emissions of nitrogen oxides (NO_X) to achieve cleaner, healthier air while improving the visibility at sixteen of our most pristine national parks and wilderness areas. EPA's proposal can be achieved by installing and operating selective catalytic reduction (SCR) on all five units. EPA is also proposing a particulate matter (PM) emission limit of 0.012 lb/MMBtu for the three smaller units that will require additional controls for fine particles, and is also requesting comment on whether BART can be met on the three smaller units by requiring an emission limit of 0.03 lb/MMBtu with a 20% opacity limit. Reduction of fine particles may help reduce the visible secondary plume that is often emanating from these three units. For the two larger units at Four Corners Power Plant, EPA is proposing an emission limit of 0.015 lb/MMBtu, achievable with proper operation of the existing baghouses.

On November 9, 2010, EPA met with representatives from Arizona Public Service (APS), co-owner and operator of FCPP. APS discussed an alternative proposal that calls for shutting down Units 1–3 at FCPP by 2014 and installing SCR on Units 4 and 5 by 2018. APS claims this plan will result in larger emissions reductions than EPA's proposal without layoffs at the facility. A record of this meeting has been posted to the docket for this proposed rulemaking. APS plans to submit their alternative proposal and supporting analysis to EPA shortly. EPA will make this submittal from APS available from our docket when it is received. The link to the docket can be reached at the following Web site: *http://www.epa.gov/region9/air/navajo/index.html#proposed* or from *http://www.regulations.gov,* identified by EPA Docket Number: EPA–R09–OAR–2010–0683.

EPA is extending the public comment period for our proposal to March 18, 2011 and postponing the scheduled open houses and public hearings to allow EPA and the public time to assess the alternative proposal submitted by APS. EPA may supplement our proposal with additional information following our analysis of APS' submission. If EPA supplements our original proposal, we will publish the supplement in the **Federal Register** and provide supporting documentation in our docket. The dates for the rescheduled open houses and public hearings have

not yet been determined, but EPA will provide notice of the rescheduled open houses and hearings in local newspapers, in our docket, and on our Web site at least 30 days prior to the events.

EPA's proposed rule was published in the **Federal Register** on October 19, 2010 (75 FR 64221) and can be accessed the following Web site: *http://www.epa.gov/region9/airnavajo/index.html#proposed.* EPA has established a public docket for the proposed rulemaking under the docket number EPA–R09–OAR–2010–0683.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). Due to building security procedures, to inspect the hard copy materials, please schedule an appointment at least 24 hours in advance during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: November 22, 2010.

Deborah Jordan,

Air Division Director, Region IX.

[FR Doc. 2010–30841 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0671; FRL–9236–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve a July 29, 2010, request from the State of Illinois to exempt sources of Nitrogen Oxides (NO_X) in the Illinois portions of the Chicago-Gary-Lake County, Illinois-Indiana and St. Louis, Missouri-Illinois 8-hour ozone nonattainment areas from Clean Air Act (CAA) requirements for NO_X Reasonably Available Control Technology (RACT) for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The State's NO_X RACT waiver request is based on the most recent three years of complete, quality-assured ozone monitoring data, which demonstrate that additional reduction of NO_X emissions in the ozone nonattainment areas would not contribute to attainment of the 1997 8-hour ozone NAAQS in the two ozone nonattainment areas. In addition to waiving the NO_X RACT requirement for the State of Illinois, final approval of the NO_X RACT waiver would also suspend a requirement for EPA to promulgate a NO_X RACT Federal Implementation Plan (FIP) for the 8-hour ozone nonattainment areas.

DATES: Comments must be received on or before January 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0671, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 692–2551.
- *Mail:* John M. Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0671. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified in the proposed rule.

II. What is the background for this action?

EPA has determined that ground-level ozone (O_3) is detrimental to human health. On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone NAAQS of 0.08 parts per million parts of air (ppm). The standard is violated in an area when any ozone monitor in the area (or in its downwind environs) records 8-hour ozone concentrations with a 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 0.085 ppm.

Section 107 of the CAA required EPA to designate as nonattainment any area that violated the 1997 8-hour ozone standard. The 8-hour ozone designations and classifications were promulgated on April 30, 2004 (69 FR 23857). In that EPA rulemaking, the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) and St. Louis, Missouri-Illinois (MO-IL) areas were designated as nonattainment for the 1997 8-hour ozone NAAQS, and the designations became effective on June 15, 2004.

Ground-level ozone is not generally emitted directly by sources. Rather, emitted NO_X and Volatile Organic Compounds (VOC) react in the presence of sunlight to form ground-level ozone, as a secondary compound, along with other secondary compounds. NO_X and VOC are referred to as "ozone precursors." Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO_X emissions.

The CAA, title 1, part D contains two sets of provisions—subparts 1 and 2—that address planning and emission control requirements for ozone nonattainment areas. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for ozone nonattainment areas classified under section 181 of the CAA. The Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL areas are classified as moderate nonattainment areas under the 1997 8-hour ozone NAAQS.[1]

The subpart 2 ozone plan requirements under the CAA with respect to control of VOC and NO_X emissions depend on the ozone nonattainment classification of an area. The air quality planning and control requirements for the reduction of NO_X emissions are contained in section 182(f) of the CAA. Section 182(f) requires States with areas classified as moderate nonattainment and above to adopt and implement the same level of NO_X emission controls for major stationary sources as are required for major stationary sources of VOC emissions. Section 182(f) also provides that these NO_X emission reduction requirements do not apply to an area outside of an ozone transport region if EPA determines that additional reductions of NO_X emissions would not contribute to attainment of the ozone standard in the area. In areas where the ozone standard is attained, as demonstrated by complete, quality-assured air quality data, without the implementation of the additional section 182(f) NO_X emission controls, it is clear that the additional NO_X emission reductions required by section 182(f) did not contribute to attainment of the ozone standard.

On March 17, 2008, EPA notified Douglas P. Scott, Director of the Illinois EPA, that EPA had determined that the State of Illinois had failed to submit a CAA-required NO_X RACT State Implementation Plan (SIP) revision (the NO_X RACT emission control rules) for the Illinois portions of the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL ozone nonattainment areas. EPA formalized this finding in the **Federal Register** on March 24, 2008 (73 FR 15416), and that action commenced the sanctions process outlined by section 179 of the CAA and 40 CFR 52.31. *See* 59 FR 39832, August 4, 1994. Under this process, the new source two-to-one (2:1) emissions offset sanction would take effect in the Illinois ozone nonattainment areas on September 24, 2009. The sanctions clock would run and any imposed sanctions would remain in effect until either a NO_X RACT SIP revision is submitted to EPA by the State of Illinois and is affirmatively determined complete by EPA, or a NO_X control waiver, under section 182(f), is granted by EPA.

On September 1 and 2, 2009, the Illinois EPA submitted adopted NO_X emission control regulations, as a requested SIP revision, to meet the CAA NO_X RACT requirement. On September 16, 2009, EPA determined this SIP revision submittal to be complete, terminating the sanctions clock activated on March 24, 2008.[2] EPA continues to review this SIP revision, but has not yet completed rulemaking on this requested SIP revision. Therefore, the Illinois SIP does not yet contain the Illinois NO_X emission control rules. In addition, it is noted that Illinois has not yet completed implementation of the NO_X emission control rules.

The criteria established for determining the applicability of section 182(f) NO_X emission controls and the evaluation of section 182(f) NO_X emission control waiver requests are set forth in a January 14, 2005, EPA policy memorandum, "Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation," from Stephen D. Page, Director, Office of Air Quality Planning and Standards.

[1] On May 11, 2010 (75 FR 26113), EPA published a final rule to redesignate Lake and Porter Counties, Indiana to attainment of the 1997 8-hour ozone NAAQS. The Illinois portion of the Chicago-Gary-Lake County, IL-IN area remains designated as a nonattainment area for the 1997 8-hour ozone NAAQS.

[2] Termination of the sanctions clock did not suspend or terminate a FIP clock (also started on March 24, 2008) requiring EPA to promulgate a NO_X RACT FIP within two years of the determination that Illinois had failed to submit required NO_X RACT rules. The FIP clock can only be terminated (EPA's obligation to promulgate a FIP is ended) if EPA approves Illinois' NO_X emission control rules as NO_X RACT in the Illinois SIP or suspended if EPA approves a waiver of the NO_X RACT requirement for both of the ozone nonattainment areas. If the FIP clock is suspended through approval of the NO_X RACT waiver, the suspension of the FIP clock continues only as long as the two ozone nonattainment areas continue to attain the 1997 8-hour ozone NAAQS. The FIP clock is terminated if EPA approves the redesignation of both areas (the Illinois portions of the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL 8-hour ozone nonattainment areas) to attainment of the 1997 8-hour ozone NAAQS.

III. State Petition

On July 29, 2010, Illinois EPA submitted a request for a NO_X RACT waiver for the Illinois ozone nonattainment areas.[3] This NO_X RACT waiver was requested for the 1997 8-hour ozone standard. Illinois EPA requested that EPA consider the NO_X emission control rules submitted on September 1 and 2, 2009, for approval as NO_X RACT in the Illinois SIP under a possible new ozone standard that EPA is currently considering.

Illinois EPA based its NO_X RACT waiver request on ozone air quality data for 2007–2009, which demonstrate that the 1997 8-hour ozone NAAQS has been attained in the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL areas without the implementation of NO_X RACT in the Illinois portions of these areas.

IV. EPA Review of the Petition

A. Have the ozone nonattainment areas attained the 1997 8-hour ozone NAAQS?

An area may be considered to be attaining the 1997 8-hour ozone standard if there are no violations of the standard, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three years of complete, quality-assured air quality monitoring data at all ozone monitoring sites in the area and in its nearby downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitoring site over the most recent 3-year period (the monitoring site's ozone design value) must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR 50, appendix I, the 1997 8-hour ozone standard is attained if the area's ozone design value[4] is 0.084 ppm or less. The data must be collected and quality-assured in accordance with 40 CFR 58, and must be recorded in EPA's Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for duration of the monitoring period required to demonstrate attainment of the ozone standard. The data supporting attainment of the standard must be complete in accordance with 40 CFR 50, appendix I.

Table 1 summarizes the annual fourth-high daily maximum 8-hour ozone concentrations and their 3-year (2007–2009) averages for all monitors in the Chicago-Gary-Lake County, IL-IN area and for the Chiwaukee Prairie monitoring site in Wisconsin (considered to be a high ozone monitor in the downwind environs of the Chicago-Gary-Lake County, IL-IN area). These data reflect peak ozone concentrations quality assured and reported by the States of Illinois, Indiana, and Wisconsin.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND 3-YEAR AVERAGES FOR THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA

State/monitoring site	2007	2008	2009	3-Year average
Indiana Monitoring Sites				
Gary	0.085	0.062	0.058	0.068
Hammond	0.077	0.068	0.065	0.070
Ogden Dunes	0.084	0.069	0.067	0.073
Valparaiso	0.080	0.061	0.064	0.068
Whiting	0.088	0.062	0.062	0.071
Illinois Monitoring Sites				
Alsip	0.085	0.066	0.069	0.073
Chicago-Cheltenham	0.082	0.066	0.065	0.071
Chicago-Adams	0.084	0.058	0.076	0.073
Chicago-Ellis Avenue	0.079	0.063	0.060	0.068
Chicago-Ohio Street	0.075	0.063	0.062	0.067
Chicago-Lawndale	0.080	0.066	0.067	0.071
Chicago-Hurlbut Street	0.079	0.063	0.064	0.069
Lemont	0.085	0.071	0.067	0.074
Cicero	0.068	0.060	0.067	0.065
Northbrook	0.076	0.063	0.069	0.069
Evanston	0.080	0.058	0.064	0.067
Lisle	0.072	0.057	0.059	0.063
Waukegan	0.081	0.061	0.057	0.066
Illinois Beach State Park	0.080	0.067	0.075	0.074
Cary	0.074	0.063	0.066	0.068
Essex Road	0.071	0.057	0.063	0.064
Wisconsin Monitoring Site				
Chiwaukee Prairie	0.085	0.069	0.071	0.075

[3] The Illinois portion of the Chicago-Gary-Lake County, IL-IN 8-hour ozone nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, and portions of Grundy (Aux Sable and Goose Lake Townships) and Kendall (Oswego Township) Counties. The Illinois portion of the St. Louis, MO-IL 8-hour ozone nonattainment area includes Jersey, Madison, Monroe, and St. Clair Counties.

[4] The worst-case monitoring site-specific ozone design value in the area and in its downwind environs.

Table 2 summarizes the annual fourth-high daily maximum 8-hour ozone concentrations and their 3-year (2007–2009) averages for all monitors in the St. Louis, MO-IL area. These data reflect peak ozone concentrations quality assured and reported by the States of Illinois and Missouri.

TABLE 2—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGES IN PPM FOR THE ST. LOUIS, MO-IL AREA

State/monitoring site	2007	2008	2009	3-Year average
Illinois Sites				
Jerseyville	0.075	0.069	0.068	0.070
Alton	0.081	0.068	0.067	0.072
Maryville	0.087	0.070	0.074	0.077
Wood River	0.086	0.067	0.066	0.073
East St. Louis	0.077	0.064	0.069	0.070
Missouri Sites				
Arnold	0.087	0.070	0.070	0.075
Orchard Farm	0.083	0.072	0.072	0.075
West Alton	0.089	0.076	0.071	0.078
Maryland Heights	0.094	0.069	0.067	0.076
Pacific	0.085	0.064	0.064	0.071
Blair Street	0.087	0.073	0.065	0.075

Review of the 2007–2009 ozone concentrations and site-specific ozone design values (3-year averages) in Tables 1 and 2 shows that all of the ozone monitoring sites in the two areas were attaining the 1997 8-hour ozone NAAQS during this period. Therefore, based on the most recent three years of quality-assured ozone monitoring data, the 1997 8-hour ozone standard has been attained in these areas. Preliminary 2010 ozone data show that the 1997 8-hour ozone standard continues to be attained in the two areas.

B. EPA's Analysis of Illinois' NO_X RACT Waiver Petition

EPA's guidance document, "Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation," sets forth the criteria for demonstrating that further NO_X emission reductions in an ozone nonattainment area will not contribute to ozone attainment. The guidance provides that three consecutive years of monitoring data documenting ozone levels attaining the ozone NAAQS in areas in which a State has not implemented certain NO_X emission controls is adequate to demonstrate that the additional NO_X emission reductions will not aid in achieving attainment of the ozone NAAQS. As described in the guidance document, approval of the NO_X emission control exemption is granted by the EPA on a contingent basis. The NO_X emission control exemption continues only as long as the State continues to monitor attainment of the ozone NAAQS. If, prior to redesignation of the area to attainment of the ozone NAAQS, the area violates the 1997 8-hour ozone NAAQS, as defined at 40 CFR 50.10 and appendix I, EPA will undertake rulemaking to withdraw the NO_X emission control exemption, the area would once again be subject to the NO_X emission control requirements under section 182(f) of the CAA.

EPA's review of the ozone monitoring data and Illinois' NO_X emission control exemption request shows that Illinois has complied with the requirements for a NO_X RACT exemption in the State's 8-hour ozone nonattainment areas under section 182(f) of the CAA consistent with the guidelines contained in EPA's January 14, 2005, guidance document. Therefore, EPA proposes to determine that the State of Illinois qualifies for exemption from NO_X RACT requirements for the Illinois portions of the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL ozone nonattainment areas for the purposes of attaining the 1997 8-hour ozone NAAQS.

V. What are the environmental effects of this action?

The section 182(f) NO_X RACT exemption is based on a finding that additional reductions of NO_X would not contribute to attainment of the 1997 8-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL ozone nonattainment areas. These areas have three consecutive years of ozone levels attaining the ozone standard even though Illinois has not implemented NO_X RACT rules.

While EPA is proposing to waive the requirements to control NO_X emissions through NO_X RACT in the Illinois ozone nonattaiment areas on the basis that NO_X emission reductions would not contribute to attainment of the ozone NAAQS in the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL areas, EPA recognizes that there are other benefits to controlling NO_X emissions. These benefits include reducing acid deposition, reducing nitrogen deposition in sensitive wetlands, estuaries, and their watersheds, and mitigating ozone transport to downwind ozone nonattainment areas. Illinois will continue to be required to control NO_X emissions from certain NO_X sources under other CAA programs, such as the Acid Rain program in title IV of the CAA, for purposes of achieving these environmental benefits. This proposed NO_X RACT waiver will not affect other existing and pending NO_X emission control requirements for Illinois needed to achieve these environmental benefits.

In addition, EPA notes that an approval of this waiver request is solely for purposes of the CAA requirements to meet the 1997 8-hour ozone NAAQS. The waiver would not apply for purposes of the ozone NAAQS promulgated in 2008 (March 27, 2008, 73 FR 16435) or for purposes of any future ozone NAAQS EPA may promulgate. To the extent section 182(f) applies in this area for purposes of the 2008 or any future ozone NAAQS, the State would need to submit a NO_X RACT SIP or would need to demonstrate

that a waiver is appropriate for purposes of that different ozone NAAQS.

VI. EPA's Proposed Action

EPA is proposing approval of Illinois' request to exempt the State's 8-hour ozone nonattainment areas from the section 182(f) NO_X RACT requirement. This proposed approval is based on EPA's review of the evidence that the requirements of section 182(f)(1)(A), as elaborated upon in EPA's guidance for section 182(f) exemptions, have been met for Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL ozone nonattainment areas. In the future, if EPA determines that a violation of the 1997 8-hour ozone NAAQS has occurred in the Chicago-Gary-Lake County, IL-IN area (or at the Chiwaukee Prairie monitoring site in Kenosha County, Wisconsin) or in the St. Louis, MO-IL area while the Illinois portions of these ozone nonattainment areas are designated as nonattainment for the 1997 8-hour ozone NAAQS, EPA will take action to revoke the exemption.

Final approval of Illinois' NO_X RACT exemption request would suspend a requirement for a NO_X RACT FIP stemming from EPA's March 24, 2008, finding of Illinois' failure to submit the NO_X RACT rules. The suspension would remain in place contingent upon continued attainment of the 1997 8-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL areas. If EPA approves a redesignation request for either of these areas for the 1997 8-hour ozone NAAQS, the NO_X RACT FIP clock will permanently stop at that time. If EPA determines that there is a violation of the 1997 8-hour ozone NAAQS while either of these areas remain designated as nonattainment for the 1997 8-hour ozone NAAQS, the NO_X RACT waiver will no longer be applicable as of the effective date of any such determination for the violating area by EPA. At that time, the NO_X RACT FIP requirement will no longer be suspended and the NO_X RACT FIP clock will restart at the point at which it stopped. EPA will provide notice in the **Federal Register** of any such waiver revocation and of the restarting of the NO_X RACT FIP clock.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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 located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 23, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010–30840 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2006–0735; FRL–9236–4]

Notice of Data Availability Regarding Two Studies of Ambient Lead Concentrations Near a General Aviation Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability (NODA).

SUMMARY: The EPA issued a final rule on November 12, 2008, (effective date January 12, 2009) that revised the primary and secondary National Ambient Air Quality Standards (NAAQS) for lead and associated monitoring requirements. On December 30, 2009, EPA proposed revisions to the lead monitoring requirements. As part of the proposed revisions, EPA proposed requiring monitoring near general aviation airports estimated to have lead emissions of 0.50 tons per year or greater. After the proposal was published, EPA completed a study of ambient lead concentrations near a general aviation airport which may be referenced by the EPA in preparing the final lead monitoring requirements. In addition, a final report on one of the studies relied on in the proposed rule has become available. This action announces the availability of these two studies in the Revision to Lead Ambient Air Monitoring Requirements docket (EPA–HQ–OAR–2006–0735).

FOR FURTHER INFORMATION CONTACT: For questions regarding the additional data, contact Kevin Cavender, Air Quality Assessment Division, C304–06, Environmental Protection Agency, U.S. EPA (C304–06), AQAD/AAMG, Research Triangle Park, NC 27711; *telephone number:* 919–541–2364; *fax number:* 919–541–1903; *e-mail address*: *cavender.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is today's action?

This action announces the availability of two studies that contain information on ambient lead concentrations near an airport that has lead emissions from the combustion of leaded aviation fuel. The first is a local-scale airport modeling and monitoring study conducted by the EPA to investigate near-source ambient lead concentrations attributable to lead from the combustion of leaded aviation gasoline (EPA, 2010). The second is a final report documenting the study relied on in the proposed rule which was used to identify airports as having

the potential to exceed the lead NAAQS (South Coast Air Quality Management District, 2010). Both studies are located in Docket ID No. EPA–HQ–OAR–2006–0735.

II. How does this information relate to the Proposed Rule—revisions to lead ambient air monitoring requirements?

These two studies provide information on the potential for lead emissions from the combustion of leaded aviation fuel at airports to exceed the lead NAAQS as well as other information (locations of maximum emissions and lead concentration gradients) that may be referenced in the final rule.

The first study developed and evaluated an air quality modeling approach that could be used to evaluate local-scale concentrations of lead in the vicinity of an airport where piston-engine aircraft are operated. The study also included an assessment of the maximum 3-month average lead concentration and model sensitivity tests. The maximum 3-month average lead concentration was evaluated in order to compare the model output with the NAAQS for lead, 0.15 μg/m3, reported as the maximum 3-month average concentration.

Air monitoring was conducted to evaluate the performance of the air modeling approach, to assist in the quantification of the contribution of lead from general aviation emissions to local air quality, and to provide information about the change in lead concentrations with distance from the airport. Air quality modeling was conducted using EPA's American Meteorological Society/Environmental Protection Agency Regulatory Model or AERMOD. Inputs to the model included a comprehensive lead emission inventory incorporating on-site, time-in-mode and sub-daily activity data for piston engine aircraft. Model inputs also included considerations of aircraft-induced wake turbulence, plume rise of the aircraft exhaust, and allocation of approach and climb-out emissions to 50 meter increments in altitude.

To evaluate the modeling approach used here, ambient lead concentrations were measured upwind and downwind of the Santa Monica Airport and compared to modeled air concentrations. Modeling results paired in both time and space with monitoring data showed excellent overall agreement. Modeling results show aircraft engine run-up is the most important source contribution to the maximum lead concentration. Sensitivity analysis shows that engine run-up time, lead concentration in aviation gasoline, and the fraction of piston engine aircraft that are twin engine are the most important parameters in determining near-field lead concentrations. Year-long air quality modeling for 2008 and sensitivity analysis for the maximum 3-month average concentration period suggest the potential for 3-month average lead concentrations that exceed the current NAAQS for lead (0.15 μg/m^3) and help inform the process for identifying locations of maximum concentration.

The second study is the final report on one of the airport studies referenced in the proposed rule. This report provides additional information on the approach, methods, and results of the study.

III. How can I get a copy of these documents and other related information?

1. Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0735. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Revisions to Lead Ambient Air Monitoring Requirements docket, Docket ID No. EPA–OAR–2006–0735, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566–1742. 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.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

IV. References

U.S. EPA (2010) Development and evaluation of an air quality modeling approach for lead emissions from piston-engine aircraft operating on leaded aviation gasoline. EPA–420–R–10–007. Available at *http://www.epa.gov/otaq/aviation.htm.*

South Coast Air Quality Management District (2010) General Aviation Airport Air Monitoring Study Final Report. Final Report.

List of Subjects in 40 CFR Part 58

Ambient air monitoring, Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 2, 2010.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–30849 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, and 600

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 531 and 533

[EPA–HQ–OAR–2010–0799; FRL–9235–8; NHTSA–2010–0131]

RIN 2060–AQ54; RIN 2127–AK79

2017 and Later Model Year Light-Duty Vehicle GHG Emissions and CAFE Standards: Supplemental Notice of Intent

AGENCIES: Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Supplemental Notice of Intent to conduct a joint rulemaking.

SUMMARY: On May 21, 2010, President Obama issued a Presidential Memorandum requesting that the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA), on behalf of the Department of Transportation, develop, through notice and comment rulemaking, a coordinated National Program under the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA), as amended by the Energy Independence and Security Act (EISA), to improve fuel economy and to reduce greenhouse gas emissions of light-duty vehicles for model years 2017–2025. President Obama requested that the agencies issue a Notice of Intent (NOI) to issue a proposed rulemaking that announces plans for setting stringent fuel economy and greenhouse gas emissions standards for light-duty

vehicles for model year 2017 and beyond. On September 30, 2010, the agencies issued the requested Notice, which described the agencies' initial assessment of potential levels of stringency for a National Program for model years 2017–2025 (*See* 75 FR 62739 (Oct. 13, 2010). This Supplemental Notice highlights input on many of the key issues the agencies have received in response to the September NOI and the accompanying Interim Joint Technical Assessment (TAR) developed by EPA, NHTSA, and the California Air Resources Board, and also provides an overview of many of the key technical analyses the agencies have planned and are conducting to support the upcoming proposed rule.

DATES: The agencies currently expect to issue a proposed rulemaking for a coordinated National Program for model year 2017–2025 light-duty vehicles by September 30, 2011, and a final rulemaking by July 31, 2012.

ADDRESSES: *See* the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: *EPA:* Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; *telephone number:* 734–214–4332; *fax number:* 734–214–4816; *e-mail address: wysor.tad@epa.gov,* or Assessment and Standards Division Hotline; telephone number (734) 214–4636; e-mail address *asdinfo@epa.gov. DOT/NHTSA:* Rebecca Yoon, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–2992.

SUPPLEMENTARY INFORMATION:

How can I get copies of this document and other related information?

NHTSA and EPA have established dockets for the September 30, 2010 Notice of Intent and upcoming rulemaking under Docket ID numbers NHTSA–2010–0131 and EPA–HQ–OAR–2010–0799, respectively. You may read the materials placed in the dockets (*e.g.,* the comments submitted in response to the September 30, 2010 Notice of Intent by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the EPA Docket Center or NHTSA Docket Management Facility at the following locations: *EPA:* EPA Docket Center, 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. *NHTSA:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

How do I prepare and submit comments?

The dockets established by the agencies will remain open for the duration of the rulemaking. While the agencies have not established a set comment period for this Supplemental NOI, you may continue to submit comments to the dockets throughout the course of the rulemaking. An explanation of how to submit comments to the rulemaking dockets is available in the September NOI, 75 FR 62739 (Oct. 13, 2010), or you may contact the agency officials listed above for more information.

I. Introduction

A. Purpose of This Supplemental Notice of Intent (NOI)

This Supplemental Notice of Intent represents a further step in the process that EPA and NHTSA have initiated to develop a proposed rulemaking to establish greenhouse gas (GHG) and fuel economy standards for model years 2017–2025 light-duty vehicles. This document is meant to aid the public's understanding of some of the key issues facing the agencies in developing the upcoming rulemaking. This Supplemental NOI highlights many of the key comments that the agencies have received in response to the initial Notice of Intent issued on September 30, 2010, and to the Interim Joint Technical Assessment Report that accompanied that Notice.[1] This Supplemental NOI, however, does not present a comprehensive summary of comments received to date. This Supplemental NOI also discusses the agencies' plans for some of the key technical work and analyses that will be undertaken in developing the upcoming proposed rulemaking.

The purpose of this Supplemental NOI has changed from the agencies' original intent for this document. The September NOI stated that a principal goal of the Supplemental NOI would be "to narrow the range of potential stringencies for the future proposed standards, as well as to reflect new technical data and information and, as appropriate, further analysis supplementing the Interim Joint TAR."[2] However, given the short amount of time between the issuance of the September NOI/TAR and this Supplemental NOI, the agencies were unable to complete several additional pieces of technical research in time for inclusion in analysis to support this Supplemental NOI. Additionally, based on the stakeholder input between the end of September and now and on public comments, the agencies have concluded that narrowing the range of potential stringencies would not be appropriate at this time. As discussed further in this Notice, in order to develop the proposed standards, a more complete analysis will need to be done. Therefore, at this time we are not updating the assessment presented in the September NOI, and instead we will continue to conduct analyses for purposes of developing the proposal. Many of the public comments supported the agencies' plans, noted in the September NOI, as to types and scope of analyses to be conducted for the proposed rulemaking. Therefore, the agencies are moving forward with this work as further described in Section III. As NHTSA and EPA move forward, we will continue to work with California in our technical assessments of potential standards, and will continue extensive dialogue with stakeholders.

B. Background on the September NOI and Interim Joint Technical Assessment Report

As discussed above, the September NOI was issued in response to a May 21, 2010 Presidential Memorandum, which requested that NHTSA and EPA develop, through notice and comment rulemaking, a coordinated National Program under the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA), as amended by the Energy Independence and Security Act (EISA), to improve fuel economy and reduce greenhouse gas emissions of light-duty vehicles for model years 2017–2025. The Presidential Memorandum stated "The program should also seek to achieve substantial annual progress in reducing transportation sector greenhouse gas emissions and fossil fuel consumption, consistent with my Administration's overall energy and

[1] In addition to publishing the September NOI in the **Federal Register** (*see supra* Note 1 above), the agencies also posted both the September NOI and the Interim Joint TAR on our Web sites. Readers may access them at *http://www.epa.gov/otaq/climate/regulations.htm* and *http://www.nhtsa.gov/fuel-economy.*

[2] 75 FR 62741.

climate security goals, through the increased domestic production and use of existing, advanced, and emerging technologies, and should strengthen the industry and enhance job creation in the United States." This upcoming rulemaking will build on the first phase of the National Program for fuel economy and GHG emissions standards, for model year 2012–2016 vehicles, which was issued on April 1, 2010.[3] The Presidential Memorandum also requested that the agencies work with the State of California to develop a technical assessment to inform the rulemaking process. EPA and NHTSA worked with CARB to develop an initial technical assessment consistent with the President's request. The agencies released the document, the Interim Joint Technical Assessment Report (TAR), in conjunction with the September NOI.[4]

In the Interim Joint TAR, the agencies and CARB conducted an initial fleet-wide analysis of improvements in overall average GHG emissions and fuel economy levels. The agencies stated in the September NOI that for purposes of an initial assessment, this range represents a reasonably broad range of stringency increases for potential future GHG emissions standards and is also consistent with the increases suggested by CARB in its letter of commitment in response to the President's memorandum. We analyzed a range of potential stringency scenarios for model year 2025, representing a 3, 4, 5, and 6 percent per year estimated decrease in GHG levels from the model year 2016 fleet-wide average of 250 gram/mile (g/mi). Thus, the model year 2025 scenarios analyzed in the TAR range from 190 g/mi (calculated to be equivalent to 47 miles per gallon, mpg) under the 3 percent per year reduction scenario to 143 g/mi (calculated to be equivalent to 62 mpg) under the 6 percent per year scenario.[5] These levels correspond to on-road values of 37 to 50 mpg, respectively. For each of these scenarios, NHTSA, EPA, and CARB also analyzed four "technological pathways" by which these levels could be attained. These pathways were meant to represent ways that a hypothetical manufacturer could increase fuel economy and reduce greenhouse gas emissions, and do not represent ways that they would be required to or necessarily would respond to future standards. Each technology pathway emphasizes a different mix of advanced technologies, by assuming various degrees of penetration of advanced gasoline technologies, mass reduction, hybrid electric vehicles (HEVs), plug-in hybrids (PHEVs), and electric vehicles (EVs).[6]

The TAR also discusses the significant additional technical information and analysis that will be needed to support the rulemaking development process. For the initial assessment in the TAR, we analyzed the vehicle fleet as one single industry-wide fleet, which did not account for differences among individual manufacturers and did not separately analyze car and truck fleet standards, as required by EPCA/EISA. By focusing the analysis on the technology itself, independent of the individual manufacturer, the agencies produced results that indicated how that single hypothetical fleet could achieve greater GHG reductions and improved fuel economy in the most efficient manner. Treating the entire fleet as a single fleet assumes, for example, that averaging GHG performance across all vehicle platforms is possible irrespective of who the individual manufacturer is for a particular vehicle platform. This can be thought of as analyzing the fleet as if there was a single large manufacturer, instead of multiple individual manufacturers. In addition, this analysis assumed there are no statutory or other limits on manufacturers' ability to transfer credits between passenger car and light truck fleets, no limits on the ability to trade credits between manufacturers, and that all manufacturers fully utilize such flexibilities with no transfer costs in doing so.

The approach used for the TAR analyses provides an initial and approximate evaluation of the potential costs and benefits of the fleet-wide scenarios modeled. The agencies, however, cautioned in the Interim Joint TAR that several of the simplifications employed in the September NOI/TAR evaluation would not be used for purposes of a full Federal rulemaking analysis because such analysis must reflect all statutory requirements and limitations faced by the agencies in setting GHG and CAFE standards. The agencies noted that EPCA/EISA, in particular, are fairly prescriptive as compared to the CAA. In order to ensure that NHTSA's statutory framework is accounted for, and as permitted under the CAA, the agencies' analysis for the NPRM will examine attribute-based standards under which each manufacturer is subject to its own individual passenger car and light truck CAFE and GHG requirements for each model year, where the standard for each manufacturer is based on the production-weighted average of its passenger car and light truck targets, with the targets established in the attribute-based curves.

Additionally, the NPRM's CAFE analysis will account for EPCA/EISA restrictions on credit use and transfer/trading, the ability of manufacturers to pay fines in lieu of compliance, the differential impact of potential standards on individual manufacturers (historically relevant to NHTSA's determinations of whether standards are economically practicable), and a more extensive analysis of relevant social benefits.[7] The NOI also noted NHTSA's practice of considering safety effects in determining appropriate levels of standards stringency, as recognized approvingly in case law over several decades. In addition, EPA has also considered safety impacts in previous mobile source rules, including for the 2012–2016 National Program. Generally,

[3] *See* 75 FR 25324 (May 7, 2010).

[4] "Interim Joint Technical Assessment Report: Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2017–2025," issued jointly by EPA, NHTSA and CARB, September 2010. Available at *http://www.nhtsa.gov/fuel-economy* and *http://www.epa.gov/OTAQ/climate/regulations.htm.*

[5] The modeled scenarios, like the EPA's MY 2012–2016 standards, include the potential use of air conditioning emission reductions, which EPA estimated at 15 grams (compared to a 2008 baseline) in 2025 for all four technology paths. The estimates for further air conditioning reductions are largely due to an anticipated increase in the use of alternative refrigerants. As a result of including A/C-related emission reductions in the modeling, however, the "mpg-equivalent" values presented in the September NOI and Interim Joint TAR do not reflect analysis of potential CAFE improvements, and should be taken as merely illustrative mpg levels if manufacturers achieved all modeled GHG emission improvements through reductions in tailpipe emissions. The agencies note additionally that real-world CO_2 is typically 25 percent higher and real-world fuel economy is typically 20 percent lower. Thus the 3% to 6% range evaluated in the September assessment would span a range of real-world fuel economy values (again, if all improvements were achieved through reductions of tailpipe emissions) of approximately 37 to 50 mpg-equivalent, which correspond to the regulatory test procedure values of 47 to 62, respectively.

[6] Pathway A represented an approach where the industry would focus on HEVs, with less reliance on advanced gasoline vehicles and mass reduction, relative to Pathways B and C; Pathway B focused on advanced gasoline vehicles and mass reduction at a more moderate level (higher than in Pathway A but less than in Pathway C); Pathway C focused on advanced gasoline vehicles and mass reduction, and to a lesser extent on HEVs; and Pathway D focused on the use of PHEV, EV, and HEV technology, and relied less on advanced gasoline vehicles and mass reduction. Further information on the four technology pathways is provided in Section II.A.3 of the September NOI and in Section 6.3 of the Interim Report.

[7] Relevant social benefits would include, for example, the social cost of carbon, criteria pollution reduction and energy security improvements. A much more detailed discussion of caveats with respect to the September NOI/TAR analysis can be found in Section 6.2 of the Interim Joint TAR, pp. 6–1 through 6–6.

the agencies stressed that much work remained to be done, and that the upcoming rulemaking to develop the standards for MYs 2017 and beyond will be based on a full analysis that is consistent with both statutes and similar to the analysis for the MYs 2012–2016 rulemaking. Moreover, as noted in the September NOI, the agencies analyzed scenarios in the 3–6% range, but we have made no decisions on the appropriate standards for the NPRM. For the full proposed rulemaking, the agencies are not precluded from considering standards outside of this range. For purposes of the Draft Environmental Impact Statement and NPRM discussed below, NHTSA intends to analyze standards both within and outside this range, as well as an alternative which is estimated to maximize net benefits.

II. Highlights of Stakeholder Input to Date on the September NOI and TAR

EPA and NHTSA requested comment on the initial assessments contained in the September NOI and the TAR. The agencies received comments from more than 30 organizations and more than 100,000 individuals. In addition to the public comments, NHTSA, EPA, and CARB met individually with the ten largest automobile original equipment manufacturers (OEMs),[8] as well as environmental non-governmental organizations (NGOs),[9] and representatives of State and local governments.[10] We summarize below some key themes that we heard from stakeholders, both in the public comments and in the outreach meetings. This summary is meant to provide an overview of many key issues we heard from stakeholders, and is in no way meant to reflect a full summary of the public comments received. We encourage readers interested in more details to review the actual public comments received in the agencies' dockets. The agencies will continue to consider all of these comments as we develop the proposed rulemaking.

[8] NHTSA, EPA, and CARB met with the representatives of the following OEMs: Chrysler, Ford, General Motors, Honda, Toyota, Hyundai, Nissan, BMW, Daimler, and Volkswagen.

[9] NHTSA, EPA, and CARB met with representatives from several environmental NGOs, including the Natural Resources Defense Council, Union of Concerned Scientists, Sierra Club, National Wildlife Federation, ACEEE, Environment America, Safe Climate Campaign, and Environmental Defense Fund.

[10] NHTSA, EPA and CARB met with representatives of the National Association of Clean Air Agencies (NACAA) and the Northeast States for Coordinated Air Use Management (NESCAUM), and several representatives of individual State and local governments.

A. Continuing the National Program for Model Years 2017–2025

There was widespread stakeholder support for continuing the National Program for improved fuel economy and greenhouse gas standards for model years 2017–2025.

In both the written comments in response to the NOI and in our recent meetings with automotive companies (both the meetings held during July–August 2010 prior to the NOI, and in our meetings with automotive companies in October–November 2010, after the publication of the NOI), all manufacturers indicated their support for the continuation of the National Program approach, established in the 2012–2016 Joint NHTSA–EPA final rule, for model years 2017 and later. The manufacturers emphasized the significant benefits in the development of coordinated fuel economy and greenhouse gas standards that can be met with a single fleet of vehicles that can be sold nationwide. OEMs were also supportive of the on-going coordination between NHTSA and EPA with CARB in the development of 2017–2025 program, including coordination on the time frame for the State and Federal rulemaking, in order to help ensure alignment of the State and Federal standards.

Many automotive companies that provided comments and two OEM associations expressed concern regarding the potential effects a revised California Zero Emission Vehicle (ZEV) program could have on a manufacturer's ability to achieve a "single national fleet," because the ZEV program could drive the use of particular vehicle technologies that may not be chosen by manufacturers to meet the Federal CAFE and GHG standards.

Support for the concept of the National Program approach was also included in written comments from auto dealers and automotive component manufacturers.

The States and environmental NGOs also expressed strong support for the continuation of the National Program in model years 2017–2025, and stated that the agencies should continue to fully include California in this process. Environmental NGOs stated that stringent GHG and fuel economy standards are needed to make America more energy independent, reduce global warming pollution to curb the impacts of climate change, and save consumers money at the pump keeping it in the American economy. Several NGOs also stated that future standards can help ensure the U.S. auto industry remains competitive globally, and emphasized that other countries and regions are moving forward with strengthened standards and plans for vehicle electrification programs.

Although the environmental NGOs support a National Program, some suggested that the goal of a "single national fleet" does not mean that the EPA and NHTSA standards need to be identical. These commenters suggested that, as with the MYs 2012–2016 final rulemaking, the two agencies' standards continue to include some important differences based on differences in statutes, such as the treatment of air conditioning, electric vehicles, and credit transfers.

In addition, we have received comments from more than 100,000 individuals supporting stronger Federal fuel economy and greenhouse gas standards for model years 2017–2025.

B. Level of the Standards

Since publication of the September NOI and release of the Interim Joint Technical Report, the agencies have held further meetings with the ten largest auto manufacturers (OEMs), and from those meetings and written comments from OEMs and two OEM associations, we received a range of perspectives from the companies regarding the potential levels of stringency that the agencies should consider evaluating for model years 2017–2025 standards in the upcoming full rulemaking. In general, the OEMs indicated that they are investing significantly in the full range of technologies discussed by the agencies in the September NOI and TAR, and the OEMs agree that many of those technologies offer a significant potential for reducing fuel consumption and GHG emissions. However, many OEMs also commented that the potential of certain technologies to reduce fuel consumption and GHG emissions was less than the agencies had projected, as discussed further below. Auto manufacturers indicated that they know how to produce a wide range of advanced technologies, and that they intend to introduce a wide range of vehicle models that rely upon these technologies, including advanced gasoline and diesel vehicles, hybrid-electric vehicles, plug-in hybrid electric vehicles, and battery-electric vehicles, during the model years in question. Many OEMs also commented, however, that due to its fundamental approach (as well as specific assumptions regarding available technologies), the analysis presented in the TAR understated the challenges and costs that manufacturers would face in attempting to achieve the examined scenarios.

Manufacturers stated that EPCA does not allow unlimited credit transfers, and stated that an analysis consistent with EPCA would support less stringent CAFE standards than an analysis of the sort presented in the September NOI and TAR.

Both manufacturers and the Consumer Federation of America (CFA) supported the agencies' plans to assess manufacturers' individual abilities to meet new standards.

Both in meetings with the agencies and in written comments, many OEMs nonetheless indicated that the level of stringency they could achieve in the future was not necessarily constrained by the availability of technology—that is, that technology does exist that they could deploy to meet fairly stringent standards. However, the OEMs emphasized that their ability to deploy that technology in a way that would help them to meet stringent standards and continue to offer vehicles that consumers would purchase would depend on a number of other important factors, some of which are outside their direct control. Some of these factors include: the current relative high cost for some advanced technologies and uncertainty regarding the degree of cost reduction that will occur in the 2017–2025 timeframe; the future price of gasoline and diesel fuel; the existence of future consumer incentives for some advanced technologies; the level of consumer acceptance for HEV, PHEV, and EV technologies; and the willingness of consumers to pay higher prices for vehicles with advanced technologies and lower fuel consumption. Many OEMs also stressed that their ability to comply with future standards will be closely tied to the regulatory details of the model year 2017–2025 program, including the specific shape of the CAFE and GHG footprint-based standard curves for passenger cars and trucks, EPA's treatment of upstream CO_2 emissions for electricity-derived vehicle power, and other details regarding the structure of the program.

Based on the uncertainties expected during the 2017–2025 time frame, as described above, one OEM association stated in written comments that numeric commitments to rates of stringency increase are not possible for the 2017–2025 time frame, and several OEMs stated similarly in individual meetings with the agencies. However, just over half of the firms provided comments in individual meetings with the agencies on the maximum rate of increase in stringency that they thought their firms could achieve for that time frame (as opposed to rates of increase that they believed were feasible for the industry as a whole). Most were in the 3 percent to 4 percent per year range, although one stated 2.5 percent per year and another stated between 5 percent and 6 percent per year. In all cases, these estimates of potential rates of increase included the assumption that 15 g/mi worth of additional CO_2 credits for air conditioning system improvements would be available for the MY 2017–2025 period, and the majority also included the assumption that upstream emissions from electric power generation would not be included in their compliance calculations for EVs and PHEVs.

Many commenters discussed the merits of the agencies including a framework for a "mid-term review" of the MYs 2017–2025 standards. The majority of OEMs supported a mid-term review, but varied in their views of how to structure it. OEMs who supported a future review stated that it was necessary due to a number of factors, such as the long time between standards promulgated in 2012 and the implementation of the standards in the model year 2017–2025 timeframe, and also a number of key uncertainties regarding future events and conditions as mentioned above, like OEMs' ability to reduce technology costs, future fuel prices, and the willingness of consumers to purchase the advanced technology vehicles. Many OEMs suggested that if the current rulemaking established standards from model year 2017–2025, then a review of the later model year (2020–2025, or 2021–2025) standards should be undertaken in the 2014 to 2017 time frame, and re-examine only the appropriateness of those model year standards, in part due to lead time concerns with changing the earlier model year standards. As an alternative, one auto industry association suggested that instead of incorporating a mid-term review, the agencies should break the MY 2017–2025 standard setting process into three separate rulemakings, rather than establishing standards for all of these MYs in the current rulemaking process.

OEM recommendations also varied regarding how such a review should be undertaken, what factors should be considered, and what should be the role of the agencies (including potentially CARB). Many OEMs stressed that a review should not just examine their "progress" in meeting the standards, but should also focus on external conditions (as discussed above, fuel price, technology costs, and consumer acceptance). Several manufacturers and one OEM association additionally recommended that the review process include using an independent panel of experts to periodically consider whether rulemaking assumptions have turned out to be valid. Depending on the details and facts that come to light during the review, several OEMs stated that the results of any future review of the standards could result in an increase in stringency, a decrease in stringency, or no change in stringency. Most OEMs stated that they would give this topic additional consideration as the agencies move forward with the development of the Joint NPRM.

Many State and local governments, including the Northeast States for Coordinated Air Use Management (NESCAUM), the National Association of Clean Air Agencies (NACAA), and the governors of nine States, along with environmental NGOs, and a large number of individuals voiced strong support for proposing standards based on a 6 percent annual rate of improvement, or alternatively, a 60 mpg standard by 2025. Many of these commenters stated that the agencies' analysis in the September NOI and TAR indicates that the 6 percent level is technically feasible and cost-effective, would provide the greatest estimated lifetime owner fuel savings, and is necessary to keep the U.S. auto industry competitive globally by requiring them to build more fuel-efficient vehicles. NESCAUM commented that, under the initial assessment, the 6 percent rate of increase represented the only scenario that projected widespread introduction of PHEVs and EVs. In addition, Environment America submitted letters from more than 150 State and local elected officials, leaders of a number of businesses, and organizations supporting standards that would require 60 mpg by 2025.

The Governors of nine States, including New York, Maine, Maryland, Massachusetts, New Mexico, Oregon, Pennsylvania, Vermont, and Washington, stated their support for a standard of 60 mpg by 2025, and cite a key reason that more efficient vehicles will reduce unnecessary consumer spending at the pump, keeping money in their State and local economies.

Several NGOs stated that the September NOI and Interim TAR provide a strong basis for setting a standard of at least 6 percent annual improvement rate, which they believe is level that provides the greatest GHG reduction and oil saving benefits. Some groups stated that much of the basic vehicle design and technology to build a fleet that achieves at least 62 mpg is already in use in vehicles today, in the form of hybrids, PHEVs, and EVs entering the market this fall. They

further stated that this fleetwide level is achievable for manufacturers especially given that the agencies are providing 6 to 15 years of leadtime.

The Union of Concerned Scientists and Natural Resources Defense Council conducted a joint analysis of fleetwide annual emission reductions in the MYs 2017–2025 timeframe, and they stated the TAR substantiates their assessment's conclusion that a 6% annual reduction is both technically feasible and cost effective. Further, these groups stated that their analysis would support a 7% annual reduction by model year 2025 if using the TAR's 0 g/mi accounting method for EV upstream emissions. Several other groups also recommended that the agencies analyze scenarios more stringent than 6 percent, such as 7 percent, or other approaches such as a rate representing the point at which net benefits are maximized, or a rate representing the point at which total costs are equal to total benefits. Some NGOs also commented that the 3 and 4 percent scenarios fail to significantly advance clean vehicle technology, noting that the TAR analysis projected no use of EVs or PHEVs by manufacturers in meeting these scenarios.

Environmental NGOs and States that offered comments on a mid-term review expressed concern that it could be used to weaken the standards and that it could cause uncertainty for manufacturers by implying that later year standards would be somehow less binding. These commenters suggested that this could undermine the development of advanced technologies, and that any review, if one must occur, should be limited in scope, focus only on later model years, occur only once, and consider more stringent standards.

C. Technology Costs, Effectiveness, Feasibility, and Safety

Our stakeholder meetings with the OEMs, as well as the written comments from several OEMs and two trade associations, raised several concerns with the September NOI and the TAR regarding the agencies' initial assessment of technology cost, effectiveness, and feasibility. In addition several OEMs discussed the important issues regarding vehicle mass reduction and potential impacts on vehicle safety. We summarize here some of the major issues raised by the OEMs.

Most automotive companies commented that the agencies' estimates of most technology costs were in general too low, though for some OEMs this was not the case for all technologies. Nearly every OEM stressed that the agencies' costs estimates for lithium-ion batteries for HEVs/PHEVs/EVs and mass reduction in particular were significantly too low compared to their projections for the 2020–2025 timeframe. One OEM association provided a list of several reasons why they believe the TAR cost estimates are too low, including the TAR projection that batteries will last the life of the vehicle and the agencies' estimates for indirect costs, which they stated are low compared to a 2009 National Research Council Report. The OEM association also commented that the agencies should consider the potential for stranded capital in the 2017–2025 analysis in the event the MYs 2017–2025 standards result in a significant change in future vehicle designs compared to the investment manufactures have made and are making now to comply with the MYs 2012–2016 standards. This OEM association also noted more generally that while the OEMs supported the MYs 2012–2016 standards, they had not evaluated the agencies' analysis for that rulemaking carefully, and upon revisiting it found a number of assumptions carried into the TAR with which they do not agree.

OEMs discussed with the agencies their concerns that the effectiveness (the technologies' ability to reduce CO_2 and fuel consumption) of both individual technologies as well as the packages of technologies identified in the TAR were too optimistic. In some cases manufacturers stated that they thought the differences were due to a range of potential engineering considerations which the TAR may not properly have accounted for, such as vehicle performance, utility (*e.g.,* towing capability), and comfort (*e.g.,* noise, vibration, and harshness), the role of competing regulatory or technical requirements (*e.g.,* criteria pollutant and/or safety standards), and assumptions regarding future gasoline fuel properties (*e.g.,* octane levels), although OEMs acknowledged that their review of the TAR's technical effectiveness assessment was still ongoing. However, there were a number of OEMs that agreed with our assessment of a number of specific packages or individual technologies. The agencies expect to discuss these issues with the OEMs in much more depth over the next several months in order to assess the basis of these concerns, which could be based in part on the possibility of different assumptions about baseline technologies by the agencies and the OEMs.

With regard to the feasibility of applying the technologies identified in the TAR, in general the OEMs agreed with the agencies that most of the technologies identified in the TAR could be applied to at least some vehicle models in the 2017–2025 timeframe (as nearly all of the technologies considered are either available today or are expected to be introduced into the market within the next few years). However, the OEMs highlighted several specific areas where they did not agree with the assessment in the TAR, or they believed that challenges exist. All OEMs stated that mass reduction will be an important element of their future fuel economy/CO_2 reduction strategy, however; all of the OEMs also stated that mass reduction cannot be done as aggressively as indicated by several of the Technology Pathways analyzed in the TAR. All manufacturers and one OEM association expressly stated that a 30 percent net mass reduction from model year 2008 to model year 2025 was not technically feasible. Reasons cited included, but were not limited to, manufacturing constraints, mass increases associated with known and potential vehicle safety requirements that may be developed between now and model year 2025, future voluntary standards (such as those established by NHTSA through the New Car Assessment Program (NCAP) and the Insurance Institute for Highway Safety (IIHS)), and other potential voluntary improvements, noise/vibration/harshness considerations, and the potential safety implications of severe weight reduction. One OEM association noted the agencies' commitment to on-going work noted in the September NOI and stated that the agencies must complete these studies to inform the Joint NPRM, indicating that a failure by the agencies (and particularly NHTSA) to evaluate fully the potential safety effects of mass reduction in the 2017–2025 timeframe could leave the final rule legally vulnerable. Many manufacturers commented that reducing mass in the 20–25% range would likely not be practical for many vehicle models because of high costs and, in some cases, because they have already incorporated today some of the mass reduction technologies that could be used to reduce mass in the 20–25% range. Manufacturers encouraged the agencies to continue to analyze this issue carefully.

Several environmental NGOs and the State organizations also expressed support for the continued technical work EPA, NHTSA, and CARB are doing on costs, effectiveness, mass reduction, and vehicle safety.

One automotive supplier association (the Aluminum Association)

commented that the mass reduction on the order of 15–30 percent discussed in the TAR was technologically achievable based in part through the use of aluminum.

Several OEMs also commented during our stakeholder meetings on the relatively high level of penetration of full hybrids for a number of the Technology Pathways for the higher levels of stringency evaluated in the TAR. Some auto companies indicated that the HEV levels which approached nearly 70 percent of the new vehicle fleet may not be feasible from a lead-time perspective (independent of the OEMs' concerns regarding the willingness of consumers to purchase those quantities of HEVs).

D. Program Design Elements, Credit Opportunities and Flexibilities

Several commenters provided feedback on how various credit programs and other flexibilities contained in the model year 2012–2016 program might be assessed or adapted for the MYs 2017–2025 program.

1. Program Design Elements

Automotive OEMs, both in their written comments and in recent stakeholder meetings with the agencies, have stated that the agencies should continue many of the program design elements as well as flexibilities provided in the model year 2012–2016 National Program. A number of OEMs have stated that the agencies should continue with the use of separate car and truck based standards (as required by EPCA/EISA) and continue to use vehicle footprint as the attribute for determining a manufacturer's CAFE and CO_2 standards.

2. Credits and Flexibilities

All automotive OEMs supported the agencies providing as much flexibility as possible through credit programs. Automotive OEMs generally expressed support for the continuation of both NHTSA's and EPA's regulatory provisions regarding the banking and trading of fuel economy/GHG credits, including the provisions for carry-forward and carry-back of credits across model years. A number of OEMs expressed concern, that additional flexibilities could be particularly important for the MYs 2017–2025 time frame, given the stringency of the MY 2012–2016 standards. Regarding other program flexibilities, OEMs in general support the continuation of the flexibilities included in the model year 2012–2016 National Program, including the availability of emission credits for improvement in air conditioning GHG emissions under the EPA standards, and the availability of off-cycle GHG emission credits for technologies that produce real-world emission reductions but that are not captured under the regulatory test procedure, and provisions for unlimited credit trading between cars and trucks and between companies. A number of OEMs also supported the continuation of the 2012–2016 programs provisions for credit transfer between the car and truck fleets, as well as trading of credits between automotive firms. Some automotive OEMs and their trade associations suggested that EPA and NHTSA may need to consider additional program flexibility for small and intermediate volume manufacturers for model years 2017–2025, similar to the compliance flexibility provided by EPA in the TLAAS program in the model year 2012–2016 program.

Some environmental groups similarly expressed support for provisions that give manufacturers greater flexibility, such as averaging, banking, and trading, but emphasized that the provisions must not undermine the technology-forcing nature or the emissions benefits of the program. Several groups also stressed the need for transparency to provide clear public accounting of any credits and compliance programs. One environmental group, however, stated that while flexibilities might have been appropriate for the early years of the National Program, they should not persist indefinitely, and the MYs 2012–2016 standards should have provided plenty of time for manufacturers to achieve compliance by adding technology to their vehicles. This commenter therefore argued that the agencies should dispense with the credits, incentives and flexibilities discussed in the September NOI, including averaging, banking, and trading (ABT).

Environmental groups generally commented that EPA should establish air conditioning standards rather than continue credits based on air conditioning system improvements.

Environmental groups commented that given the extensive amount of lead time contemplated for the rulemaking, along with the fleet improvements that will have arisen due to model year 2012–2016 standards, the agencies should not constrain stringency levels in the 2017–2025 rule based on lead time considerations. These environmental groups indicated, as stated in the model year 2012–2016 rulemaking and the TAR, that most vehicle models are redesigned (not merely refreshed) every five years, such that most manufacturers should have ample opportunity to apply new technologies prior to MY 2025. In addition, some environmental groups commented that there is no evidence or compelling policy rationale to support continuing the Temporary Lead-time Allowance Alternative Standards (TLAAS) that were provided in the model year 2012–2016 program. In addition, one NGO commenter urged that EPA establish standards for small volume manufacturers (*i.e.,* those manufacturers with annual U.S. sales of less than 5,000 vehicles), and that NHTSA end the statutory exemption from generally-applicable CAFE standards allowed for manufacturers of less than 10,000 vehicles worldwide annually, as this commenter believes that by 2017, these manufacturers will have had ample time to bring their fleets into compliance.

3. Treatment of Upstream Emissions

With the exception of one company, all OEMs and their trade associations supported the use of a zero gram/mile CO_2 tailpipe emissions value under the EPA regulations for all electric vehicles (EVs) as well as the grid-derived electricity for plug-in hybrid electric vehicles (PHEVs). OEMs provided a range of reasons for their position, including their perspectives that: automotive manufacturers do not have any control over the GHG emissions used to produce grid electricity, thus it would be unfair for EPA to require manufacturers to accept the burden of emissions for which vehicles are not directly (at the tailpipe) responsible; the inclusion of upstream emissions would be a significant deterrent to OEMs for investing the significant capital resources necessary to bring EVs and PHEVs to the market, and the resulting compliance value for those vehicles would not be significantly better than for non-EV and non-PHEV vehicles; there is too much variation across the national electricity grid in terms of CO_2-generation intensity for a single upstream value to be meaningful; and such an approach is not consistent with EPA's historic regulation of light-duty vehicles, as EPA does not account for the upstream emissions associated with gasoline and diesel production in vehicle compliance values (the Edison Electric Institute commented similarly).

The Edison Electric Institute (EEI) commented that EPA should be consistent in the treatment of upstream emissions by not including upstream emissions for any vehicles. EEI argues that there is too much variation in upstream energy production to produce "national average" values for any energy type.

The treatment of advanced technology vehicles continues to be a key concern for environmental groups. Environmental groups continue to believe that upstream CO_2 emissions should be accounted for in determining vehicle emission rates for all vehicles. NRDC and the Union of Concerned Scientists also support the inclusion of upstream emissions accounting for electric vehicles, and they provided an analysis and comments that they believe support standards increasing at a 6 percent annual rate if upstream emissions are included, and up to 7 percent annual rate if a 0 g/mile CO_2 emissions rate is used for the electric portion of vehicle operation.

The agencies also received comments from Natural Gas Interests strongly supporting the inclusion of full life-cycle GHG emissions for all petroleum and non-petroleum-fueled vehicles in determining vehicle compliance, noting that natural gas vehicles have 30 percent lower life-cycle GHG emissions compared to their gasoline-fueled counterparts.

Two automotive material supplier trade associations, the American Iron and Steel Institute and the World Steel Association, recommended that EPA and NHTSA include not only upstream emissions from fuel production (*e.g.,* gasoline fuel and electricity) in the regulatory standard, but the entire life-cycle emissions of the vehicle manufacturing process as well. These commenters suggested that the inclusion of lifecycle GHG emissions at both the supplier and the OEM levels from the manufacturing process is the most appropriate method to ensure an overall reduction in GHG emissions from light-duty vehicles.

The State of New York Department of Transportation commented that they recognize the valid concerns about upstream emissions generation in the production of electricity and other energy sources used in fuels, and encourage the agencies to work cooperatively with the Department of Energy to develop incentives to expand clean, low-carbon power generation in the U.S.

E. Other Comments

The agencies received additional comments in several areas including assumptions used in economic and benefit analyses (*e.g.,* discount rates should be higher or lower, rebound effect should be higher or lower, values used to assess the social cost of carbon, potential consumer welfare effects), ensuring program benefits beyond fuel savings are properly accounted for, consideration of higher oil price scenarios, and potential employment impacts. Several commenters also provided recommendations regarding the need for the agencies to consider the role of EV/PHEV vehicle charging locations/infrastructure in the development of the 2017–2025 standards.

NACAA commented that they believe State and local governments have a key role to play in supporting the development of infrastructure for electric vehicle charging. State commenters also asked the agencies to work with DOE to encourage the installation of charging stations in homes and public locations, such as parking lots.

NACAA also commented that there are potential co-benefits of improved fuel economy/GHG standards in helping meet clean air goals for criteria pollutants and air toxics, especially if the new standards are stringent enough to encourage meaningful penetrations of electrified vehicles.

Several environmental NGOs recommended that the agencies should establish backstop standards to ensure that the projected fleet-wide reductions are still met in the event of shifts in sales mix and average vehicle size.

All of these comments will be considered as we conduct our analyses for the proposed rulemaking.

III. Plans for Developing the Proposed Rulemaking

A. Continued Stakeholder Outreach and Key Areas of Technical Analysis in Developing the Proposed Rulemaking

This Supplemental NOI is an early step in NHTSA's and EPA's plans to propose a coordinated National Program for model year 2017–2025 light-duty vehicles with which (as with the model year 2012–2016 program) manufacturers could comply by building a single vehicle fleet. As NHTSA and EPA proceed to develop the proposed rulemaking, we plan to continue our ongoing dialogue with stakeholders, and we specifically welcome additional data and information that can inform our rulemaking efforts.

EPA and NHTSA intend to continue working with the California Air Resources Board in developing the underlying technical assessments that will inform our future proposed standards and we will continue to work with CARB on additional program related issues and seek their input as we work toward our common goal of a National Program. We will continue to coordinate on a number of on-going studies, including technology cost, effectiveness, mass feasibility, and mass-related safety studies.

As we indicated in the September NOI and Interim Joint TAR, there are numerous areas of technical work that EPA and NHTSA have underway as part of developing our proposed standards. Some of these key areas include new technical assessments of advanced gasoline, diesel, and hybrid vehicle technology effectiveness; several new projects to evaluate the cost, feasibility, and safety impacts of mass reduction from vehicles; an on-going project to improve our cost estimates for advanced technologies; further consideration of battery life, durability, cost and safety; and further review of the lead time needed to implement advanced technologies. The agencies are working very closely with the Department of Energy on a number of projects related to these technical areas.

In addition, for the 2017–2025 NPRM, NHTSA and EPA will conduct an analysis of the effects of the proposed standards on vehicle safety, including societal effects. CARB is undertaking and coordinating with EPA and NHTSA on a study of how a future vehicle design that incorporates high levels of mass reduction complies with vehicle safety standards and voluntary safety guidelines. NHTSA is also initiating a new study of the feasible amount of mass reduction based on a mid-size passenger car platform, and the effects of several advanced mass reduction design concepts on fleet safety. The NHTSA studies are being coordinated with EPA, DOE, and CARB.

The agencies expect that several, but not all of these studies will be completed in time to inform the NPRM. Others are expected to be completed in time to inform the final rule.

As discussed above, the agencies' initial assessment in the Interim Joint TAR was limited to a fleet-wide level analysis of improvements in overall average GHG emissions and fuel economy level, which included a number of simplifying assumptions. NHTSA and EPA acknowledged in the September NOI that for the upcoming proposed rulemaking, we would conduct a more refined analysis, as required by EPCA/EISA and as allowed by the CAA, including separate analyses for car and light truck vehicle fleets, year-by-year attribute-based standards, and manufacturer-specific estimates of potential attribute-based standard targets and costs, among other statutory requirements. NHTSA and EPA also will perform a more thorough assessment of the impacts of proposed standards, as was done for the model year 2012–2016 rulemaking, including

analysis of improved energy security, monetized benefits of CO_2 reductions, impacts of other pollutants, an assessment of the societal costs and benefits of potential standards, an assessment of potential safety impacts, an assessment of impacts on automobile sales, an assessment of employment impacts, an assessment of the regulatory program's key design elements and flexibility mechanisms, and related issues.

Finally, as discussed in the September NOI, EPA is currently in the process of conducting an assessment of the potential need for additional controls on light-duty vehicles' non-greenhouse gas emissions and gasoline fuel quality. EPA expects to coordinate the timing of any final action on new non-greenhouse gas emissions regulations for light-duty vehicles and gasoline with the final action on greenhouse gas emissions and CAFE regulations discussed in this Supplemental NOI.

In his May 21, 2010 Memorandum, the President highlighted the opportunity for the U.S. to lead the world in developing a new generation of clean cars and trucks, to spur economic growth and to create high-quality jobs. In developing the proposal, the agencies will continue to gather input from stakeholders, including the OEMs and labor unions, on the potential impacts of standards on worker productivity, jobs, the automotive sector, and the opportunities for economic growth.

B. Anticipated Rulemaking Schedule

The May 21, 2010 Presidential Memorandum called for EPA and NHTSA to include in the September Notice of Intent a "schedule for setting those standards as expeditiously as possible, consistent with providing sufficient leadtime to vehicle manufacturers." As we indicated in the September NOI, the agencies expect to issue a joint Notice of Proposed Rulemaking (NPRM) by September 30, 2011, and a final rule by July 31, 2012.

As required by the National Environmental Policy Act (NEPA), and by NHTSA and Council of Environmental Quality (CEQ) regulations, NHTSA will be developing a Draft Environmental Impact Statement (DEIS), to inform the upcoming NPRM. In the coming months, NHTSA will issue a scoping notice to request comment on the regulatory options that the DEIS should consider. A Final EIS (FEIS) will be issued at least 30 days prior to the release of the final rule.

As with any notice-and-comment rulemaking process, the agencies will provide full opportunity for the public to participate in the rulemaking process, consistent with EPCA/EISA, the Clean Air Act, Administrative Procedure Act, other applicable law, and Administration policies on openness and transparency in government. Upon publication of the NPRM, the agencies will open a public comment period for receiving written comments and expect to hold at least one joint public hearing to receive oral comments. We will describe all of these opportunities for public involvement in the NPRM which will be published in the **Federal Register**, and we will post this information on each agency's Web site associated with this rulemaking.

Dated: November 30, 2010.

Ray LaHood,

Secretary, Department of Transportation.

Dated: November 30, 2010.

Lisa P. Jackson,

Administrator, Environmental Protection Agency.

[FR Doc. 2010–30631 Filed 12–7–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II

[Docket No. FRA–2009–0038]

RIN 2130–AC11

Risk Reduction Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Rail Safety Improvement Act of 2008 requires the development and implementation of railroad safety risk reduction programs. Risk reduction is a comprehensive, system-oriented approach to safety that determines an operation's level of risk by identifying and analyzing applicable hazards and develops plans to mitigate that risk. Each Risk Reduction Program (RRP) is statutorily required to be supported by a risk analysis and a Risk Reduction Program Plan (RRPP), which must include a Technology Implementation Plan and a Fatigue Management Plan.

This ANPRM solicits public comment on a potential rulemaking that would require each Class I railroad, each railroad with an inadequate safety record, and each passenger railroad to submit an RRPP to FRA for its review and approval. Each of those railroads would ultimately be required to implement its approved RRP.

DATES: Written comments must be received by February 7, 2011. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

After all public comments are received, FRA may hold a public hearing on a date to be announced in a forthcoming notice. The focus of the meeting would be on issues raised in the submitted comments.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2009–0038 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. *Please see* the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

FOR FURTHER INFORMATION CONTACT: Miriam Kloeppel, Staff Director, Risk Reduction Program Division, Office of Safety Analysis, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (*telephone:* 202–493–6224), *miriam.kloeppel@dot.gov.* Elizabeth A. Gross, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–1342), *elizabeth.gross@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In section 103 of the Rail Safety Improvement Act of 2008, Public Law 110–432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20156) (hereinafter RSIA), Congress directed the Secretary of Transportation to issue a regulation by October 16, 2012, requiring certain railroads to develop a Risk Reduction Program (RRP). While

the statute vests certain responsibilities with the Secretary of the U.S. DOT (Secretary), the Secretary has since delegated those responsibilities to the FRA Administrator. *See* 49 CFR 1.49(oo); 74 FR 26981 (June 5, 2009); *see also* 49 U.S.C. 103(g).

Each railroad subject to the regulation would have to develop and implement an RRP approved by FRA. *See* 49 U.S.C. 20156(a)(1). This RRP is required to be supported by an RRPP. *See* 49 U.S.C. 20156(d)(2). FRA would also conduct an annual review to ensure that each railroad has complied with its RRP. *See* 49 U.S.C. 20156(a)(3). The RSIA mandates that the following three categories of railroads be required to develop and implement an FRA-approved RRP:

(1) Class I railroads;

(2) Railroad carriers with inadequate safety performance, as determined by the Secretary; and

(3) Railroad carriers that provide intercity rail passenger or commuter rail passenger transportation (passenger railroads).

See 49 U.S.C. 20156(a)(1).

In accordance with the RSIA mandate, this ANPRM announces the initiation of an RRP rulemaking applicable to the above railroads. Railroads not required to implement RRPs under the RSIA would be permitted to voluntarily submit plans meeting the requirements of any final RRP regulation for FRA review and approval. *See* 49 U.S.C. 20156(a)(4).

II. Related Proceeding

With the assistance of the Railroad Safety Advisory Committee (RSAC), FRA is currently developing a System Safety Program (SSP) regulation applicable to passenger railroads. An SSP is anticipated to be a comprehensive process for the application of engineering and management principles, criteria, and techniques to optimize safety. Like risk reduction, an SSP might require a railroad to assess and manage risk, and to develop proactive hazard management methods that would support safety improvement. As currently envisioned, SSP would be specifically tailored to the risks presented by passenger railroads. To the extent possible, FRA intends to incorporate risk reduction requirements into a complimentary safety and risk reduction framework.

III. RSIA RRP Requirements

Under the RSIA, each RRP required to be submitted by a railroad must contain certain components. As a general matter, an RRP is required to systematically evaluate safety risks on a railroad's system and to manage those risks to reduce the consequences and rates of railroad accidents, incidents, injuries, and fatalities. *See* 49 U.S.C. 20156(a)(1)(A). The RRP will help achieve this goal by mitigating aspects that increase railroad safety risks and enhancing aspects that decrease railroad safety risks. *Id.* Each RRP must contain a risk-based hazard analysis [1] and must be supported by an RRPP describing the processes, procedures and resources that are committed to supporting the RRP.[2] For example, the RRPP must describe the organizational functions and procedures that a railroad will utilize in developing, implementing, and evaluating its RRP. In addition, an RRPP must also incorporate a Technology Implementation Plan and a Fatigue Management Plan.

A. Risk-Based Hazard Analysis

Each railroad required to implement an RRP would conduct a risk-based hazard analysis that would be submitted along with the railroad's RRPP. *See* 49 U.S.C. 20156(c). FRA would likely expect a risk-based hazard analysis to identify and analyze the following factors that affect railroad safety:

- Operating rules and practices;
- Infrastructure;
- Equipment;
- Employee staffing levels and schedules;
- Management structure;
- Employee training; and
- Other matters that impact railroad safety.

A railroad would not be required to limit its risk-based hazard analysis to the above identified factors, and FRA may require a railroad to consider these and/or additional factors in any proposed or final rule. However, the contents of a railroad's risk mitigation RRPP would be based upon the results of the railroad's completed risk-based hazard analysis. *See* 49 U.S.C. 20156(d)(1).

[1] The RSIA uses the phrase "risk analysis" to describe the type of analysis a railroad is required to perform. For purposes of this ANPRM and any final rule, however, FRA will refer to this analysis as a "risk-based hazard analysis." This terminology clarifies that safety hazard risks are the concern of the rulemaking, as opposed to financial or other types of risk. Additionally, this harmonizes the risk reduction rulemaking with the terminology currently being utilized by the SSP rulemaking.

[2] The RSIA uses the phrases "comprehensive safety risk reduction program" and "risk mitigation plan" to describe the plan that must accompany and support an RRP submitted by a railroad to the FRA for approval. For purposes of this ANPRM, however, FRA will refer to this plan as an RRPP.

B. Technology Implementation Plan and Positive Train Control Systems

An RRPP must include a Technology Implementation Plan (TIP) that describes the railroad's plan for the "development, implementation, maintenance, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified under the railroad safety risk reduction program." 49 U.S.C. 20156(e)(1). At a minimum, a TIP must contain (1) a technology analysis addressing the safety impact, feasibility, and costs and benefits of implementing technologies, and (2) a 10-year implementation schedule prioritizing the development and implementation of new technology. *See* 49 U.S.C. 20156(e)(2) and (e)(3).

The RSIA also contains several provisions regarding a railroad's TIP and the implementation of positive train control (PTC) systems. These provisions, however, apply only to the extent that a railroad is not already required to implement a PTC system under section 104 of the RSIA. Under section 104, certain railroads—including all Class I and passenger railroads—are required to implement PTC systems by December 31, 2015. *See* 49 U.S.C. 20156(e)(4) and 20157(a). Therefore, the RSIA's provisions (other than those in section 104) regarding PTC systems would apply only to railroads determined to have an inadequate safety record. Possible methodologies FRA could use to determine whether a railroad has an inadequate safety record are discussed later in this ANPRM.

While there is no general requirement in the RSIA that all railroads with an inadequate safety record must address PTC systems in their TIPs, the RSIA does contain the following provisions regarding PTC systems:

- If a railroad's TIP contains an implementation schedule for a PTC system, the railroad must comply with that schedule. *See* 49 U.S.C. 20156(e)(4)(A).
- If a railroad is required to submit a TIP that addresses PTC systems, that railroad must implement such a PTC system pursuant to its TIP by December 31, 2018. *See* 49 U.S.C. 20156(e)(4)(B).

The above provisions mean that a railroad voluntarily submitting a TIP addressing the implementation of a PTC system would not have to comply with the December 31, 2018 implementation deadline. Rather, such a railroad would only be required to comply with the implementation schedule contained in its own TIP. The December 31, 2018 deadline would apply only to a railroad with an inadequate safety record that

FRA specifically requires to implement PTC.

C. Fatigue Management Plan

Each RRPP must include a Fatigue Management Plan (FMP) that will be designed to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by the fatigue of safety-related railroad employees. *See* 49 U.S.C. 20156(f)(1). A railroad will have to update its FMP every two years. *Id.* An FMP should accomplish this by prescribing appropriate fatigue countermeasures, taking into account the various operating circumstances on the different parts of a railroad system. *See* 49 U.S.C. 20156(f)(2). A railroad would also have to consider whether its FMP should include elements addressing the following:

- Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.
- Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders.
- Effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions.
- Scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss.
- Methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees' circadian rhythm.
- Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty.
- Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier.
- The increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.
- Avoidance of abrupt changes in rest cycles for employees.
- Additional elements that the Secretary considers appropriate.

See 49 U.S.C. 20156(f)(3)(A)–(J).

D. Consensus Requirements

Each railroad submitting an RRP must consult on the contents of the plan in good faith with all of its directly affected railroad employees and any non-profit employee labor organization representing directly affected employees. *See* 49 U.S.C. 20156(g)(1). If the railroad cannot reach a consensus on the proposed contents with the employees or the labor organization, the employees or the labor organization may file a statement with FRA explaining their views on the RRP on which consensus was not reached. *See* 49 U.S.C. 20156(g)(2). FRA is required to consider such views during the review and approval of the RRP. *Id.*

E. Protection of Confidential Information

1. FOIA Protection

Under section 109 of the RSIA, 49 U.S.C. 20118(a), certain information submitted to FRA pursuant to an RRP or risk reduction pilot project is prohibited from disclosure under the Freedom of Information Act, 5 U.S.C. 552, ("FOIA"), except as necessary for the Secretary or another Federal agency to enforce or carry out any provision of Federal law. This prohibition applies to any part of any record that FRA receives, inspects, or copies pursuant to an RRP or pilot project, including (but not limited to) a railroad's analysis of its safety risks and its statement of identified mitigation measures. *Id.* This prohibition, however, is subject to the exception that FRA may disclose information otherwise available to the public if FRA determines that disclosure would be consistent with the confidentiality needed for an RRP or pilot program. *See* 49 U.S.C. 20118(b).

In addition, FRA may also prohibit disclosure of risk analyses or risk mitigation analyses obtained under other provisions, regulations, or orders promulgated under 49 U.S.C. chapter 201, if FRA determines that the prohibition of public disclosure is necessary to promote railroad safety. *See* 49 U.S.C. 20118(c).

2. Protection From Discovery

The RSIA also directs FRA to conduct a study evaluating whether it is in the public interest to withhold certain risk reduction information from discovery or admission into evidence in Federal or State court proceedings against a railroad that involve personal injury or wrongful death. *See* 49 U.S.C. 20119(a). In conducting this study, FRA must take into account both public safety and the legal rights of persons injured in railroad accidents, and must solicit input from railroads, railroad non-profit employee labor organizations, railroad accident victims and their families, and the general public. *Id.* The risk reduction information that is the subject of the study would include any report, survey, schedule, list, or data compiled or collected for the purpose of evaluating, planning, or implementing a railroad RRP that is required under 49 U.S.C. chapter 201, including a railroad's analysis of safety risks and its statement of mitigation measures with which it will address those risks. *Id.* FRA may then issue a rule addressing the results of this study, so long as the rule is in the public interest (including public safety and the legal rights of persons injured in railroad accidents). *See* 49 U.S.C. 20119(b). Any such rule may not go into effect until one year after its adoption. *Id.*

FRA anticipates that it will complete this study within one to two years. The public will have an opportunity to comment on the information collection requirements of this study through FRA's obligation under the Paperwork Reduction Act.

IV. FRA's Risk Reduction Initiative

Although FRA's traditional rule-based system has been effective at establishing minimum safety standards, additional safety improvements could be achieved through the establishment of risk reduction programs. FRA's risk reduction initiative utilizes an approach based on (1) voluntary risk reduction programs in the railroad industry, and (2) changes to FRA's internal safety culture to maximize the agency's ability to improve railroad safety. FRA envisions that the RRP and SSP regulations discussed in this ANPRM will enhance this broad approach. Risk reduction is a problem-solving process used to identify and mitigate railroad safety risks. Its objective is to develop innovative methods, processes, and technologies that can be used to identify and mitigate railroad safety risk factors proactively instead of reactively, so that risks are effectively counteracted before an accident, injury, or fatality occurs.

Overall, a risk reduction approach could help railroads, FRA, and labor organizations learn how unsafe events may occur and identify underlying conditions that contribute to unsafe events. This knowledge will then provide a means to effectively prevent those unsafe events. When fully implemented, FRA intends that its

broad risk reduction initiative will help identify systemic factors that can address multiple railroad safety problems. Risk reduction will also help to identify, track, and evaluate corrective actions taken by railroads, and could help reveal previously hidden safety information for analysis and problem solving.

A. Voluntary Risk Reduction Programs

Before the passage of RSIA, FRA worked with railroads and labor organizations to develop voluntary proactive safety programs designed to improve railroad safety and build strong safety cultures. Various programs, such as the Confidential Close Call Reporting Systems (C^3RS) (OMB No. 2130–0574), Crew Resource Management model training programs, and Clear Signal for Action (CSA) behavior-based safety programs (as well as many others), contained elements that made them (or other programs like them) appropriate for consideration as voluntary programs under the risk reduction umbrella. These elements include commitments from all stakeholders; voluntary, confidential, and non-punitive participation; systematic and objective data gathering, analysis, and reporting; problem-solving and corrective actions; and long-term sustaining mechanisms. FRA's risk reduction initiative will continue to encourage the development and implementation of voluntary programs focusing on proactive risk mitigation.

B. FRA's Internal Risk Reduction Program

As a regulator, FRA recognizes that the presence of a strong internal safety culture increases its ability to improve railroad safety. A strong internal safety culture enables the agency to overcome institutional "stovepipe" barriers that inhibit the free flow of information within the agency and can help the entire agency focus effectively on railroad safety issues. To help the agency identify new processes or methods for improving railroad safety, FRA is developing its own internal risk reduction program. This program will provide support and guidance to several FRA teams working on internal pilot studies that would address specific railroad safety issues.

C. Risk Reduction Pilot Programs

The RSIA authorized FRA to conduct research and pilot programs related to risk reduction. *See* 49 U.S.C. 20156(a)(2). FRA intends to use the information and experience gathered through these pilot programs to develop the RRP regulation. *Id.*

On May 29, 2009, FRA published a Broad Agency Announcement (BAA) soliciting proposals for risk reduction pilot programs. *See* Department of Transportation (Federal Railroad Administration), "Limited Competition of the Federal Railroad Administration Risk Reduction Program/Broad Agency Announcement," Special Notice, Solicitation Number: DTFR53–09–M–0000, *available at: https://www.fbo.gov/index?s=opportunity&mode=form&id=0ea229f12915fda77cfc84b4dbc6ef9a&tab=core&_cview=0.* FRA limited competition under the BAA to Class I railroads, many of which were already developing proactive safety programs. This allowed FRA to increase the speed of generating pilot projects results to help develop the RRP regulation required by RSIA. The BAA requested proposals from the Class I railroads for pilot projects that targeted operations, equipment, or systems that posed the greatest risk to operational and personal safety. FRA evaluated the proposals and announced in September 2009 that Risk Reduction Pilot Program Grant Awards had been awarded to the National Railroad Passenger Corporation (Amtrak); BNSF Railway Company; Canadian Pacific Railway; CSX Transportation, Inc.; Norfolk Southern Corporation; and Union Pacific Railroad Company.

FRA is currently monitoring these pilot programs and gathering information and results that will assist in the development of the subject RRP regulation. FRA anticipates that many of these pilot projects will have a life span beyond the publication of the final risk reduction regulation, and many of them may ultimately become part of a railroad's FRA-approved RRP.

V. Advance Notice of Proposed Rulemaking

In accordance with the RSIA mandate, this ANPRM announces the initiation of an RRP rulemaking. This ANPRM requests written comments in response to the questions presented. FRA also welcomes any additional information that may be helpful in considering a risk reduction framework for railroad carriers. FRA is not proposing any specific regulatory language in this ANPRM. After a review of all the comments submitted in response to this ANPRM, FRA will likely issue a notice of proposed rulemaking (NPRM) proposing specific risk reduction program regulations. Interested persons will have the opportunity to comment on a proposed regulation prior to the adoption of any final regulation regarding risk reduction.

A. Identifying Railroads With an Inadequate Safety Record

FRA is particularly interested in soliciting input regarding how to determine whether a railroad has an "inadequate safety record" under 49 U.S.C. 20156(a)(1) and thus would be required to develop and implement an RRP. The RSIA does not provide guidance on how this determination should be made. FRA is currently considering an approach in which a variety of safety factors would be analyzed and weighed when making the determination. Such possible factors could include:

- The railroad's safety performance within the last five (5) years, as measured by the number of occurrences per million train-miles of the following:
  - Fatal accidents/incidents reportable under 49 CFR part 225 (not including accidents/incidents occurring at highway-rail grade crossings, unless caused by a railroad's failure to comply with a railroad operating rule or a Federal statute or regulation).
  - The number, severity, and types (*e.g.,* head-on collisions between pieces of on-track equipment) of accidents/incidents reportable under 49 CFR part 225.
  - Non-accident hazardous materials releases.
  - FRA safety violations/deficiencies.
- How the railroad's measured safety performance compares with other railroads of similar size and operations.
- Any serious accident/incident involving hazardous materials and whether any such accident/incident led to an evacuation, environmental damage, or a personal injury/fatality.
- Any recommendations made by an FRA Regional Administrator (with detailed supporting reasons provided) identifying a railroad with an inadequate safety record.
- The proportion of the railroad's territory that is excepted track under 49 CFR 213.4. Railroads may designate a segment of track as excepted track subject to certain conditions. *Id.* For example, on excepted track a railroad may not operate trains in excess of ten miles an hour, operate occupied passenger trains, or operate freight trains containing more than five cars containing hazardous materials. *See* § 213.4(e)(1)–(e)(3). Excepted track is then subject to less stringent track safety standards. *See* 49 CFR 213.5.

FRA does not anticipate that all these factors would necessarily be weighted equally. Additionally, a determination relating to the adequacy of a railroad's safety record could be based upon any number of factors, depending upon the

severity of the safety concern involved. FRA would likely consider such factors as fatalities, accidents/incidents, non-accident hazmat releases, and FRA safety violations/deficiencies, using statistical models that compare the railroad's performance to the industry average or an FRA threshold established on a periodic basis (*e.g.,* yearly). Rates above a certain threshold would then likely cause FRA to determine that a railroad has an inadequate safety record. In order for FRA to determine that a railroad no longer has an inadequate safety record, the railroad may then need to be below all applicable thresholds for a set period of time (*e.g.,* three years).

Additional factors to be considered may include the increased risk level due to operating conditions specific to an individual railroad. In other words, factors presenting a greater than usual risk or hazard would weigh in favor of determining that a railroad has an inadequate safety record. Such factors might include the following:

- Share of a railroad's revenue from the shipment of hazardous materials;
- Share of a railroad's revenue from the shipment of hazardous materials in a major metropolitan area;
- Whether the railroad shares trackage rights with a railroad engaged in passenger operations; and
- Whether a passenger operation crosses the railroad's right-of-way at grade, otherwise known as a diamond crossing.

As this document is an ANPRM, the above ideas are not intended to constitute FRA's final position regarding the definition of "inadequate safety record." Rather, they are intended to elicit discussion and comment from interested parties. FRA anticipates that any approach proposed in a future NPRM could differ significantly from the above. Nevertheless, FRA believes that the approach presented above provides a good starting point for discussion. As discussed further below in the Request for Information section, FRA is interested in receiving any comments, questions, or concerns about the above approach, as well as any suggestions for alternate methods of determining when a railroad has an "inadequate safety record."

B. RRP Requirements and Implementation

As discussed above, the RSIA requires a railroad's RRP to include certain minimum core components: A risk-based hazard analysis and an RRPP (which must include a TIP and an FMP). FRA anticipates that a risk reduction proposed rule would provide further specification regarding what a risk-based hazard analysis and an RRPP might contain. For example, FRA could propose the following requirements for public comment:

- A railroad's risk-based hazard analysis may be required to:
  - Utilize certain demonstrated methodologies;
  - Be of a certain scope;
  - Contain a comprehensive description of the railroad's system;
  - Address the risks posed both by and to contractors who work for the railroad; and
  - Address the risks posed by joint operations between railroads.
- A railroad may be required to update its risk-based hazard analysis on a periodic basis. Additionally, certain events or occurrences may trigger a mandatory update of a railroad's risk-based hazard analysis.
- A railroad's RRPP may be required to include defined roles and responsibilities for contractors working for the railroad, as well as employees.
- A railroad's RRPP may be required to provide for periodic risk reduction training to specific railroad employees and contractors.
- A railroad's RRPP may be required to specify how the railroad will periodically review the design and implementation of its RRP utilizing valid mathematical tests or methods that conform to the standards of the American Evaluation Association.
- A railroad may be required to maintain certain risk reduction documentation and records and to make that information available upon request to the FRA for auditing purposes.
- A railroad may be required to develop and submit a risk-based hazard analysis and an RRPP for approval six months after the publication of the final rule, and to fully implement the RRP six months after the hazard analysis and the RRPP have been approved by the FRA.

C. Request for Information

In general, FRA seeks comments on the broad areas outlined within this ANRPM, and approaches FRA can take to integrate existing FRA requirements into a comprehensive risk reduction program that meets the requirements set forth in RSIA. FRA seeks comments on how a risk reduction program could be implemented to meet the requirements of the law in a manner that maximizes benefits without imposing excessive, unjustified, or unnecessary costs.

FRA also seeks input from the public on the following specific questions. Comments will be used by FRA to make decisions regarding the content and direction of any future public meetings on the risk reduction rulemaking and the contents of the NPRM. Each commenting party should refer to the number of the specific question(s) to which it is responding. FRA also requests additional comments and information not addressed by these questions that would promote an understanding of the implications of imposing an RRP regulatory requirement. FRA does not expect that every commenter will be able to answer every question. Please respond to those questions you feel able to answer or that address your particular issue. FRA encourages responses from all interested entities, not only railroads. Each comment filed by a party, other than railroads or their representatives, should explain its interest in risk reduction and how its comments may assist in the development of an RRP rulemaking.

Risk Reduction Program

1. If you are not in the railroad industry, please tell us about your organization and your interest in risk reduction.

2. What should be the scope of applicability for the final risk reduction rule? Should certain types of railroads (such as tourist railroads) be exempted from the regulation?

3. The RSIA requires a railroad with an "inadequate safety record" to develop and implement an FRA-approved RRP. This ANPRM proposes a list of factors that FRA could consider when determining whether a railroad has an "inadequate safety record."

a. Is FRA asking the right questions to determine the adequacy of a safety record? Please comment on the various factors FRA has identified. What other questions should FRA be asking?

b. What additional factors not discussed above should FRA consider?

4. An RRP must be designed to improve safety by reducing the number and rates of accidents, incidents, injuries, and fatalities. An RRP will accomplish this by using a safety improvement process that identifies accident precursors and mitigates hazards on an ongoing basis.

a. What should an effective RRP include to accomplish this mandate?

b. How should a railroad go about adequately demonstrating that its RRP is effective for addressing safety concerns identified in the risk-based hazard analysis?

c. How can a railroad utilize risk reduction to improve its corporate safety culture?

5. Each railroad required to develop and implement an FRA-approved RRP must include defined roles and responsibilities for contractors. FRA

will likely hold a railroad responsible for ensuring that a contractor fulfills these roles and responsibilities.

a. What are the different ways an RRP can incorporate contractors performing work for a railroad?

b. How would you determine which contractors should be included in a railroad's RRP? Should a railroad's RRP be required to incorporate only contractors who perform safety-sensitive service for the railroad? Who should be excluded? Explain.

c. Should a railroad or FRA (or both) be responsible for ensuring that contractors working for a railroad are fulfilling their RRP roles and responsibilities?

6. An RRP must take into account the risks and hazards associated with joint operations between railroads.

a. How should FRA define joint operations in the context of an RRP regulation?

b. What are the different ways an RRP can incorporate risks and hazards associated with joint operations?

7. Should all railroads be required to submit risk-based hazard analyses and RRPPs of identical scope and depth that meet uniform rigorous standards? If not, how can FRA craft a scalable regulation that applies fairly to both large and small railroads? Are there ways to make risk reduction programs scalable and flexible, dependent upon the size and flexibility of the railroad?

8. Risk reduction is an ongoing, dynamic approach to identifying and mitigating risks. How can a railroad use an RRPP to promote safety improvement and to maintain an acceptable level of safety?

9. What risk reduction activities are already in place at railroads, and, how could those activities be incorporated into a future proposed rule?

10. Are there ways to achieve greater benefits at a lower cost through alternative methods of implementation?

Risk-Based Hazard Analysis

11. The RSIA requires each railroad to develop and implement an RRP that systematically "evaluates railroad safety risks on its system." How can a risk-based hazard analysis accomplish this mandate?

a. What methodologies should FRA require that a railroad use when conducting its risk-based hazard analysis?

b. What should be excluded from the scope of a risk-based hazard analysis? What should be included in that scope?

c. How should a risk-based hazard analysis determine what is and what is not an acceptable level of risk?

d. What are various methods for determining whether a railroad has effectively applied a risk-based hazard analysis to its entire system?

12. FRA will likely require a risk-based hazard analysis to address the risks presented both by and to contractors working for the railroad. What elements would need to be present to ensure risks relevant to contractors are addressed?

a. Is there a particular set of contractors that FRA should focus on, or, conversely, contractors that have little impact on overall risk?

13. When approving a railroad's RRPP, FRA will likely consider the railroad's approach to updating its risk-based hazard analysis.

a. At a minimum, how often should a railroad update a risk-based hazard analysis? Why have you recommended this time span?

b. In what ways is a risk-based hazard analysis an on-going process supporting safety improvements?

c. What type of events or occurrences might trigger an update of a railroad's risk-based hazard analysis?

Risk Reduction Program Plan

14. The RSIA requires a railroad to include a TIP and an FMP in its RRPP. FRA may require an RRPP to have additional elements, such as a comprehensive description of the railroad's system. What other basic elements should an RRPP be required to contain?

15. Based on the information provided in this ANPRM, what would the potential burden on railroads be for developing and maintaining an RRPP, TIP, and FMP? Are particular elements more burdensome than others? Are there ways for FRA to reduce the burden on railroads (including, but not limited to, reduction of burden on small entities)?

16. All conclusions reached or positions taken by a railroad should have supporting data that a reviewer can understand and follow in order to reach the same conclusions. What additional supporting documentation, data, or other information should a railroad be required to include in the RRPP package it submits for FRA approval?

17. Are there risk management standards or guidelines that FRA should apply when approving a railroad's RRPP?

18. Are there standards, analyses, or other considerations that FRA should apply when deciding whether a railroad with an inadequate safety record must submit a TIP providing for the implementation of a PTC system?

19. The RSIA requires a railroad to consider whether its FMP should address certain elements. Are there additional elements that FRA should require a railroad's FMP to consider? What are the likely costs of implementing specific elements of an FMP, and, what are the expected benefits of implementing these elements?

Training

20. A railroad will likely be required to develop a risk reduction training program (submitted as part of the railroad's RRPP) that introduces the concept of safety risk reduction and the elements of the railroad's RRP. What specific material should be included in or excluded from a railroad's training?

21. Which employees or classes of employees should a railroad be required to train on various RRP policies and procedures? Who should be excluded from this training? Explain.

22. How often should risk reduction training be required? Why?

Recordkeeping and Program Audits

23. FRA may require railroads to maintain RRP records related to input and output data, safety outcomes, evaluation protocols, manuals, training programs, policies, procedures, standard operating procedures, *etc.* Would retaining these records be appropriate? Are there other records FRA should propose that railroads maintain? What would be the practical utility of collecting and maintaining this information? What would the potential burden of these activities be? Are there ways for FRA to reduce burden related to recordkeeping and auditing requirements?

24. In addition to a records review, FRA's annual review will probably include field inspections, interviews, surveys, and other evaluative data collection efforts. FRA may also inspect data indicating whether the program has been effective in reducing risk. Are these effective evaluation measures? What other tools could FRA incorporate into its annual review effort?

25. As provided by the RSIA, FRA will review a railroad's RRP annually. Should FRA's annual review:

a. Address a railroad's entire RRP?

b. Focus primarily on certain RRP components, with a maximum of two years between audits for any single program component?

c. Target certain issues identified by accident/incident, inspection, or complaint data?

26. How should a railroad provide FRA access to proprietary or sensitive data?

27. FRA will likely require covered railroads to periodically evaluate their RRP to ensure that it is effectively

reducing risk. Covered railroads will be specifically required to evaluate components of the program that were not audited by FRA that year. These evaluations will likely be required to utilize valid mathematical tests or methods that conform to the standards of the American Evaluation Association.

a. How often should a railroad be required to evaluate the effectiveness of its RRP?

b. What other standards could a railroad use to evaluate the effectiveness of its RRP?

28. Should FRA allow a railroad to hire a contractor to evaluate its RRP? If so, what qualifications or certifications should this contractor have?

29. What documentation/certification must a railroad maintain so that FRA can verify that the railroad has properly evaluated the effectiveness of its RRP?

Cost/Benefits

30. What are the initial and recurrent costs of establishing and maintaining RRP processes (*e.g.,* internal auditing and evaluation, data collection, employee training, computer software, personnel hiring and training)?

31. How could railroads maximize benefits associated with a risk reduction program without unjustified or unnecessary costs?

32. What new knowledge, skills, and abilities would your organization need, if any, to operate successfully within a risk reduction framework?

33. What are practical ways a small business could apply the elements of an RRP?

34. What business benefits are created by a risk reduction program?

35. Are there special costs or loss of benefits of scale for small businesses? If so, how can they be minimized?

General/Background

36. FRA may require a railroad to develop and submit an RRPP for approval six months after publication of the final rule. Is this timeline appropriate? If not, why? What additional problems does the six month deadline create?

37. FRA may require a railroad to establish a full initial implementation of an RRP six months after the RRPP has been approved by FRA.

a. Is this timeline appropriate? If not, explain why it is not appropriate.

b. Should FRA permit a railroad to implement its RRP in phases? What should those phases be? Explain.

38. Has your organization implemented an official safety risk reduction program (or other programs that could qualify as risk reduction)? Please describe your implementation experience.

a. How has this program impacted organizational safety and compliance with existing Federal statutes and regulations?

b. How have the resources required to implement and maintain the program affected your organization?

c. If you do not represent a railroad, how do you think your risk reduction activities would apply in a railroad context?

d. How has this program improved your organization's corporate safety culture?

39. Has your railroad undertaken a risk reduction pilot project? If so, please tell us how successful that pilot project has been and how any data or information obtained through the project could assist in the development of an RRP regulation.

40. What areas of FRA's current regulations do you believe already incorporate risk reduction principles? How would you suggest the FRA avoid any duplicative requirements in any risk reduction rulemaking effort?

Public Meetings

41. After the ANPRM comment period has closed, FRA may hold one or more public hearings on the announced risk reduction rulemaking. Decisions regarding public meetings will be made based upon the content of the comments. As such, all interested entities should, to the best of their ability, respond fully in writing to the questions presented in this ANPRM.

a. How many public meetings, if any, should FRA hold?

b. Where should any public meeting(s) be held? Are there certain meeting locations that would increase participation?

Issued in Washington, DC, on December 2, 2010.

Karen J. Hedlund,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 2010–30836 Filed 12–7–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100526227–0256–01]

RIN 0648–AY71

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam (Surfclam) and Ocean Quahog Fishery

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws the proposed rule published on June 30, 2010, which proposed to open a portion of the Georges Bank (GB) Closed Area to the harvest of surfclams and ocean quahogs. The previously published proposed rule will not be issued as a final rule and will not become effective or enforceable. The current GB Closed Area remains in effect.

DATES: The withdrawal of the proposed rule to open a portion of the GB Closed Area to the harvest of surfclams and ocean quahogs (75 FR 37745, June 30, 2010) is effective December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, phone (978) 281–9165, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS is withdrawing a proposed rule to open a portion of the GB Closed Area to the harvest of surfclams and ocean quahogs that was published on June 30, 2010 (75 FR 37745), with public comments accepted through July 30, 2010. The background and full details on the development of the June 30, 2011 proposed rule are contained in the preamble of the proposed rule and are only summarized here.

The GB Closed Area, located in the Exclusive Economic Zone east of 69°00' W. long. and south of 42°20′ N. lat., has been closed to the harvest of surfclams and ocean quahogs since 1990 due to red tide blooms that cause paralytic shellfish poisoning (PSP). The closure was implemented based on advice from the U.S. Food and Drug Administration (FDA), after samples tested positive for toxins (saxotoxins) that cause PSP. PSP toxins are produced by the alga, *Alexandrium fundyense,* which can

form blooms commonly referred to as red tides, or harmful algal blooms (HABs), and can produce toxins that accumulate in water column filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death in humans.

Due to inadequate testing or monitoring of the GB Closed Area for the presence of PSP-causing toxins, the closure was made permanent in 1999, under Amendment 12 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). Since the implementation of the permanent closure, NOAA's National Ocean Service (NOS) has provided grants to the FDA; the States of Maine, New Hampshire, and Massachusetts; and a clam industry representative to collect water and shellfish samples from Federal waters off of southern New England. The FDA, in consultation with NMFS and several States, also developed the Protocol for Onboard Screening and Dockside Testing in Molluscan Shellfish (Protocol), which is designed to test and verify that clams harvested from GB are safe. NMFS first issued an Exempted Fishing Permit (EFP) on January 9, 2008, to Truex Enterprises of New Bedford, MA, to allow for testing the efficacy of harvesting surfclams and ocean quahogs from a portion of the GB Closed Area using the Protocol. The EFP was subsequently renewed on January 22, 2009, and December 10, 2009.

On January 21, 2010, NMFS received a letter from the FDA requesting that NMFS open a portion of the GB Closed Area, as specified at 648.73(a), to the harvest of surfclams and ocean quahogs for human consumption. The FDA indicated that testing of clams from the portion of the GB Closed Area known as Cultivator Shoal had demonstrated that PSP toxin levels were well below the regulatory limit established for public health and safety. This information contributed to the FDA's determination that harvesting of surfclams and ocean quahogs from this area is once again safe. In response to the FDA' s request, NMFS published the aforementioned proposed rule to solicit public comments on the FDA's request to open a portion of the GB Closed Area.

Basis for Withdrawal

During the public comment period, NMFS received substantive comments from leading experts in PSP, who questioned the validity of the data on which the proposed re-opening is based, and strongly cautioned against re-opening the area without a rigorous testing protocol designed to protect the public health. Several other comments were also received in support of a re-opening, but with the use of the FDA-approved Protocol.

Upon review of public comments, NMFS agrees that testing is necessary to ensure clams harvested from the area are safe for human consumption. The proposed rule did not propose any additional requirements such as a testing protocol. The Regional Administrator does not have the authority to implement a testing protocol under the existing regulations for the FMP. Therefore, NMFS is withdrawing the proposed rule.

Comments and Responses

During the public comment period on the proposed rule, 11 comments were received. Two comments were in support of the re-opening; six comments supported the re-opening, but with the use of the FDA-approved Protocol; two comments were opposed to the action, due to lack of a monitoring requirement; and one comment was opposed to the re-opening but did not supply any significant rationale for the opposition.

Comment 1: Two experts questioned the validity of the data on which the proposed opening of the GB Closed Area is based, and strongly cautioned NMFS against re-reopening the area without a rigorous testing protocol to ensure the clams harvested from the area are safe. Six comments were in support of the re-opening, but with the use of the FDA approved Protocol.

Response: NMFS agrees that testing is necessary; however, the proposed rule only proposed to re-open an area, and did not propose any additional requirements such as a testing protocol. The Regional Administrator does not have the authority to implement a monitoring requirement under the existing regulations implementing the FMP.

Comment 2: One commenter supported the re-opening, since the FDA determined that clams from the area were safe. This commenter stated that the industry should be permitted to harvest clams from the area. The commenter further supported the re-opening because a large portion, roughly 50 percent of the surfclam and ocean quahog biomass, is located in GB and opening a portion of the GB Closed Area would alleviate fishing pressure on areas that are experiencing declines in landings per unit of effort.

Response: NMFS recognizes that re-opening a portion of the GB Closed Area may help address problems associated with localized depletion. However, given the significant health risk associated with opening the area without a sufficient monitoring program to ensure that clams harvested from the area are safe for human consumption, NMFS will not take action to re-open the area. NMFS does not have the authority to implement a monitoring requirement under the existing regulations implementing the FMP. NMFS would consider supporting a Mid-Atlantic Fishery Management Council action to open the area, provided a sufficient monitoring program was included as part of the action.

Comment 3: One commenter supported the proposed opening, but expressed concern as to whether there were enough data to support the finding that ocean quahogs harvested from GB are safe.

Response: NMFS agrees this is a valid concern. Based on the significant comments received on this action, and given the significant risk associated with opening the area without a testing protocol, NMFS is withdrawing the proposed rule.

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

Dated: December 2, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–30874 Filed 12–7–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0522–02]

RIN 0648–XZ89

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2011 and 2012 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2011 and 2012 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 2011 and 2012 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of

Alaska. 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: Comments must be received by January 7, 2011.

ADDRESSES: Send comment to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XZ89, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required 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 the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), the Initial Regulatory Flexibility Analysis (IRFA), and the Supplemental IRFA prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Copies of the final 2009 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2009, are 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.* The draft 2010 SAFE report for the GOA will be available from the same sources in November 2010.

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.

These proposed specifications are based in large part on the 2009 SAFE report (*see* **ADDRESSES**). In December 2010, the Council will consider the draft 2010 SAFE report to develop its recommendations for the final 2011 and 2012 acceptable biological catch (ABC) amounts and total allowable catch (TAC) limits. In addition to the proposed specifications, this proposed rule identifies anticipated changes to the proposed specifications that might result from the Council's review of the 2010 SAFE report for public review.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the TACs 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 inshore/offshore Pacific cod. The proposed specifications in Tables 1 through 18 of this document satisfy these requirements. For 2011 and 2012, the sum of the proposed TAC amounts is 330,746 mt. Under § 679.20(c)(3), NMFS will publish the final 2011 and 2012 specifications after (1) considering comments received within the comment period (*see* **DATES**), (2) consulting with the Council at its December 2010 meeting, and (3) considering information presented in the Final EIS (*see* **ADDRESSES**) and the final 2010 SAFE report prepared for the 2011 and 2012 groundfish fisheries.

Other Actions Potentially Affecting the 2011 and 2012 Harvest Specifications

NMFS published a final rule to implement Amendment 87 to the FMP on October 6, 2010 (75 FR 61639), effective November 5, 2010. Amendment 87 moves sharks, sculpins, squids, and octopuses from the "other species" category to the "target species" category in the GOA and eliminates the "other species" category in the GOA FMP. Amendment 87 revises the FMP to meet the National Standard 1 guidelines for annual catch limits and accountability measures and requires that overfishing levels (OFLs), ABCs, and TACs be established for sharks, sculpins, squids, and octopuses as part of the annual groundfish harvest specifications process. Based on the 2009 SAFE report, NMFS proposes ABCs, TACs, and OFLs for sharks, sculpins, octopuses, and squids listed in Table 1.

Implementation of Amendment 87 to the FMP was necessary to comply with Magnuson-Stevens Act requirements associated with annual catch limits and accountability measures and will result in revisions to how total annual groundfish mortality is estimated and accounted for in the annual SAFE reports. These revisions may affect the OFLs and ABCs for certain groundfish species. Specifically, NMFS will attempt to identify additional sources of mortality to groundfish stocks not currently reported or considered by the groundfish stock assessments in recommending OFLs, ABCs, and TACs for certain groundfish species. These additional sources of mortality result from recreational fishing, subsistence fishing, trawl and hook-and-line surveys, exempted fishing permits, research, commercial halibut fisheries, crab bait, sablefish catch predation by whales, or other sources of mortality not yet identified. Many of the sources of this mortality have been identified, some of which are currently unreported due to the absence of formal reporting protocols.

NMFS intends to develop a single database that stock assessment authors can access through a single source such as the Alaska Fisheries Information Network. The development of this data base will require the cooperation of several agencies including NMFS, the Alaska Department of Fish and Game, and the International Pacific Halibut Commission (IPHC). At its October 2010 meeting, the Council's groundfish Plan Teams recommended the formation of a total catch accounting working group to assist NMFS in developing a methodology to estimate total catch of groundfish. While much of the information is currently available and will be incorporated into the final 2010 SAFE report, the development of an adequate methodology is ongoing and not fully ready for use in the final SAFE report. NMFS intends to have this

information fully available for the 2011 assessment cycle.

In conjunction with the implementation of Amendment 87, during its October 2010 meeting, the Council made additional recommendations with respect to the management of octopuses. The Council, in response to the fishing industry's concerns that new requirements for ACLs for octopuses may constrain commercial fisheries, initiated an analysis for amendments to the FMP that would consider moving octopuses into the ecosystem category or create octopus discard mortality rates. Initial review and final action are scheduled tentatively for April and June 2011, respectively. The intent is for the amendments to be implemented for the 2012 fisheries.

The Council, at its December 2009 meeting, took final action to recommend a Pacific cod sector split in the Western and Central GOA. If approved by the Secretary of Commerce, the Pacific cod TAC would be allocated in the Western GOA among trawl catcher/processors (C/Ps), trawl catcher vessels (CVs), hook-and-line C/Ps, hook-and-line CVs, combined CP and CV pot vessels, and jig vessels; and in the Central GOA among trawl C/Ps, trawl catcher vessels (CVs), hook-and-line C/Ps, hook-and-line CVs less than 50 feet length overall, hook-and-line CVs equal to or greater than 50 feet length overall, combined C/P and CV pot vessels, and jig vessels. Sector allocations may provide stability to long-term participants in the fishery by reducing competition among sectors for access to the GOA Pacific cod resource. NMFS intends to publish proposed and final rulemaking for this action during 2011. If these sector allocations are approved and implemented for the 2012 Pacific cod fishery in the Western and Central GOA, the allocations of the Pacific cod TAC between the inshore and offshore components in the Western and Central GOA would be discontinued and replaced by allocations to each sector noted above.

Proposed ABC and TAC Specifications

The amounts proposed for the 2011 and 2012 harvest specifications are based on the 2009 SAFE report. The proposed ABCs and TACs could be changed in the final harvest specifications depending on the most recent scientific information contained in the final 2010 SAFE report. 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 GOA Groundfish Plan Team (Plan Team) estimates an ABC for each species category.

At the October 2010 Council meeting, the Council, the Scientific and Statistical Committee (SSC), and the Advisory Panel (AP) reviewed most recent biological and harvest information about the condition of groundfish stocks in the GOA. This information was initially compiled by the Plan Team and presented in the final 2009 SAFE report for the GOA groundfish fisheries, dated November 2009 (*see* **ADDRESSES**). In November 2010, the Plan Team will update the 2009 SAFE report to include new information collected during 2010, such as revised stock assessments and catch data. The Plan Team will compile this information and produce the draft 2010 SAFE report in time for the Council to review it during the December 2010 Council meeting. Upon completing its review, the Council will formally approve the draft 2010 SAFE report. Once this approval occurs, the draft 2010 SAFE report will be considered final. The Council also will consider information contained in the draft 2010 SAFE report, the recommendations made by the Plan Team during its November 2010 meeting, information from the December 2010 SSC and AP meetings, public testimony, and relevant written public comments in making its recommendations for the final 2011 and 2012 harvest specifications.

In previous years the largest changes from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for making stock assessments. NMFS scientists presented updated and new survey results, changes to assessment models, and accompanying stock estimates at the September Plan Team meeting, and the SSC reviewed this information at the October 2010 Council meeting. In November 2010, the Plan Team considered updated stock assessments for pollock, Pacific cod, sablefish, sharks, squids, sculpins, and octopuses which were included in the draft 2010 SAFE report. For the other groundfish stocks without recent surveys or other new scientific information, NMFS will update the assessments to include any other available, recent information, such as 2010 catch. Thus, NMFS does not expect the final harvest specification amounts for the latter group of stocks (*i.e.,* those without recent surveys) to vary greatly from the proposed specification amounts published here.

If the draft 2010 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2011 and 2012 harvest specifications for that species may reflect an increase from the proposed harvest specifications. The draft 2010 SAFE reports indicate that the biomass trend for pollock, Pacific cod, Rex sole, arrowtooth flounder, northern rockfish, and demersal shelf rockfish may be increasing. Conversely, if the draft 2010 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2011 and 2012 harvest specifications may reflect a decrease from the proposed harvest specifications. The draft 2010 SAFE reports indicate that the biomass trend for flathead sole, pelagic shelf rockfish, and sharks may be decreasing. Notwithstanding the apparent decrease in the shark biomass, the Plan Team will be recommending an alternative method for calculating shark OFL to the SSC at the December 2010 Council meeting. If the SSC concurs with this method, the final harvest specifications may reflect an increasing OFL, ABC, and TAC for sharks.

The biomass trends for species otherwise not listed above are relatively level and stable. However, with respect to octopuses, the Plan Team also will recommend an alternative method to calculate the octopus OFL to the SSC at the December 2010 Council meeting. This method varies from the default method of using Tier 6 methodology as specified in the FMP. The new method would incorporate octopus biomass estimates from recent GOA groundfish trawl surveys, in combination with historical catch data, to calculate the OFL for octopuses. If accepted by the SSC, this change could result in an increasing OFL, ABC, and TAC for octopuses.

The proposed ABCs and TACs are based on the best available biological and socioeconomic data, 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. Fisheries scientists determine formulas applicable to a particular stock or stock complex based on the level of available, reliable information. This information is categorized in the FMP into a successive series of six tiers to define OFL and ABC amounts, with tier one representing the highest level of information quality available and tier six representing the

lowest level of information quality available.

The SSC adopted the proposed 2011 and 2012 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. These amounts are unchanged from the final 2011 harvest specifications published in the **Federal Register** on March 12, 2010 (75 FR 11749) . The exceptions to this are the establishment of individual ABC and TAC amounts for sculpins, sharks, squid, and octopuses per the adoption of Amendment 87 to the FMP, as previously described. For 2011 and 2012, the Council recommended and NMFS proposes the OFLs, ABCs, and TACs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2011 and 2012 ABCs for all assessed groundfish is 605,086 mt, which is higher than the final 2010 ABC total of 565,499 mt (75 FR 11749, March 12, 2010).

Specification and Apportionment of TAC Amounts

The Council recommended proposed TACs for 2011 and 2012 that are equal to proposed ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, skates, sharks, sculpins, squids, and octopuses. The Council recommended other proposed TACs for 2011 and 2012 that are less than the proposed ABCs for certain species: Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish. The Pacific cod TACs are set to accommodate the State of Alaska's (State) GHLs for Pacific cod so that the ABC is not exceeded. The flathead sole, shallow-water flatfish, and arrowtooth flounder TACs are set to conserve the halibut PSC limit for use in other fisheries. The other rockfish TACs are set to reduce the amount of discards in the Southeast Outside (SEO) District. The Atka mackerel TAC is set to accommodate incidental catch 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 Guideline Harvest Level (GHL) established by the State for the Prince William Sound (PWS) pollock fishery since its inception in 1995. Genetic studies revealed that the pollock in PWS was 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 2011, the PWS GHL for pollock is 1,650 mt.

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, and divided 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) (50 CFR 679.23(d)(2)(i) through (iv), and 679.20(a)(5)(iv)(A), (B)).

As in 2010, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2011 and 2012 include commercial fishery and survey data. NMFS stock assessment scientists believe that unbiased commercial fishery catch-per-unit-effort data are useful for stock distribution assessments. NMFS evaluates annually the use of commercial fishery data to ensure that 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 TACs to trawl gear for use as incidental catch in other directed groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)).

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 proposed 2011 and 2012 Pacific cod TACs are affected by the State's fishery for Pacific cod in State waters in the Western and Central 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 recommended reducing the proposed 2011 and 2012 Pacific cod TACs in the proposed ABCs for the Eastern, Central, and Western Regulatory Areas to account for State GHLs. Therefore, the proposed 2011 and 2012 Pacific cod TACs are less than the proposed ABCs by the following amounts: (1) Eastern GOA, 734 mt; (2) Central GOA, 15,174 mt; and (3) Western GOA, 8,566 mt. These amounts reflect the sum of the State's 2011 and 2012 guideline harvest levels in these areas, which are 25 percent of the Eastern, Central, and Western GOA proposed ABCs. In 2011, the State waters Pacific cod GHL in PWS was increased from 15 to 25 percent of the Eastern GOA Pacific cod ABC, per the recommendations of State of Alaska Department of Fish and Game fisheries managers. Thus, the corresponding 2011 and 2012 Eastern GOA Pacific cod TAC may decrease in final harvest specifications to accommodate the increased State GHL in that area.

NMFS also is proposing seasonal apportionments of the annual Pacific cod TACs in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, or 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, or 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)).

As in 2010, NMFS proposes to establish for 2011 and 2012 an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs minus the recent average A season incidental catch of Pacific cod in each management area before June 10 (§ 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total catch in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to accrue against the B season TAC. This action meets the intent of the Steller sea lion protection measures by achieving temporal dispersion of the Pacific cod removals and reducing the likelihood of catch exceeding 60 percent of the annual TAC in the A season.

The sum of the proposed TACs for all GOA groundfish is 330,746 mt for 2011 and 2012, which is within the OY range specified by the FMP. The sums of the proposed 2011 and 2012 TACs are higher than the sum of the 2010 TACs of 292,087 mt, but are unchanged from the 2011 TACs currently specified for the GOA groundfish fisheries (75 FR 11788, March 12, 2010), with the exception of the Eastern GOA Pacific Cod TAC and the TACs for the major taxonomic groups (sharks, squids, octopuses, and sculpins), which used to compose the "other species" category.

Table 1 lists the proposed 2011 and 2012 ABCs, TACs, and OFLs and area apportionments of groundfish in the

GOA. These amounts are consistent with the biological condition of groundfish stocks as described in the 2009 SAFE report, and adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range. These proposed amounts are subject to change pending the completion of the draft 2010 SAFE report and the Council's recommendations for the final 2011 and 2012 harvest specifications during its December 2010 meeting.

TABLE 1—PROPOSED 2011 AND 2012 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
Pollock [2]	Shumagin (610)	34,728	34,728	n/a
	Chirikof (620)	37,159	37,159	n/a
	Kodiak (630)	25,287	25,287	n/a
	WYK (640)	2,686	2,686	n/a
	W/C/WYK (subtotal)	99,860	99,860	135,010
	SEO (650)	9,245	9,245	12,326
	Total	109,105	109,105	147,336
Pacific cod [3]	W	34,265	25,699	n/a
	C	60,698	45,524	n/a
	E	2,937	2,203	n/a
	Total	97,900	73,426	116,700
Sablefish [4]	W	1,488	1,488	n/a
	C	4,042	4,042	n/a
	WYK	1,450	1,450	n/a
	SEO	2,320	2,320	n/a
	E (WYK and SEO) (subtotal)	3,770	3,770	n/a
	Total	9,300	9,300	11,008
Shallow-water flatfish [6]	W	23,681	4,500	n/a
	C	29,999	13,000	n/a
	WYK	1,228	1,228	n/a
	SEO	1,334	1,334	n/a
	Total	56,242	20,062	67,768
Deep-water flatfish [5]	W	530	530	n/a
	C	2,928	2,928	n/a
	WYK	2,089	2,089	n/a
	SEO	778	778	n/a
	Total	6,325	6,325	7,847
Rex sole	W	1,521	1,521	n/a
	C	6,312	6,312	n/a
	WYK	871	871	n/a
	SEO	888	888	n/a
	Total	9,592	9,592	12,534
Arrowtooth flounder	W	34,263	8,000	n/a
	C	144,262	30,000	n/a
	WYK	22,501	2,500	n/a
	SEO	11,693	2,500	n/a
	Total	212,719	43,000	250,559
Flathead sole	W	17,520	2,000	n/a
	C	28,190	5,000	n/a
	WYK	2,068	2,068	n/a
	SEO	1,508	1,508	n/a
	Total	49,286	10,576	61,601
Pacific ocean perch [7]	W	2,797	2,797	3,220
	C	10,377	10,377	11,944
	WYK	1,937	1,937	n/a
	SEO	1,882	1,882	n/a

TABLE 1—PROPOSED 2011 AND 2012 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
	E (WYK and SEO) (subtotal)	3,819	3,819	4,396
	Total	16,993	16,993	19,560
Northern rockfish [8 9]	W	2,549	2,549	n/a
	C	2,259	2,259	n/a
	E	0	0	n/a
	Total	4,808	4,808	5,730
Shortraker rockfish [11]	W	134	134	n/a
	C	325	325	n/a
	E	455	455	n/a
	Total	914	914	1,219
Other rockfish [9 12]	W	212	212	n/a
	C	507	507	n/a
	WYK	273	273	n/a
	SEO	2,757	200	n/a
	Total	3,749	1,192	4,881
Pelagic shelf rockfish [13]	W	607	607	n/a
	C	3,035	3,035	n/a
	WYK	405	405	n/a
	SEO	680	680	n/a
	Total	4,727	4,727	5,739
Rougheye and Blackspotted rockfish [10]	W	81	81	n/a
	C	869	869	n/a
	E	363	363	n/a
	Total	1,313	1,313	1,581
Demersal shelf rockfish [14]	SEO	295	295	472
Thornyhead rockfish	W	425	425	n/a
	C	637	637	n/a
	E	708	708	n/a
	Total	1,770	1,770	2,360
Atka mackerel	GW	4,700	2,000	6,200
Big skate [15]	W	598	598	n/a
	C	2,049	2,049	n/a
	E	681	681	n/a
	Total	3,328	3,328	4,438
Longnose skate [16]	W	81	81	n/a
	C	2,009	2,009	n/a
	E	762	762	n/a
	Total	2,852	2,852	3,803
Other skates [17]	GW	2,093	2,093	2,791
Sharks	GW	957	957	1,276
Squids	GW	1,148	1,148	1,530
Octopuses	GW	224	224	298
Sculpins	GW	4,746	4,746	6,328
Total		605,086	330,746	743,559

[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 30%, 46%, and 24% in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 30%, 54%, and 16% 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 41%, 27%, and 32% in Statistical Areas 610, 620, and 630, respectively. Table 4 lists the proposed 2011 and 2012 pollock 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% to the A season and 40% to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90% for processing by the inshore component and 10% for processing by the offshore component. Table 5 lists the proposed 2011 and 2012 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gears for 2011 and to trawl gear in 2012. Tables 2 and 3 list the proposed 2011 and 2012 sablefish TACs.

[5] "Deep-water flatfish" means Dover sole, Greenland turbot, 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 Eastern Gulf of Alaska has been included in the slope rockfish complex.

[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), and *S. reedi* (yellowmouth). 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 category "other rockfish" in the SEO District means slope rockfish.

[13] "Pelagic shelf rockfish" means, *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[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.*

Proposed Apportionment of Reserves

Section 679.20(b)(2) requires that 20 percent of each TAC for pollock, Pacific cod, flatfish, skates, sharks, squids, sculpins, and octopuses be set aside in reserves for possible apportionment at a later date during the fishing year. In 2010, NMFS apportioned all of the reserves in the final harvest specifications. For 2011 and 2012, NMFS proposes reapportionment of all the reserves for pollock, Pacific cod, flatfish, skates, sharks, squids, sculpins, and octopuses. Table 1 reflects the apportionment of reserve amounts for these species and species groups. Each proposed TAC for the above mentioned species categories contains the full TAC recommended by the Council, since no reserve was created from the relevant species categories.

Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

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 five percent is allocated to trawl gear. The trawl gear allocation in the Eastern GOA 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 trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS proposes the allocation of five percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District and the remainder of the WYK sablefish TAC be available to vessels using hook-and-line gear. As a result, NMFS proposes to allocate 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This recommendation results in a proposed 2011 allocation of 189 mt to trawl gear and 3,581 mt to hook-and-line gear in the Eastern GOA. Table 2 lists the allocations of the proposed 2011 sablefish TACs to hook-and-line and trawl gear. Table 3 lists the allocations of the proposed 2012 sablefish TACs to trawl gear.

The Council recommended that the hook-and-line sablefish TAC be established annually to ensure that the Individual Fishery Quota (IFQ) fishery is conducted concurrent with the halibut IFQ fishery and is based on the most recent 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, in early March), the Council recommended that the sablefish TAC be set on an annual basis so that the best and most recent scientific information could be considered in recommending the ABCs and TACs. Since sablefish is on bycatch status for trawl gear during the entire fishing year, and given that fishing for groundfish with trawl gear is prohibited prior to January 20, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of the final harvest specifications.

TABLE 2—PROPOSED 2011 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA 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	1,488	1,190	298
Central	4,042	3,234	808
West Yakutat [1]	1,450	1,261	189

TABLE 2—PROPOSED 2011 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR—Continued

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Southeast Outside	2,320	2,320	0
Total	9,300	8,005	1,295

[1] Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

TABLE 3—PROPOSED 2012 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATION TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,488	n/a	298
Central	4,042	n/a	808
West Yakutat [2]	1,450	n/a	189
Southeast Outside	2,320	n/a	0
Total	9,300	n/a	1,295

[1] The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

[2] Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

Proposed 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 between inshore and offshore processing 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 through March 10, March 10 through May 31, August 25 through October 1, and October 1 through 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. For 2011 and 2012, the Council recommends, and NMFS proposes, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season. The average is intended to reflect the distribution of pollock and the performance of the fishery in the area during the A season for the 2011 and 2012 fishing years. 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 proposed pollock TACs in the WYK District of 2,686 mt and SEO District of 9,245 mt for 2011 and 2012 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 that are 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 under § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year.

Table 4 lists the proposed 2011 and 2012 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 4—PROPOSED 2011 AND 2012 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]

Season [1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [2]
A (Jan 20–Mar 10)	7,342	(30.22%)	11,129	(45.81%)	5,823	(23.97%)	24,294 (100%)
B (Mar 10–May 31)	7,342	(30.22%)	13,128	(54.04%)	3,824	(15.74%)	24,294 (100%)
C (Aug 25–Oct 1)	10,022	(41.25%)	6,451	(26.55%)	7,820	(32.19%)	24,293 (100%)
D (Oct 1–Nov1)	10,022	(41.25%)	6,451	(26.55%)	7,820	(32.19%)	24,293 (100%)
Annual Total	34,728		37,159		25,287		97,174

[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.

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot, and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1 (§ 679.23(d)(3)(i)). After subtraction of incidental catch from the A season, 60 percent of the annual TAC will be available as a DFA during the A season for the inshore and offshore components. The remaining 40 percent of the annual TAC will be available for harvest during 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.

Section 679.20(a)(6)(ii) requires the allocation of the TAC apportionment of Pacific cod in all regulatory areas to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. Table 5 lists the seasonal apportionments and allocations of the proposed 2011 and 2012 Pacific cod TAC amounts.

TABLE 5—PROPOSED 2011 AND 2012 SEASONAL APPORTIONMENTS AND ALLOCATIONS OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area	Season	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Western	Annual	25,699	23,129	2,570
	A season (60%)	15,419	13,877	1,542
	B season (40%)	10,280	9,252	1,028
Central	Annual	45,524	40,972	4,552
	A season (60%)	27,314	24,583	2,731
	B season (40%)	18,210	16,389	1,821
Eastern	Annual	2,203	1,983	220
Total		73,426	66,084	7,342

Proposed Apportionments to the Central GOA Rockfish Pilot Program

Section 679.81(a)(1) and (2) requires the allocation of the primary rockfish species TACs in the Central Regulatory Area, after deducting incidental catch needs in other directed groundfish fisheries, to participants in the Central GOA Rockfish Program (Rockfish Program). Five percent (2.5 percent to trawl gear and 2.5 percent to fixed gear) of the proposed TACs for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish in the Central Regulatory Area are allocated to the entry level rockfish fishery; and the remaining 95 percent are allocated to those vessels eligible to participate in the Rockfish Program. The Rockfish Program will expire in December 2011, although the Council has proposed a new program to supersede the existing Rockfish Program by 2012. NMFS is developing a proposed rule to implement the Council's revised program and anticipates that it will be published in the **Federal Register** for public review and comment early in 2011.

NMFS proposes setting aside 2011 incidental catch amounts of 100 mt for northern rockfish, 100 mt for pelagic shelf rockfish, and 500 mt for Pacific ocean perch for other directed groundfish fisheries in the Central Regulatory Area. These proposed amounts are based on recent average incidental catch in the Central Regulatory Area by other groundfish fisheries.

Section 679.83(a)(1)(i) requires that allocations to the trawl entry level fishery must be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for

trawl CVs in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish must be allocated to trawl CVs. Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to longline gear vessels must be made after the allocations to trawl gear.

Table 6 lists the proposed 2011 allocations of rockfish in the Central GOA to trawl and longline gear in the entry level rockfish fishery. Allocations of primary rockfish species TACs among participants in the Rockfish Program are not included in the proposed harvest specifications because applications for C/P and CV cooperatives are due to NMFS on March 1 of each calendar year, thereby preventing NMFS from calculating proposed 2011 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 2011.

TABLE 6—PROPOSED 2011 ALLOCATIONS OF ROCKFISH IN THE CENTRAL GULF OF ALASKA TO TRAWL AND LONGLINE GEAR[1] IN THE ENTRY LEVEL ROCKFISH FISHERY

[Values are rounded to the nearest mt]

Species	Proposed TAC	Incidental catch allowance	TAC minus ICA	5% TAC	2.5% TAC	Entry level trawl allocation	Entry level longline allocation
Pacific ocean perch	10,377	500	9,877	494	247	375	119
Northern rockfish	2,259	100	2,159	108	54	0	108
Pelagic shelf rockfish ...	3,035	100	2,935	147	74	0	147
Total	15,671	700	14,971	749	375	375	374

[1] Longline gear includes jig and hook-and-line gear.

Proposed Halibut Prohibited Species Catch (PSC) Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl and hook-and-line gear, and permits the establishment of apportionments for pot gear. In October 2010, the Council recommended that NMFS maintain the 2010 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries. The Alaska Department of Fish and Game sets the GHL after estimates of incidental catch in all fisheries (including halibut and subsistence) and allocation to the sport fish fishery have been deducted.

Ten mt of the hook-and-line limit is further allocated to the demersal shelf rockfish (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: the duration of the DSR fisheries and the gear soak times are short; the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut; and, the directed commercial DSR fishery has a low DSR TAC. Of the 295 mt TAC for DSR in 2010, 100 mt were available for the directed commercial fishery, of which 30 mt were harvested.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limit. NMFS, after consultation with the Council, proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut PSC limit for 2011 and 2012. The Council recommended and NMFS is proposing these exemptions because (1) the pot gear fisheries have low annual halibut bycatch mortality (averaging 18 mt annually from 2001 through 2009); (2) the IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a CV 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. Halibut mortality is assumed to be negligible in the jig gear fisheries given the small amount of groundfish harvested by jig gear (averaging 261 mt annually from 2001 through 2009), the selective nature of jig gear, and the high survival rates of halibut caught and 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 that the Council and NMFS 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 final 2010 and 2011 harvest specifications for halibut PSC (75 FR 11749, March 12, 2010) summarized the Council's and NMFS' findings with respect to each of these FMP considerations. The Council's and NMFS' findings for 2011 and 2012 are unchanged from 2010. Table 7 lists the proposed 2011 and 2012 Pacific halibut PSC limits, allowances, and apportionments. Section 679.21(d)(5)(iii) and (iv), respectively, specify that any underages or overages of a seasonal apportionment of a PSC limit will be added to, or removed from, the next respective seasonal apportionment within the fishing year.

TABLE 7—PROPOSED 2011 AND 2012 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear [1]				
Season	Percent	Amount	Other than DSR			DSR	
			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 IFQ sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear fisheries for all groundfish species.

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 a 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 category, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species category, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, sharks, squids, sculpins, and octopuses (§ 679.21(d)(3)(iii)). Table 8 lists the proposed 2011 and 2012 seasonal apportionments of Pacific halibut PSC trawl limits between the deep-water and the shallow-water species categories. Based on public comment and information contained in the final 2010 SAFE report, the Council may recommend or NMFS may make changes to the seasonal, gear-type, or fishery category apportionments of halibut PSC limits for the final 2011 and 2012 harvest specifications.

TABLE 8—PROPOSED 2011 AND 2012 SEASONAL APPORTIONMENTS OF THE PACIFIC HALIBUT PSC LIMIT APPORTIONED BETWEEN THE TRAWL GEAR SHALLOW-WATER SPECIES AND DEEP-WATER SPECIES CATEGORIES

[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 Gulf of Alaska Rockfish Program will receive a portion of the third season (July 1–September 1) deep-water category halibut PSC apportionment. At this time, this amount is not known but will be posted later on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when it becomes available.

[2] There is no apportionment between shallow-water and deep-water trawl fishery categories during the fifth season (October 1 through December 31).

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2010. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gears through October 2, 2010, is 1,276 mt, 214 mt, and 26 mt, respectively, for a total halibut mortality of 1,516 mt. This mortality was calculated using groundfish and halibut catch data from the NMFS Alaska Region's catch accounting system. This system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2010 fishing year. Table 9 displays the closure dates for fisheries that resulted from the attainment of seasonal or annual halibut PSC limits. NMFS does not know the amount of groundfish that trawl gear might have harvested if halibut PSC limits had not restricted some 2010 GOA groundfish fisheries.

TABLE 9—2010 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, 2010	April 28, 2010	75 FR 23189, May 3, 2010.
Trawl Shallow-water,season 4 [1]	September 1, 2010	September 3, 2010	75 FR 54290, September 7, 2010.
Trawl, Shallow-water,season 4	September 11, 2010	Unknown	75 FR 56017, September 15, 2010.
Hook-and-line gear, all targets [2]	January 1, 2010	Unknown.	

[1] With the exception of vessels participating in the Central GOA Rockfish Program.
[2] With the exception of sablefish, open March 6, 2010, through November 15, 2010.

Comparison of Final 2010 ABC Amounts With Proposed 2011 and 2012 ABC Amounts

Proposed 2011 and 2012 ABCs for pollock, Pacific cod, deep-water flatfish, rougheye rockfish, and flathead sole are higher than the final specifications established for 2010, while the proposed 2011 and 2012 ABCs for sablefish, rex sole, Pacific ocean perch, northern rockfish, and pelagic shelf rockfish are lower than those established for 2010. These differences reflect the stock projections and trends made for these species during the final GOA groundfish harvest specifications process in November 2009. For the remaining target species, the Council recommended and NMFS proposes ABC levels that are unchanged from 2010. As previously described, the "other species" category has been dissolved into its component species categories (sharks, octopuses, squids, and sculpins). The Council recommended individual TAC limits for each of these new categories for 2011 and 2012. More information on these changes is included in the final 2009 SAFE report (*see* **ADDRESSES**) and will be updated with the 2010 SAFE report, which will be available for Council approval at its December 2010 meeting.

In the GOA, the total proposed 2011 and 2012 TAC amounts are 330,746 mt, an increase of 13 percent from the 2010 TAC total of 292,087 mt. Table 10 compares the final 2010 TACs to the proposed 2011 and 2012 TACs.

TABLE 10—COMPARISON OF FINAL 2010 AND PROPOSED 2011 AND 2012 TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GULF OF ALASKA

[Values are in metric tons]

Species	Final 2010 TACs	Proposed 2011 and 2012 TACS
Pollock	84,745	109,105
Pacific cod	59,563	73,426
Sablefish	10,370	9,300
Shallow water flatfish	20,062	20,062
Deep-water flatfish	6,190	6,325
Rex sole	9,729	9,592
Arrowtooth flounder	43,000	43,000
Flathead sole	10,411	10,576
Pacific ocean perch	17,584	16,993
Northern rockfish	5,098	4,808
Rougheye rockfish	1,302	1,313
Shortraker rockfish	914	914
Other rockfish	1,192	1,192
Pelagic shelf rockfish	5,059	4,727
Demersal shelf rockfish	295	295
Thornyhead rockfish	1,770	1,770
Atka mackerel	2,000	2,000
Big skates	3,328	3,328
Longnose skates	2,852	2,852
Other skates	2,093	2,093
Other species [1]	4,500	n/a
Sharks	n/a	957
Squids	n/a	1,148
Octopuses	n/a	224
Sculpins	n/a	4,746
Total	292,087	330,746

[1] The other species category, for the purpose of the annual harvest specifications, was dissolved in 2010 into its major taxonomic components; sharks, squid, octopuses, and sculpins (75 FR 61639, October 6, 2010).

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was developed by the IPHC staff in December 2009 for the 2010 commercial fishery; this assessment was considered by the IPHC at its annual January 2010 meeting. Since 2006, the IPHC stock assessment has been fitted to a coastwide data set (including the United States and Canada) to estimate total exploitable biomass. Coastwide exploitable biomass at the beginning of 2010 is estimated to be 334 million pounds. The assessment revised last year's estimate of 325 million pounds at the start of 2009 downwards to 291 million pounds and projects an increase of 14 percent over that value to arrive at the 2010 value of 334 million pounds. At least part, if not most, of the

downward revision for 2009 is believed to be caused by the ongoing decline in size and age, which continues for all ages in all areas. Projections based on the currently estimated age compositions suggest that the exploitable and female spawning biomasses will continue to increase over the next several years as a sequence of strong year classes recruit to the legal-sized component of the population. The coastwide exploitable biomass was apportioned among regulatory areas in accordance with survey estimates of relative abundance and other considerations. The assessment recommends a coastwide harvest rate of 20 percent of the exploitable biomass overall, but a lower harvest rate of 15 percent for Areas 4A, 4B, 4C, 4D, and 4E and 3B.

The halibut resource is fully utilized. Recent catches, over the last 16 years (1994–2009) in the commercial halibut fisheries in Alaska, have averaged 32,850 mt round weight. In January 2010, the IPHC recommended Alaska commercial catch limits totaling 24,372 mt round weight for 2010, a 7.5 percent decrease from 26,338 mt in 2009. Through November 15, 2010, commercial hook-and-line harvests of halibut off Alaska totaled 25,286 mt round weight.

Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2009 Pacific halibut stock assessment (December 2009), available on the IPHC Web site at *http://www.iphc.washington.edu*. The IPHC will consider the 2010 Pacific halibut assessment for 2011 at its January 2011 annual meeting when it will set the 2011 commercial halibut fishery catch limits.

Other Factors

The IPHC will adjust the allowable commercial catch of halibut to account for the overall halibut PSC limit established for groundfish fisheries. The 2011 and 2012 groundfish fisheries are expected to use the entire proposed annual halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by first accounting for recreational and subsistence catch, waste, and bycatch mortality, and then provides the remainder to the directed fishery. Groundfish fishing is not expected to affect adversely the halibut stocks. Methods available for reducing halibut bycatch include (1) consistent monitoring through publication of individual vessel bycatch rates on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* (2) modifications to gear, (3) changes in groundfish fishing seasons, (4) individual transferable quota programs, and (5) time/area closures.

With respect to fishing gear modifications, various regulations have been implemented to address halibut bycatch concerns that are associated with different gear types. The definitions of the various gear types defined at § 679.2 under "Authorized fishing gear" delineate a variety of different requirements and restrictions by gear type. Many of these requirements are intended to decrease or minimize halibut bycatch by pot, trawl, and hook-and-line gear types.

For example, groundfish pots must be constructed with biodegradable panels and tunnel openings in order to reduce halibut bycatch, thereby reducing halibut mortality in the groundfish pot fisheries. Further, the definition of "pelagic trawl gear" includes specific construction parameters and performance characteristics that distinguish it from nonpelagic trawl gear, which is designed for use in proximity to the seafloor. Because halibut bycatch by pelagic trawl gear is minimal, directed fishing for pollock with pelagic gear may continue even when the halibut PSC limit for the shallow-water species complex is reached (*see* § 679.7(d)(7)(i)). Finally, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

The FMP requires that the Council review recent halibut bycatch data and recommend proposed halibut PSC limits in conjunction with developing proposed groundfish harvest levels. NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness and will initiate changes, as necessary, in response to this review or to public testimony and comment. At its December 2010 meeting, the Council is scheduled to review a discussion paper on GOA halibut PSC and potentially consider alternatives for analysis that would change how GOA halibut PSC limits currently are established.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, discard mortality rates (DMR), 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 proposes the Council's recommendation that the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) for the 2010 GOA groundfish fisheries be used for monitoring the proposed 2011 and 2012 halibut bycatch mortality allowances *(see* Table 11). The IPHC developed the DMRs for the 2010 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 11 lists the proposed 2011 and 2012 DMRs.

TABLE 11—PROPOSED 2011 AND 2012 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

TABLE 11—PROPOSED 2011 AND 2012 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA—Continued

[Values are percent of halibut assumed to be dead]

Gear	Target fishery	Mortality rate (%)
Trawl	Pacific cod	12
	Rockfish	9
	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 Atka mackerel, sculpin, shark, skate, squids, octopuses, and hook-and-line sablefish.

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Sideboard Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limits 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 fish in the GOA. Additionally, § 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 m) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands of less than 5,100 mt, and have made at least 40 landings of GOA groundfish from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs operating 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. Table 12 lists the proposed 2011 and 2012 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 Table 12.

TABLE 12—PROPOSED 2011 AND 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	Proposed 2011 and 2012 TACs	Proposed 2011 and 2012 non-exempt AFA CV sideboard limit
Pollock	A Season	Shumagin (610)	0.6047	7,342	4,440
	January 20–March 10	Chirikof (620)	0.1167	11,129	1,299
		Kodiak (630)	0.2028	5,823	1,181
	B Season	Shumagin (610)	0.6047	7,342	4,440
	March 10–May 31	Chirikof (620)	0.1167	13,128	1,532
		Kodiak (630)	0.2028	3,824	776
	C Season	Shumagin (610)	0.6047	10,022	6,060
	August 25–October 1	Chirikof (620)	0.1167	6,451	753
		Kodiak (630)	0.2028	7,820	1,586
	D Season	Shumagin (610)	0.6047	10,022	6,060
	October 1–November 1	Chirikof (620)	0.1167	6,451	753
		Kodiak (630)	0.2028	7,820	1,586
	Annual	WYK (640)	0.3495	2,686	939
		SEO (650)	0.3495	9,245	3,231
Pacific cod	A Season [1]	W inshore	0.1365	13,877	1,894
	January 1–June 10	W offshore	0.1026	1,542	158
		C inshore	0.0689	24,583	1,694
		C offshore	0.0721	2,731	197
	B Season [2]	W inshore	0.1365	9,252	1,263
	September 1–December 31	W offshore	0.1026	1,028	105

TABLE 12—PROPOSED 2011 AND 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	Proposed 2011 and 2012 TACs	Proposed 2011 and 2012 non-exempt AFA CV sideboard limit
		C inshore	0.0689	16,389	1,129
		C offshore	0.0721	1,821	131
	Annual	E inshore	0.0079	1,983	16
		E offshore	0.0078	220	2
Sablefish	Annual, trawl gear	W	0.0000	298	0
		C	0.0642	808	52
		E	0.0433	189	8
Flatfish, deep-water	Annual	W	0.0000	530	0
		C	0.0647	2,928	189
		E	0.0128	2,867	37
Flatfish, shallow-water	Annual	W	0.0156	4,500	70
		C	0.0587	13,000	763
		E	0.0126	2,562	32
Rex sole	Annual	W	0.0007	1,521	1
		C	0.0384	6,312	242
		E	0.0029	1,759	5
Arrowtooth flounder	Annual	W	0.0021	8,000	17
		C	0.0280	30,000	840
		E	0.0002	5,000	1
Flathead sole	Annual	W	0.0036	2,000	7
		C	0.0213	5,000	107
		E	0.0009	3,576	3
Pacific ocean perch	Annual	W	0.0023	2,797	6
		C	0.0748	10,377	776
		E	0.0466	3,819	178
Northern rockfish	Annual	W	0.0003	2,549	1
		C	0.0277	2,259	63
Rougheye rockfish	Annual	W	0.0000	81	0
		C	0.0237	869	21
		E	0.0124	363	5
Shortraker rockfish	Annual	W	0.0000	134	0
		C	0.0218	325	7
		E	0.0110	455	5
Other rockfish	Annual	W	0.0034	212	1
		C	0.1699	507	86
		E	0.0000	473	0
Pelagic shelf rockfish	Annual	W	0.0001	607	0
		C	0.0000	3,035	0
		E	0.0067	1,085	7
Demersal shelf rockfish	Annual	SEO	0.0020	295	1
Thornyhead rockfish	Annual	W	0.0280	425	12
		C	0.0280	637	18
		E	0.0280	708	20
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	598	4
		C	0.0063	2,049	13
		E	0.0063	681	4
Longnose skates	Annual	W	0.0063	81	0
		C	0.0063	2,009	13
		E	0.0063	762	5
Other skates	Annual	Gulfwide	0.0063	2,093	13
Sharks	Annual	Gulfwide	0.0063	957	6
Squids	Annual	Gulfwide	0.0063	1,148	7
Sculpin	Annual	Gulfwide	0.0063	4,746	30
Octopuses	Annual	Gulfwide	0.0063	224	1

[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 13 lists the proposed 2011 and 2012 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA.

TABLE 13—PROPOSED 2011 AND 2012 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are in metric tons]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	Proposed 2011 and 2012 PSC limit	Proposed 2011 and 2012 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
5	October 1–December 31	all targets	0.205	300	62

Non-AFA Crab Vessel Groundfish Sideboard Limits

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 all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Sideboard limits also apply to landings made using a License Limitation Program (LLP) license derived from the history of a restricted vessel, even if that LLP is used on another vessel.

Sideboard limits for non-AFA crab vessels operating in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 680.22(d) and (e) base the groundfish sideboard limits in the GOA on the retained catch by non-AFA crab vessels of each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period. Table 14 lists these proposed 2011 and 2012 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels will be deducted from the sideboard limits in Table 14.

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 that was based in whole or in part on the fishing history of a vessel meeting the criteria in § 680.22(a)(3).

TABLE 14—PROPOSED 2011 AND 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	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2011 and 2012 TACs	Proposed 2011 and 2012 non-AFA crab vessel sideboard limit
Pollock	A Season	Shumagin (610)	0.0098	7,342	72
	January 20–March 10				
		Chirikof (620)	0.0031	11,129	34
		Kodiak (630)	0.0002	5,823	1
	B Season	Shumagin (610)	0.0098	7,342	72
	March 10–May 31				
		Chirikof (620)	0.0031	13,128	41
		Kodiak (630)	0.0002	3,824	1
	C Season	Shumagin (610)	0.0098	10,022	98
	August 25–October 1				
		Chirikof (620)	0.0031	6,451	20
		Kodiak (630)	0.0002	7,820	2
	D Season	Shumagin (610)	0.0098	10,022	98
	October 1–November 1				
		Chirikof (620)	0.0031	6,451	20
		Kodiak (630)	0.0002	7,820	2
	Annual	WYK (640)	0.0000	2,686	0
		SEO (650)	0.0000	9,245	0
Pacific cod	A Season[1]	W inshore	0.0902	13,877	1,252
	January 1–June 10				
		W offshore	0.2046	1,542	315
		C inshore	0.0383	24,583	942
		C offshore	0.2074	2,731	566

TABLE 14—PROPOSED 2011 AND 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	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2011 and 2012 TACs	Proposed 2011 and 2012 non-AFA crab vessel sideboard limit
	B Season[2] September 1–December 31	W inshore	0.0902	9,252	835
		W offshore	0.2046	1,028	210
		C inshore	0.0383	16,389	628
		C offshore	0.2074	1,821	378
	Annual	E inshore	0.0110	1,983	22
		E offshore	0.0000	220	0
Sablefish	Annual, trawl gear	W	0.0000	298	0
		C	0.0000	808	0
		E	0.0000	188	0
Flatfish, deep-water	Annual	W	0.0035	530	2
		C	0.0000	2,928	0
		E	0.0000	2,867	0
Flatfish, shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	2,562	0
Rex sole	Annual	W	0.0000	1,521	0
		C	0.0000	6,312	0
		E	0.0000	1,759	0
Arrowtooth flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	5,000	0
Flathead sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	3,576	0
Pacific ocean perch	Annual	W	0.0000	2,797	0
		C	0.0000	10,377	0
		E	0.0000	3,819	0
Northern rockfish	Annual	W	0.0005	2,549	1
		C	0.0000	2,259	0
Rougheye rockfish	Annual	W	0.0067	81	1
		C	0.0047	869	4
		E	0.0008	363	0
Shortraker rockfish	Annual	W	0.0013	134	0
		C	0.0012	325	0
		E	0.0009	455	0
Other rockfish	Annual	W	0.0035	212	1
		C	0.0033	507	2
		E	0.0000	473	0
Pelagic shelf rockfish	Annual	W	0.0017	607	1
		C	0.0000	3,035	0
		E	0.0000	1,085	0
Demersal shelf rockfish	Annual	SEO	0.0000	295	0
Thornyhead rockfish	Annual	W	0.0047	425	2
		C	0.0066	637	4
		E	0.0045	708	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	598	23
		C	0.0159	2,049	33
		E	0.0000	681	0
Longnose skate	Annual	W	0.0392	81	3
		C	0.0159	2,009	32
		E	0.0000	762	0
Other skates	Annual	Gulfwide	0.0176	2,093	37
Sharks	Annual	Gulfwide	0.0176	957	17
Squids	Annual	Gulfwide	0.0176	1,148	20
Octopuses	Annual	Gulfwide	0.0176	224	4
Sculpins	Annual	Gulfwide	0.0176	4,746	84

[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 Limitations and Halibut Mortality Limitations

Section 679.82(d) establishes sideboards to limit the ability of participants eligible for the Rockfish Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Rockfish Program provides harvesters with certain economic advantages, which could be used to increase their participation in other fisheries and possibly adversely affect the existing participants in those fisheries. Traditionally, the Central GOA rockfish fisheries opened in July. The sideboards are designed to restrict fishing during the historical season for the fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historical rockfish season.

The proposed sideboards for 2011 limit the total amount of catch that could be taken by eligible harvesters and limit the amount of halibut mortality to historic levels. The sideboard measures are in effect only during the month of July. Table 15 lists the proposed 2011 Rockfish Program harvest limits in the WYK District and the Western GOA. Table 16 lists the proposed 2011 Rockfish Program halibut mortality limits for C/Ps and CVs.

As discussed earlier in this preamble, the Rockfish Program will expire in December 2011. The Council has proposed a new, revised program and associated FMP amendment. NMFS is developing a rulemaking to implement the program, if approved by the Secretary. The proposed rule and, if approved, the final rule for the new Rockfish Program will include revised groundfish sideboards and halibut mortality limits for 2012. Because the current Rockfish Program expires at the end of 2011, these harvest specifications propose groundfish sideboards and halibut mortality limits only for 2011.

TABLE 15—PROPOSED 2011 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR (CP) AND CATCHER VESSEL (CV) SECTORS

[Values are rounded to the nearest metric ton]

Area	Fishery	CP sector (% of TAC)	CV sector (% of TAC)	Proposed 2011 and 2012 TACs	Proposed 2011 and 2012 CP limit	Proposed 2011 and 2012 CV limit
West Yakutat District	Pelagic shelf rockfish	72.4	1.7	405	293	7
	Pacific ocean perch	76.0	2.9	1,937	1,472	56
Western GOA	Pelagic shelf rockfish	63.3	0	607	384	0
	Pacific ocean perch	61.1	0	2,797	1,709	0
	Northern rockfish	78.9	0	2,549	2,011	0

TABLE 16—PROPOSED 2011 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR AND CATCHER VESSEL SECTORS

[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	0.54	3.99	2,000	11	80
Catcher vessel	6.32	1.08	2,000	126	22

GOA Amendment 80 Vessel Groundfish Harvest and PSC 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 CP 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 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 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 to 2004. Table 17 lists the proposed 2011 and 2012 sideboard limits for Amendment 80 program vessels. All targeted or incidental catch of sideboard species made by Amendment 80 program vessels will be deducted from the sideboard limits in Table 17.

TABLE 17—PROPOSED 2011 AND 2012 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 VESSELS

[Values are rounded to the nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	Proposed 2011 and 2012 TAC (mt)	Proposed 2011 and 2012 Amendment 80 vessel sideboards (mt)
Pollock	A Season	Shumagin (610)	0.003	7,342	22
	January 20–February 25	Chirikof (620)	0.002	11,129	22
		Kodiak (630)	0.002	5,823	12
	B Season	Shumagin (610)	0.003	7,342	22
	March 10–May 31	Chirikof (620)	0.002	13,128	26
		Kodiak (630)	0.002	3,824	8
	C Season	Shumagin (610)	0.003	10,022	30
	August 25–September 15	Chirikof (620)	0.002	6,451	13
		Kodiak (630)	0.002	7,820	16
	D Season	Shumagin (610)	0.003	10,022	30
	October 1–November 1	Chirikof (620)	0.002	6,451	13
		Kodiak (630)	0.002	7,820	16
	Annual	WYK (640)	0.002	2,686	5
Pacific cod	A Season [1]	W	0.020	15,419	308
	January 1–June 10	C	0.044	27,314	1,202
	B Season [2]	W	0.020	10,280	206
	September 1–December 31.	C	0.044	18,210	801
	Annual	WYK	0.034	2,203	75
Pacific ocean perch	Annual	W	0.994	2,797	2,780
		WYK	0.961	1,937	1,861
Northern rockfish	Annual	W	1.000	2,549	2,549
Pelagic shelf rockfish	Annual	W	0.764	607	464
		WYK	0.896	405	363

[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 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. Table 18 lists the proposed 2011 and 2012 halibut PSC limits for Amendment 80 program vessels, as proscribed at Table 38 to 50 CFR part 679.

TABLE 18—PROPOSED 2011 AND 2012 HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR AMENDMENT 80 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)	Proposed 2011 and 2012 annual PSC limit (mt)	Proposed 2011 and 2012 Amendment 80 vessel PSC limit (mt)
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

Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent 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.

NMFS prepared an EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision for the EIS. Copies of the EIS and Record of Decision for this action are available from NMFS (*see* **ADDRESSES**). The EIS analyzes the environmental consequences of the

proposed groundfish harvest specifications and its alternatives on resources in the action area. The EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA evaluated the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the EEZ off Alaska. The IRFA analyzed the methodology for establishing the relevant TACs. As set forth in the methodology, TACs are set to a level that fall within the range of ABCs recommended by the SSC; the sum of the TACs must achieve optimum yield specified in the FMP. While the specific numbers that the methodology may produce vary from year to year, the methodology itself remains constant. Accordingly, NMFS is using the IRFA prepared for the EIS in association with this action. Pursuant to sections 3.2.3 and 3.2.4 of the FMP, the established methodology produces ABCs and TACs within specified ranges and the numbers in this proposed rule's preferred alternative are within those ranges. NMFS published a notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the GOA in the **Federal Register** on December 15, 2006 (71 FR 75460).

A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble above. A copy of the analysis is available from NMFS (*see* **ADDRESSES**). A summary of the IFRA prepared in association with the 2007 harvest specifications EIS follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the GOA. The preferred alternative is the existing harvest strategy in which TACs fall within the range of ABCs recommended by the SSC. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 747 small CVs and fewer than 20 small C/Ps. The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the GOA, and in parallel fisheries within State of Alaska waters. These include entities operating CVs and C/Ps within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and C/Ps were considered to be small entities if they had annual gross receipts of $4 million per year or less from all economic activities, including the revenue of their affiliated operations. Data from 2005 were the most recent available and were used to determine the number of small entities.

Estimates of first wholesale gross revenues for the GOA were used as indices of the potential impacts of the alternative harvest strategies on small entities. An index of revenues was projected to decline under the preferred alternative due to declines in ABCs for key species in the GOA. The index of revenues declined by less than 4 percent between 2006 and 2007 and by less than one percent between 2006 and 2008.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the GOA OY, in which case harvests would be limited to the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rate. Alternative 4 would have set TACs to equal the lower limit of the GOA OY range. Alternative 5 would have set TACs equal to zero. Alternative 5 is the "no action", or status quo, alternative.

Alternatives 3, 4, and 5 were all associated with smaller levels for important fishery TACs than Alternative 2. Estimated total first wholesale gross revenues were used as an index of potential adverse impacts to small entities. As a consequence of the lower TAC levels, Alternatives 3, 4, and 5 all had smaller first wholesale revenue indices than Alternative 2. Thus, Alternatives 3, 4, and 5 had greater adverse impacts on small entities. Alternative 1 appeared to generate higher values of the gross revenue index for fishing operations in the GOA than Alternative 2. A large part of the Alternative 1 GOA revenue appeared to be due to the assumption that the full Alternative 1 TAC would be harvested. Much of the larger revenue was due to increases in flatfish TACs that were much greater for Alternative 1 than for Alternative 2. In recent years, halibut bycatch constraints in these fisheries have kept actual flatfish catches from reaching Alternative 1 levels. Therefore, a large part of the revenues associated with Alternative 1 are unlikely to occur. Also, Alternative 2 TACs are constrained by the ABCs that the Plan Teams and SSC are likely to recommend to the Council on the basis of a full consideration of biological issues. These ABCs are often less than Alternative 1's maximum permissible ABCs; therefore higher TACs under Alternative 1 may not be consistent with prudent biological management of the resource. For these reasons, Alternative 2 is the preferred alternative.

NMFS also prepared a supplemental IRFA (SIRFA) to specifically evaluate the proposed specification of separate OFLs and TACs for sharks, octopus, squid, and sculpins in the GOA, consistent with the previously selected harvest strategy, the tier system in the FMP, Amendment 87 to the FMP, the Magnuson-Stevens Act, and other applicable law (*see* **ADDRESSES**). Amendment 87 to the FMP was approved by NMFS on September 22, 2010. The SIRFA augments the IRFA prepared in connection with the 2007 Alaska Groundfish Harvest Specification EIS.

NMFS does not anticipate that the specification of TACs for sculpins will have any additional economic impacts on small entities beyond those impacts analyzed in the existing harvest specification IRFA because the proposed OFL and ABC are relatively large compared to recent historical catches.

In contrast, the proposed OFLs and TACs for sharks, octopuses, and squids could potentially result in some vessels choosing to shift the timing or location of their fishing activity in an effort to avoid high rates of incidental catch in an effort to avert the imposition of inseason management measures by NMFS to avoid overfishing. The impact of efforts undertaken by the fleet to avoid reaching the TAC and the potential closures that may follow are difficult to predict and would depend on the timing and location of incidental catches and the specific steps taken by the fleet to reduce the rate of incidental catch. Generally, however, the impact on these operations may be some combination of increased costs and/or decreased gross revenues as further described below.

The 2009 Economic Status of Groundfish Fisheries Off Alaska report, prepared in conjunction with the 2009 SAFE report (*see* **ADDRESSES**), identifies 702 small groundfish entities operating in the GOA, with average revenues from all sources of about $600,000. Most of these (697) are CVs. A majority of the CVs, 520, use hook-and-line gear and have average revenues of about $490,000, 73 are trawlers with average revenues of about $1.27 million, and 142 are pot vessels with average revenues of $850,000. There were five CPs, mostly hook-and-line vessels, with average gross revenues of about $1.52 million. The 2009 SAFE report may

overstate the number of small entities, because it considers individual vessel gross revenues, but does not capture affiliations among vessels. All of these small entities would be directly regulated by the proposed action. As described below, however, certain small entities may be more likely than others to be adversely affected by the proposed action as a result of potential impacts associated with the incidental catch of sharks, octopus or squid in other target fisheries.

Sharks are incidentally caught in a large number of separate groundfish fisheries, with over half of the catch reported from fisheries using hook-and-line gear. There were an estimated 270 small sablefish hook-and-line vessels with an estimated average gross revenue from all sources of $770,000, an estimated 128 Pacific cod hook-and-line vessels with an average gross of $590,000, an estimated 21 small pelagic pollock trawlers with average gross revenues of about $1.02 million, five non-pelagic trawlers targeting arrowtooth flounder with average gross revenues of about $580,000, and five non-pelagic trawlers targeting shallow water flatfish with average gross revenues of about $650,000.

Most of the octopus catch occurs in the pot gear fishery for Pacific cod. There are an estimated 132 small vessels in this fishery, with estimated average gross revenues from all sources of about $880,000.

Almost all squid is caught in the pollock trawl fishery. Twenty-one small pollock vessels participate in this fishery with average gross revenues of about $1.02 million.

NMFS considered several alternatives to the proposed action of specifying separate OFLs and TACS for GOA sculpins, sharks, octopus, and squid species complexes. However, each of these alternatives has been eliminated from further consideration because it either does not minimize significant economic impacts on a substantial number of small entities or does not accomplish the stated objectives of, or is in conflict with the requirements of, applicable statutes.

The proposed action is intended to fulfill the agency's mandate to establish catch limits that are based on the best available scientific information, and which will achieve optimum yield while preventing overfishing. The proposed action is the alternative that is both consistent with the agency's obligations under the Magnuson-Stevens Fishery Conservation and Management Act and the FMP and minimizes the likelihood that the specification of TACs and OFLs for the sculpins, sharks, octopus, and squid species complexes will adversely affect small entities.

NMFS considered dividing the TACs for each of the species complexes among different regulatory areas in the GOA. Any such further division of the TACs would not change the total TACs for each species complex in the GOA as a whole. However, the incidental catch of fishing vessels that operate within each of the regulatory areas would be counted against a reduced TAC and OFL, which would increase the likelihood that the TAC or OFL would be reached and that one or more area closures may be triggered.

NMFS considered excusing small entities from compliance with the TACs for each of the species complexes evaluated in this SIRFA. However, the Magnuson-Stevens Act requires NMFS to implement conservation and management measures that prevent overfishing. Authorizing unlimited incidental catch of these species complexes by small entities would present an unacceptable risk of overfishing, and would not be consistent with the agency's obligations under Magnuson-Stevens Act, nor with the requirements of the Council's FMP.

In order to minimize the economic impacts of the proposed action, NMFS considered allocating relatively large portions of the TACs for each of the species complexes to potentially affected small entities. However, any such allocation, which would be motivated solely by economic considerations under the RFA, would not be consistent with National Standard 5, which states that "no [conservation and management measure] shall have economic allocation as its sole purpose." 16 U.S.C. 1851(a)(5).

Finally, NMFS considered establishing a single group TAC for all four of the species complexes in the GOA, which would substantially reduce the likelihood that incidental catch would reach or exceed the TAC or OFL and result in area closures of target fisheries. However, the establishment of a stock complex comprised of species with such disparate life histories would not be consistent with the statutory requirement to establish catch limits that prevent overfishing for stocks in the fishery, nor with the Council's intent in enacting Amendments 87.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS (*see* **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 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: December 2, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–30686 Filed 12–7–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 101126521–0521–02]

RIN 0648–XZ90

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2011 and 2012 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2011 and 2012 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2011 and 2012 fishing years, and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by January 7, 2011.

ADDRESSES: Send comment to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XZ90, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the

Federal eRulemaking Portal at *http://www.regulations.gov*.

- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required 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 the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), the Initial Regulatory Flexibility Analysis (IRFA), and the Supplemental IRFA prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*. Copies of the final 2009 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Bering Sea and Aleutian Islands, dated November 2009, are 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*. The 2010 SAFE report for the BSAI will be available from the same sources in mid-November 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (*see* § 679.20(a)(1)(i)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch (PSC) allowances, prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, American Fisheries Act allocations, Amendment 80 allocations, and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The proposed harvest specifications set forth in Tables 1 through 12 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2011 and 2012 after (1) considering comments received within the comment period (*see* **DATES**), (2) consulting with the Council at its December 2010 meeting, and (3) considering new information presented in the final 2010 SAFE reports prepared for the 2011 and 2012 groundfish fisheries.

Other Actions Potentially Affecting the 2011 and 2012 Harvest Specifications

NMFS published a final rule to implement Amendments 95 and 96 to the FMP on October 6, 2010 (75 FR 61639), effective November 5, 2010. Amendments 95 and 96 move sculpins, skates, sharks, and octopuses from the "other species" category to the "target species" category in the BSAI and eliminate the "other species" category in the FMP. Amendment 96 revises the FMP to meet the National Standard 1 guidelines for annual catch limits and accountability measures, and requires that overfishing levels (OFLs), acceptable biological catches (ABCs), and TACs be established for sculpins, skates, sharks, and octopuses as part of the annual groundfish harvest specifications process. Based on the 2009 SAFE report NMFS proposes ABCs, TACs, and OFLs for sculpins, skates, sharks, and octopuses listed in Table 1. At the November 2010 BSAI Groundfish Plan Team (Plan Team) meeting, the Plan Team recommended that the SSC and Council adopt OFLs for octopuses and sharks based upon the maximum catch from 1997 through 2007. This alternative method of calculating OFLs varies from the default method specified in the BSAI FMP for Tier 6 species (section 3.2.4). If approved, the alternative method of calculating OFL may result in higher harvest specification limits for sharks and octopuses.

Amendment 96 to the FMP is necessary to comply with Magnuson-Stevens Act requirements associated with annual catch limits and accountability measures, and revises how total annual groundfish mortality is estimated and accounted for in the annual SAFE reports. These revisions affect the OFLs and ABCs for certain groundfish species. Specifically, NMFS will attempt to identify additional sources of mortality to groundfish stocks not currently reported or considered by the groundfish stock assessments in recommending OFLs, ABCs, and TACs for certain groundfish species. These additional sources of mortality result from recreational fishing, subsistence fishing, trawl and hook-and-line surveys, exempted fishing permits, research, commercial halibut fisheries, crab bait, sablefish catch predation by whales or other sources of mortality not yet identified. Many of the sources of this mortality have been identified, some of which are currently unreported.

NMFS intends to develop a single database that stock assessment authors can access through a single source such as the Alaska Fisheries Information Network. The development of this database will require the cooperation of several agencies, including NMFS, the Alaska Department of Fish and Game, and the International Pacific Halibut Commission (IPHC). At its October 2010 meeting, the Council's groundfish Plan Teams recommended the formation of a total catch accounting working group to assist NMFS in developing a methodology to estimate total catch of groundfish. While much of the information is currently available and will be incorporated into the final 2010 SAFE reports, the development of an adequate methodology is ongoing and not fully ready for use in the final SAFE reports. NMFS intends to have the information available for the assessment cycle in the fall of 2011.

At the October 2010 meeting, the Council and the Scientific and Statistical Committee (SSC) recommended separating Kamchatka flounder from the arrowtooth flounder complex starting in the year 2011. As a result, arrowtooth flounder and Kamchatka flounder will have separate OFLs, ABCs, and TACs for 2011 and 2012. Section 305(i)(1)(1)(B)(ii)(II) of the MSA addresses allocations to the CDQ Program. It requires "the allocation under the program in any directed fishery of the Bering Sea and Aleutian

Islands (other than a fishery for halibut, sablefish, pollock and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent." This requirement was added to the MSA through the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241), which was signed by the President on July 11, 2006. Therefore, the creation of a new TAC category for Kamchatka flounder in 2011 would require NMFS to determine if an allocation of 10.7 percent of the Kamchatka flounder TAC should be made to the CDQ Program. NMFS requests public comment on the following proposal to allocate 10.7 percent of the Kamchatka flounder TAC to the CDQ Program.

In the final 2007 and 2008 harvest specifications for groundfish of the BSAI (72 FR 9451, March 2, 2007), NMFS explained the determination that the term "directed fishery" for purposes of section 305(i)(1) of the MSA means a fishery for which sufficient TAC exists to open a directed fishery for that species or species group, and the species or species group is economically valuable enough for the CDQ groups to target them. For Kamchatka flounder sufficient TAC exists to open a directed fishery for this species, the species is economically valuable, directed fishing for Kamchatka flounder has been conducted in the past, vessel harvesting groundfish on behalf of the CDQ groups have retained catch reported under the combined species code for arrowtooth flounder and Kamchatka flounder, observers onboard these vessels have reported the retention of Kamchatka flounder, and NMFS expects that vessel operators in the non-CDQ fisheries will conduct directed fishing for Kamchatka flounder in the future. NMFS does not have sufficient information at this time to determine if Kamchatka flounder is economically valuable enough to the CDQ groups for them to target on them or conduct directed fisheries for them in the future. Therefore, based on the information available at this time, NMFS initially proposes that Kamchatka flounder may meet the definition for a "directed fishery" under section 305(i)(1) and proposes to allocate 10.7 percent of the Kamchatka flounder TAC to the CDQ Program.

NMFS requests comment about the economic value of Kamchatka flounder and whether the CDQ groups intend to conduct directed fishing for Kamchatka flounder in the future. For the final 2011 and 2012 groundfish harvest specifications for the BSAI NMFS will consider additional information provided about the proposed allocation of Kamchatka flounder to the CDQ Program. Specifically, if NMFS receives information that none of the CDQ groups intend to conduct directed fishing for Kamchatka flounder, then NMFS would not allocate 10.7 percent of the Kamchatka flounder TAC to the CDQ Program. However, if any one of the six CDQ groups intends to conduct directed fishing for Kamchatka flounder, or if NMFS does not receive information that demonstrates unanimity among the CDQ groups about the economic value of Kamchatka flounder to the CDQ groups, NMFS would allocate 10.7 percent of the TAC to the CDQ Program.

If an allocation of Kamchatka flounder is made to the CDQ Program in the final 2011 and 2012 groundfish harvest specifications for the BSAI, this CDQ reserve will be allocated among the CDQ groups using the same percentage allocations currently used to allocate the arrowtooth flounder complex among the CDQ groups. These percentage allocations are shown in Table 1 of a notice published in the **Federal Register** on August 31, 2006 (71 FR 51804). The current percentage allocations of arrowtooth flounder among the CDQ groups would be used to allocate Kamchatka flounder among the CDQ groups because the new TAC category is being created by splitting Kamchatka flounder from the arrowtooth flounder complex.

The SSC and the Council also recommended splitting the BSAI rougheye/blackspotted rockfish complex ABC and TAC between the Bering Sea subarea and the Aleutian Island subarea. At the November 2010 meeting, the Plan Team recommended splitting the BSAI rougheye/blackspotted rockfish complex ABC and TAC into two areas, with the first area being the Central Aleutian Islands and Western Aleutian Islands subareas and the second area being the Eastern Aleutian Island and Bering Sea subareas. The Council could choose either or none of these proposals at its December 2010 meeting.

NMFS published a final rule to implement Amendment 91 to the FMP on August 30, 2010 (75 FR 53026), effective September 29, 2010. Amendment 91 is a change in management of Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with incentive plan agreements and performance standards. The final rule also removes from regulations the 29,000 Chinook salmon PSC limit in the Bering Sea, the Chinook Salmon Savings Areas in the Bering Sea, exemption from Chinook Salmon Savings Area closures for participants in the voluntary rolling hotspot system (VRHS) intercooperative agreement, and Chinook salmon as a component of the VRHS intercooperative agreement. The final rule does not change any regulations affecting the management of Chinook salmon in the Aleutian Islands or non-Chinook salmon in the BSAI. The Council is currently considering a separate action to modify the non-Chinook salmon management measures to minimize non-Chinook salmon bycatch.

In 2010, NMFS completed a Section 7 formal consultation on the effects of the authorization of the Alaska groundfish fisheries on Endangered Species Act listed species under NMFS jurisdiction. The consultation resulted in a biological opinion that determined that the effects of the Alaska groundfish fisheries were likely to result in the jeopardy of extinction and adverse modification of designated critical habitat for the western distinct population segment of Steller sea lions. The biological opinion contained a reasonable and prudent alternative that requires changes to the BSAI Atka mackerel and Aleutian Islands subarea Pacific cod fisheries to prevent the likelihood of jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. A separate rulemaking for implementation of the reasonable and prudent alternative is scheduled to be effective by January 1, 2011. Changes to the harvest specifications for Atka mackerel and Pacific cod that would be required by the rule implementing the reasonable and prudent alternative are described in the section for each of these target species and will revise these proposed harvest specifications for Atka mackerel and Pacific cod listed in Tables 1, 3, 4, 9, and 11.

Proposed ABC and TAC Harvest Specifications

The amounts proposed for the 2011 and 2012 harvest specifications are based on the 2009 SAFE report and are subject to change in the final harvest specifications to be published by NMFS following the Council's December 2010 meeting. At that meeting the Council will consider information contained in the final 2010 SAFE report, recommendations from the Plan Team meeting, the December 2010 Scientific and Statistical Committee (SSC), the Advisory Panel (AP) meetings, and public testimony in making its recommendations for the final 2011 and 2012 harvest specifications.

At the October 2010 Council meeting, the Council, the Scientific and Statistical Committee (SSC), and the Advisory Panel (AP) reviewed most

recent biological and harvest information about the condition of groundfish stocks in the BSAI. This information was initially compiled by the Plan Team and presented in the final 2009 SAFE report for the BSAI groundfish fisheries, dated November 2009 (*see* **ADDRESSES**). In November 2010, the Plan Team updated the 2009 SAFE report to include new information collected during 2010, such as revised stock assessments and catch data. The Plan Team compiled this information and produced the 2010 SAFE report. The Council will review the 2010 SAFE report during the December 2010 Council meeting. At that meeting, the Council will consider information contained in the 2010 SAFE report, recommendations made by the Plan Team during its November 2010 meeting, the December 2010 SSC and AP meetings, public testimony, and relevant written public comments in making its recommendations for the final 2011 and 2012 harvest specifications.

In previous years the largest changes from the proposed to the final harvest specifications have been based on the most recent NMFS surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used in the stock assessments. Any new models were presented at the September Plan Team meeting and reviewed by the SSC at the October 2010 Council meeting. In November 2010, the Plan Team will consider updated stock assessments for pollock, Pacific cod, yellowfin sole, rock sole, Kamchatka flounder, sharks, squid, sculpins, and octopus to be included in the final 2010 SAFE report. For the other groundfish stocks, the assessments will be updated to include the most recent information, such as 2010 catch. The final harvest specification amounts for these stocks are not expected to vary greatly from the proposed specification amounts published here.

If the final 2010 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2011 and 2012 harvest specifications may reflect that increase from the proposed harvest specifications. This currently is applicable to the following species: pollock, Pacific cod, sablefish, Atka mackerel, yellowfin sole, flathead sole, Pacific ocean perch, northern rockfish, shortraker rockfish, other rockfish, octopus, sculpins, and skates. Conversely, if the final 2010 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2011 and 2012 harvest specifications may reflect a decrease from the proposed harvest specifications. This is applicable to the following species: arrowtooth flounder, Greenland turbot, rock sole, Alaska plaice, other flatfish, and rougheye rockfish. The biomass trends for sharks and squid are relatively level and stable. For Alaska plaice, natural mortality has been re-estimated and this will likely result in a far smaller OFL and ABC.

The proposed ABCs and TACs are based on the best available biological and socioeconomic data, 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 OFLs and ABCs. 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 one representing the highest level of information quality available and tier six representing the lowest level of information quality available.

In October 2010, the SSC adopted the proposed 2011 and 2012 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. These amounts are unchanged from the final 2011 harvest specifications published in the **Federal Register** on March 12, 2010 (75 FR 11778). The exceptions to this are the establishment of individual ABC and TAC amounts for sculpins, sharks, squid, and octopuses per the Secretary's approval of Amendments 95 and 96 to the FMP and separating Kamchatka flounder from the arrowtooth flounder complex, as previously described. For 2011 and 2012, the Council recommended and NMFS proposes the OFLs, ABCs, and TACs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2011 and 2012 ABCs for all assessed groundfish is 2,467,266 mt, which is higher than the final 2010 ABC total of 2,121,880 mt (75 FR 11778, March 12, 2010).

Specification and Apportionment of TAC Amounts

The Council recommended proposed TACs for 2011 and 2012 that are equal to proposed ABCs for sablefish, Atka mackerel, yellowfin sole, Greenland turbot, Kamchatka flounder, "other flatfish," Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, other rockfish, squid, sharks, skates, sculpins, and octopus. The Council recommended proposed TACs for 2011 and 2012 that are less than the proposed ABCs for pollock, Pacific cod, rock sole, arrowtooth flounder, flathead sole, and Alaska plaice.

The proposed Bering Sea pollock TAC was reduced from the ABC to accommodate fishing under a potential Exempted Fisheries Permit (EFP). The Council likely will reconsider this reduction at its December 2010 meeting, given uncertainty of the deployment of the EFP and the fact that any pollock mortality that occurs under an approved EFP would be considered in the subsequent year's stock assessment as contemplated under Amendment 96 to the FMP.

Section 679.20(a)(5)(iii)(B)(*1*) requires the Aleutian Islands pollock TAC to be set at 19,000 mt when the Aleutian Islands pollock ABC equals or exceeds 19,000 mt. The Bogoslof pollock TAC is set to accommodate incidental catch amounts. The Pacific cod TAC is set to accommodate the State of Alaska's (State) Aleutian Islands Pacific cod guideline harvest level fishery so that the ABC is not exceeded. The Alaska plaice, arrowtooth flounder, flathead sole, rock sole, and sculpin TACs are set so that the sum of the overall TAC does not exceed the BSAI optimum yield.

The proposed groundfish OFLs, ABCs and TACs are subject to change pending the completion of the 2010 SAFE report and the Council's recommendations for final 2011 and 2012 harvest specifications during its December 2010 meeting. These amounts are consistent with the biological condition of groundfish stocks as described in the 2009 SAFE report, and adjusted for other biological and socioeconomic considerations. Table 1 lists the proposed 2011 and 2012 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—PROPOSED 2011 AND 2012 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI[1]

[Amounts are in metric tons]

Species	Area	Proposed 2011 and 2012				
		OFL	ABC	TAC	ITAC[2]	CDQ[3 4 5]
Pollock	2011 BS	1,220,000	1,110,000	1,107,000	996,300	110,700
	2012 BS	1,220,000	1,110,000	1,105,000	994,500	110,500
	AI	39,100	32,200	19,000	17,100	1,900
	Bogoslof	22,000	156	75	10	.....
Pacific cod[4]	BSAI	251,000	214,000	207,580	185,369	22,211
Sablefish[5]	BS	2,970	2,500	2,500	1,063	94
	AI	2,200	1,860	1,860	434	38
Atka mackerel	BSAI	76,200	65,000	65,000	58,045	6,955
	EAI/BS	.....	20,900	20,900	18,664	2,236
	CAI	.....	26,000	26,000	23,218	2,782
	WAI	.....	18,100	18,100	16,163	1,937
Yellowfin sole	BSAI	227,000	213,000	213,000	190,209	22,791
Rock sole[6]	BSAI	245,000	242,000	90,000	80,370	9,630
Greenland turbot	BSAI	6,860	5,370	5,370	4,565	n/a
	BS	.....	3,700	3,700	3,145	396
	AI	.....	1,670	1,670	1,420	.....
Arrowtooth flounder	BSAI	167,400	139,300	60,000	51,000	6,420
Kamchatka flounder	BSAI	23,600	17,700	17,700	15,045	1,894
Flathead sole[7]	BSAI	81,800	68,100	60,000	53,580	6,420
Other flatfish[8]	BSAI	23,000	17,300	17,300	14,705	.....
Alaska plaice	BSAI	314,000	248,000	40,000	34,000	.....
Pacific ocean perch	BSAI	22,200	18,680	18,680	16,518	n/a
	BS	.....	3,790	3,790	3,222	.....
	EAI	.....	4,180	4,180	3,733	447
	CAI	.....	4,230	4,230	3,777	453
	WAI	.....	6,480	6,480	5,787	693
Northern rockfish	BSAI	8,700	7,290	7,290	6,197	.....
Shortraker rockfish	BSAI	516	387	387	329	.....
Rougheye rockfish[9]	BSAI	650	531	531	451	.....
	BS	.....	42	42	36	.....
	AI	.....	489	489	416	.....
Other rockfish[10]	BSAI	1,380	1,040	1,040	884	.....
	BS	.....	485	485	412	.....
	AI	.....	555	555	472	.....
Squid	BSAI	2,620	1,970	1,970	1,675	.....
Sharks	BSAI	598	449	449	382	.....
Skates	BSAI	35,900	30,000	30,000	25,500	.....
Sculpins	BSAI	51,300	30,200	30,035	25,530	.....
Octopus	BSAI	311	233	233	198	.....
2011 Total	.....	2,826,305	2,467,266	1,997,000	1,779,457	189,148
2012 Total	.....	2,826,305	2,467,266	1,995,000	1,779,457	189,148

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves.

[3] Under § 679.20(a)(5)(i)(A)(*1*), the annual Bering Sea subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4 percent), is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by three percent from the ABC to account for the State guideline harvest level in State waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 10.7 percent of the TAC is reserved for use by CDQ participants (*see* §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (*see* § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish", Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish", squids, octopuses, skates, sculpins, and sharks are not allocated to the CDQ program.

[6] "Rock sole" includes *Lepidopsetta polyxystra* (Northern rock sole) and *Lepidopsetta bilineata* (Southern rock sole).

[7] "Flathead sole" includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

[8] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[9] "Rougheye rockfish" includes *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[10] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species category, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocations of sablefish—and 10.7 percent of Bering Sea Greenland turbot, Kamchatka flounder, and arrowtooth flounder—be allocated to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod be allocated to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (*see* § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS proposes a pollock ICA of 4 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2010. During this 12-year period, the pollock incidental catch ranged from a low of 2.4 percent in 2006 to a high of 5 percent in 1999, with a 12-year average of 3.3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS proposes a pollock ICA of 1,600 mt for the AI subarea after subtraction of the 10 percent CDQ DFA. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2010. During this 8-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with an 8-year average of 7 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS proposes ICAs of 5,000 mt of flathead sole, 10,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt of Western Aleutian District Pacific ocean perch, 75 mt of Central Aleutian District Pacific ocean perch, 100 mt of Eastern Aleutian District Pacific ocean perch, 40 mt for Western Aleutian District Atka mackerel, 75 mt for Central Aleutian District Atka mackerel, and 75 mt of Eastern Aleutian District and Bering Sea subarea Atka mackerel after subtraction of the 10.7 percent CDQ reserve. These allowances are based on NMFS' examination of the average incidental catch in other target fisheries from recent years.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserve, provided that such apportionments do not result in overfishing (*see* § 679.20(b)(1)(i)).

Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the Bering Sea subarea, after subtraction of 10 percent for the CDQ program and 4 percent for the ICA, be allocated as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20 to June 10) and 60 percent of the DFA is allocated to the B season (June 10 to November 1) (§ 679.20(a)(5)(i)(B)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)(*ii*)). In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 2 lists these proposed 2011 and 2012 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding Bering Sea subarea pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Tables 2a and 2b list the proposed 2011 and 2012 allocations of pollock TAC. Tables 9 through 12 list the AFA catcher/processor and catcher vessel harvesting sideboard limits. In past years, the proposed harvest specifications included text and tables describing pollock allocations to the Bering Sea subarea inshore pollock cooperatives and open access sector. These allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2011 have not been submitted to NMFS, thereby preventing NMFS from calculating 2011 allocations, NMFS has not included inshore cooperative text and tables in these proposed harvest specifications. NMFS will post 2011 AFA inshore cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2010.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the DFA until April 1 (§ 679.20(a)(5)(i)(C)). The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the 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. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Tables 2a and 2b list these proposed 2011 and 2012 amounts by sector.

TABLE 2a—PROPOSED 2011 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	2011 Allocations	2011 A season		2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC	1,107,000	N/A	N/A	N/A
CDQ DFA	110,700	44,280	30,996	66,420
ICA [1]	39,852	N/A	N/A	N/A
AFA Inshore	478,224	191,290	133,903	286,934
AFA Catcher/Processors [3]	382,579	153,032	107,122	229,548
Catch by C/Ps	350,060	140,024	N/A	210,036
Catch by C/Vs [3]	32,519	13,008	N/A	19,512
Unlisted C/P Limit [4]	1,913	765	N/A	1,148
AFA Motherships	95,645	38,258	26,781	57,387
Excessive Harvesting Limit [5]	167,378	N/A	N/A	N/A
Excessive Processing Limit [6]	286,934	N/A	N/A	N/A
Total Bering Sea DFA (non-CDQ)	956,448	382,579	267,805	573,869
Aleutian Islands subarea [1]	19,000	N/A	N/A	N/A
CDQ DFA	1,900	760	N/A	1,140
ICA	1,600	800	N/A	800
Aleut Corporation	15,500	10,600	N/A	4,900
Bogoslof District ICA [7]	10	N/A	N/A	N/A

[1] Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtraction for the CDQ DFA (10 percent) and the ICA (3.5 percent), is allocated as a DFA as follows: inshore sector 50 percent, catcher/processor sector 40 percent, and mothership sector 10 percent. In the Bering Sea 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 DFA (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 Bering Sea 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 the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is 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 (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) 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/processor 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 pollock DFAs not including CDQ.

[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 pollock DFAs not including CDQ.

[7] The Regional Administrator proposes closing the Bogoslof pollock fishery for directed fishing under the final 2011 and 2012 harvest specifications for the BSAI. The amounts specified are for incidental catch only and are not apportioned by season or sector.

TABLE 2b—PROPOSED 2012 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		2012 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC	1,105,000	N/A	N/A	N/A
CDQ DFA	110,500	44,200	30,940	66,300
ICA [1]	39,780	N/A	N/A	N/A
AFA Inshore	477,360	190,944	133,661	286,416
AFA Catcher/Processors [3]	381,888	152,755	106,929	229,133
Catch by C/Ps	349,428	139,771	N/A	209,657
Catch by C/Vs [3]	32,460	12,984	N/A	19,476
Unlisted C/P Limit [4]	1,909	764	N/A	1,146
AFA Motherships	95,472	38,189	26,732	57,283
Excessive Harvesting Limit [5]	167,076	N/A	N/A	N/A
Excessive Processing Limit [6]	286,416	N/A	N/A	N/A
Total Bering Sea DFA (non-CDQ)	954,720	381,888	267,322	572,832
Aleutian Islands subarea [1]	19,000	N/A	N/A	N/A
CDQ DFA	1,900	760	N/A	1,140
ICA	1,600	800	N/A	800
Aleut Corporation	15,500	10,600	N/A	4,900

TABLE 2B—PROPOSED 2012 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2012 Allocations	2012 A season		2012 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA
Bogoslof District ICA[7]	10	N/A	N/A	N/A

[1] Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtraction for the CDQ DFA (10 percent) and the ICA (3.5 percent), is allocated as a DFA as follows: Inshore sector 50 percent, catcher/processor sector 40 percent, and mothership sector 10 percent. In the Bering Sea 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*), the annual AI pollock TAC, after subtracting first for the CDQ DFA (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 Bering Sea 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 the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is 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 (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) 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 pollock DFAs not including CDQ.

[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 pollock DFAs not including CDQ.

[7] The Regional Administrator proposes closing the Bogoslof pollock fishery for directed fishing under the final 2011 and 2012 harvest specifications for the BSAI. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Allocation of the Atka Mackerel TACs

The proposed harvest specifications for Atka mackerel reflect the current regulatory provisions for temporal and spatial distribution of Atka mackerel harvest in the BSAI. However, as mentioned above, these provisions are subject to change by separate rulemaking prior to January 1, 2011, based on the reasonable and prudent alternative selected in the 2010 Alaska groundfish fisheries biological opinion.

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtraction of the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear. Table 3 lists these proposed 2011 and 2012 amounts.

The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and in § 679.91. Two Amendment 80 cooperatives have formed for the 2011 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2011 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2011, based on the harvest specifications effective on that date.

The 2012 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, which is the deadline for eligible participants to apply for participation in the Amendment 80 program. Amendment 80 applications for 2012 have not yet been submitted to NMFS, thereby preventing NMFS from calculating 2012 allocations. Thus, NMFS has not included 2012 allocations to the Amendment 80 cooperatives or Amendment 80 limited access sector in these proposed harvest specifications. NMFS will post 2012 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2012.

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes a 0.5 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2011 and 2012. This percentage is applied after subtractions of the CDQ reserve and the ICA.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances. The first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season). The jig gear allocation is not apportioned by season.

Pursuant to § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts.

NMFS will establish HLA limits for the CDQ reserve and each of the three non-CDQ fishery categories: the BSAI trawl limited access sector, the Amendment 80 limited access fishery, and an aggregate HLA limit applicable to all Amendment 80 cooperatives. NMFS will assign vessels in each of the three non-CDQ fishery categories that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply (*see* § 679.20(a)(8)(iii)(B)(*1*)). There is no allocation of Atka mackerel to the BSAI trawl limited access sector in the Western Aleutian District. Therefore, no vessels in the BSAI trawl limited access sector will be assigned to the Western Aleutian District HLA fishery.

Each trawl sector will have a separate lottery. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector. A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives: A first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. A maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery: A first and second HLA fishery in Area 542, and a first and second HLA

fishery in Area 543. NMFS will initially open fishing for the first HLA fishery in all three fishery categories at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel for the Eastern Aleutian District and Bering Sea subarea allocation for any one of the three non-CDQ fishery categories allocated Atka mackerel TAC.

TABLE 3—PROPOSED 2011 AND 2012 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2011 allocation by area			2012 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	20,900	26,000	18,100	20,900	26,000	18,100
CDQ reserve	Total	2,236	2,782	1,937	2,236	2,782	1,937
	HLA [5]	n/a	1,669	1,162	n/a	1,669	1,162
ICA	Total	75	75	40	75	75	40
Jig[6]	Total	93	0	0	93	0	0
BSAI trawl limited access	Total	1,480	1,851	0	1,850	2,314	0
	A	740	926	0	925	1,157	0
	HLA	n/a	555	0	n/a	694	0
	B	740	926	0	925	1,157	0
	HLA	n/a	555	0	n/a	694	0
Amendment 80—Alaska Seafood Cooperative.	Total	7,988	8,478	6,182	n/a	n/a	n/a
	A	3,994	4,239	3,091	n/a	n/a	n/a
	HLA	n/a	2,544	1,855	n/a	n/a	n/a
	B	3,994	4,239	3,091	n/a	n/a	n/a
	HLA	n/a	2,544	1,855	n/a	n/a	n/a
Amendment 80—Alaska Groundfish Cooperative.	Total	9,028	12,813	9,941	n/a	n/a	n/a
	A	4,514	6,407	4,971	n/a	n/a	n/a
	HLA	n/a	3,844	2,982	n/a	n/a	n/a
	B	4,514	6,407	4,971	n/a	n/a	n/a
	HLA	n/a	3,844	2,982	n/a	n/a	n/a

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and in § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (*see* §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] The A season is January 1 (January 20 for trawl gear) to April 15, and the B season is September 1 to November 1. These allowances are subject to change under ongoing Section 7 Consultation addressing impacts of the groundfish fisheries on endangered Steller sea lions.

[5] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (*see* § 679.2). In 2010 and 2011, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts. These HLA limits are subject to change under ongoing Section 7 Consultation addressing impacts of the groundfish fisheries on endangered Steller sea lions.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

The proposed harvest specifications for Pacific cod reflect the current regulatory provisions for temporal and spatial distribution of Pacific cod harvest in the Aleutian Islands subarea. However, as mentioned above, these provisions are subject to changes by separate rulemaking prior to January 1, 2011, based on the reasonable and prudent alternative selected in the 2010 Alaska groundfish fisheries biological opinion.

Sections 679.20(a)(7)(i) and (ii) allocates the Pacific cod TAC in the BSAI, after subtraction of 10.7 percent for the CDQ program, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl catcher vessels. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2011 and 2012, the Regional Administrator proposes an ICA of 500 mt based on anticipated incidental catch in these fisheries.

The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91. Two Amendment 80 cooperatives have formed for the 2011 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2011 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2011, based on the harvest specifications effective on that date.

The 2012 allocations for Amendment 80 species between Amendment 80

cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, which is the deadline for eligible participants to apply for participation in the Amendment 80 program. Amendment 80 applications for 2012 have not yet been submitted to NMFS, thereby preventing NMFS from calculating 2012 allocations. Thus, NMFS has not included 2012 allocations to the Amendment 80 cooperatives or Amendment 80 limited access sector in these proposed harvest specifications. NMFS will post 2012 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2012.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (*see* §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

The CDQ and non-CDQ season allowances by gear based on the proposed 2011 and 2012 Pacific cod TACs are listed in Table 4 based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and 679.20(a)(7)(iv)(A); and the seasonal allowances of Pacific cod set forth at § 679.23(e)(5).

TABLE 4—PROPOSED 2011 AND 2012 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2011 and 2012 share of gear sector total	2011 and 2012 share of sector total	2011 and 2012 seasonal apportionment	
				Season	Amount
Total TAC	100	207,580	n/a	n/a	n/a
CDQ	10.7	22,211	n/a	*See* § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	112,704	n/a	n/a	n/a
Hook-and-line/pot ICA [1]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	112,204	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	89,874	Jan 1–Jun 10	45,836
				Jun 10–Dec 31	44,038
Hook-and-line catcher vessels > 60 ft LOA	0.2	n/a	369	Jan 1–Jun 10	188
				Jun 10–Dec 31	181
Pot catcher/processors	1.5	n/a	2,768	Jan 1–Jun 10	1,412
				Sept 1–Dec 31	1,356
Pot catcher vessels ≥ 60 ft LOA	8.4	n/a	15,502	Jan 1–Jun 10	7,906
				Sept 1–Dec 31	7,596
Catcher vessels < 60 ft LOA using hook-and-line or pot gear.	2	n/a	3,691	n/a	n/a
Trawl catcher vessels	22.1	40,967	n/a	Jan 20–Apr 1	30,315
				Apr 1–Jun 10	4,506
				Jun 10–Nov 1	6,145
AFA trawl catcher processors	2.3	4,263	n/a	Jan 20–Apr 1	3,198
				Apr 1–Jun 10	1,066
				Jun 10–Nov 1	0
Amendment 80	13.4	24,839	n/a	Jan 20–Apr 1	18,630
				Apr 1–Jun 10	6,210
				Jun 10–Nov 1	0
Amendment 80—Alaska Groundfish Cooperative for 2011 [2].	n/a	4,625	n/a	Jan 20–Apr 1	3,469
				Apr 1–Jun 10	1,156
				Jun 10–Nov 1	0
Amendment 80—Alaska Seafood Cooperative for 2011 [2].	n/a	20,214	n/a	Jan 20–Apr 1	15,161
				Apr 1–Jun 10	5,054
				Jun 10–Nov 1	0
Jig	1.4	2,595	n/a	Jan 1–Apr 30	1,557
				Apr 30–Aug 31	519
				Aug 31–Dec 31	519

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2011 and 2012 based on anticipated incidental catch in these fisheries.

[2] The 2012 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, the deadline for eligible participants to apply for participation in the Amendment 80 program.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require the allocation of sablefish TACs for the Bering Sea and AI subareas between trawl gear and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires apportionment of 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires apportionment of 7.5 percent of the trawl gear allocation of sablefish to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2011 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries would reduce the potential for discards of halibut and sablefish in those fisheries. The

sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2011 and 2012 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5—PROPOSED 2011 AND 2012 GEAR SHARES AND CDQ RESERVE SABLEFISH TACS OF BSAI

[Amounts are in metric tons]

Subarea gear	Percent of TAC	2011 Share of TAC	2011 ITAC[1]	2011 CDQ reserve	2012 Share of TAC	2012 ITAC	2012 CDQ reserve
Bering Sea							
Trawl	50	1,250	1,063	94	1,250	1,063	94
Hook-and-line gear[2]	50	1,250	n/a	250	n/a	n/a	n/a
Total	100	2,500	1,063	344	2,500	1,063	94
Aleutian Islands							
Trawl	25	510	434	38	510	434	38
Hook-and-line gear[2]	75	1,530	n/a	306	n/a	n/a	n/a
Total	100	2,040	434	344	2,040	434	38

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Section 679.20(b)(1) does not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of the Aleutian Islands Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require the allocation between the Amendment 80 and BSAI trawl limited access sectors for Aleutian Islands Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs, after subtraction of 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for Aleutian Islands Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to part 679 and in § 679.91.

Two Amendment 80 cooperatives have formed for the 2011 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2011 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2011, based on the harvest specifications effective on that date.

The 2012 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, which is the deadline for eligible participants to apply for participation in the Amendment 80 program. Amendment 80 applications for 2012 have not yet been submitted to NMFS, thereby preventing NMFS from calculating 2012 allocations. Thus, NMFS has not included 2012 allocations to the Amendment 80 cooperatives or Amendment 80 limited access sector in these proposed harvest specifications. NMFS will post 2012 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2012.

Table 6 lists the proposed 2011 and 2012 allocations and seasonal apportionments of the Aleutian Islands Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6—PROPOSED 2011 AND 2012 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	2011 and 2012 allocations					
	Pacific ocean perch			Flathead sole	Rock sole BSAI	Yellowfin sole BSAI
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI		
TAC	4,180	4,230	6,480	60,000	90,000	213,000
CDQ	447	453	693	6,420	9,630	22,791
ICA	100	75	10	5,000	10,000	2,000
BSAI trawl limited access	363	370	116	0	0	40,226
Amendment 80	3,270	3,332	5,661	48,580	70,370	147,983
Amendment 80—Alaska Groundfish Cooperative for 2011[1]	1,734	1,767	3,002	9,487	19,752	62,815

TABLE 6—PROPOSED 2011 AND 2012 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS(TDESC>[AMOUNTS ARE IN METRIC TONS]—Continued

Sector	2011 and 2012 allocations					
	Pacific ocean perch			Flathead sole	Rock sole BSAI	Yellowfin sole BSAI
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI		
Amendment 80—Alaska Seafood Cooperative for 2011[1]	1,536	1,565	2,659	39,093	50,618	85,168

[1] The 2012 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, the deadline for eligible participants to apply for participation in the Amendment 80 program.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2011 and 2012 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Sections 679.21(e)(3)(i)(A)(*2*) and (e)(4)(i)(A) allocate 326 mt of the trawl halibut mortality limit and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. Section 679.21(e)(1)(viii) specifies 700 fish as the 2011 and 2012 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 53 Chinook salmon, as the AI subarea PSQ for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2011 and 2012 non-Chinook salmon PSC limit. Section 679.21(e)(3)(i)(A)(*3*)(*ii*) allocates 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries.

Amendment 91 (75 FR 53026, August 30, 2010), establishes two Chinook salmon PSC limits (60,000 Chinook salmon and 47,591 Chinook salmon) for the Bering Sea pollock fishery. For each PSC limit, NMFS will issue A season and B season Chinook salmon PSC allocations to the catcher/processor sector, the mothership sector, the inshore cooperatives, and the CDQ groups. Chinook salmon allocations remaining from the A season can be used in the B season. Entities can transfer PSC allocations within a season and can also receive transfers of Chinook salmon PSC to cover overages.

NMFS will issue transferable allocations of the 60,000 Chinook salmon PSC limit to those sectors that participate in an incentive plan agreement (IPA) and remain in compliance with the performance standard. Sector and cooperative allocations would be reduced if members of the sector or cooperative decided not to participate in an IPA. Vessels and CDQ groups that do not participate in an IPA would fish under a restricted opt-out allocation of Chinook salmon. If an entire sector does not participate in an IPA, all members of that sector would fish under the opt-out allocation.

Each year, each sector will be issued an annual threshold amount that represents that sector's portion of 47,591 Chinook salmon. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector must not exceed its annual threshold amount 3 times within 7 consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. NMFS will issue transferable allocations of the 47,591 Chinook salmon PSC limit to all sectors, cooperatives, and CDQ groups if no IPA is approved, or to the sectors that exceed the performance standard. When a PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

Each year, NMFS will release to the public and publish on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*): (A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation; (B) the non-transferable Chinook salmon PSC allocations; (C) the vessels fishing under each transferable or non-transferable allocation; (D) the amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation; and (E) any changes to these allocations due to transfers, rollovers, and deductions from the B season non-transferable allocations.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2010 regarding red king crab and herring PSC limits and apportionments, the Council recommended and NMFS proposes using the crab and herring 2011 and 2012 PSC limits and apportionments for the proposed 2011 and 2012 limits and apportionments. The Council will reconsider these amounts in December 2010. Pursuant to § 679.21(e)(3)(i)(A)(*1*), 10.7 percent of each PSC limit specified for crab is allocated as a PSQ reserve for use by the groundfish CDQ program.

The red king crab mature female abundance is estimated from the 2009 survey data at 35 million red king crabs, and the effective spawning biomass is estimated at 75 million lb (34,020 mt). Based on the criteria set out at § 679.21(e)(1)(i), the proposed 2011 and 2012 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit derives from the mature female abundance estimate of more than 8.4 million king crab and the effective spawning biomass estimate of more than 55 million lbs (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 25 percent of the red king crab PSC allowance based on the need to optimize the groundfish harvest relative to red king crab bycatch. NMFS proposes the Council's recommendation that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC allowance within the RKCSS (Table 7b). Based on 2010 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 379 million animals. Given the criteria set out at § 679.21(e)(1)(ii), the calculated 2011 and 2012 *C. bairdi* crab PSC limit for trawl gear is 830,000

animals in Zone 1 and 2,520,000 animals in Zone 2. These limits derive from the *C. bairdi* crab abundance estimate being in excess of the 270 million animals for the Zone 1 allocation and 290 million animals for the Zone 2 allocation, but less than 400 million animals for both zones allocations. These limits are specified in § 679.21(e)(1)(ii).

Pursuant to § 679.21(e)(1)(iii), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2010 survey estimate of 7.5 billion animals, the calculated limit is 8,460,480 animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2011 and 2012 herring biomass is 197,400 mt. This amount was derived using 2009 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit proposed for 2011 and 2012 is 1,974 mt for all trawl gear as presented in Tables 7a and 7b. Due to the lack of new information as of October 2010 regarding herring biomass, the Council recommended and NMFS proposes using the 2009 PSC limit for herring for the proposed 2011 and 2012 limits and apportionments. The Council will reconsider these amounts in December 2010, based on recommendations by the Plan Team and the SSC.

Section 679.21(e)(3)(A) requires PSQ reserves to be subtracted from the total trawl PSC limits. The amount of the 2011 PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are specified in Table 35 to part 679. The resulting allocation of PSC to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in Table 7a. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then further allocated to Amendment 80 cooperatives as PSC cooperative quota as presented in Table 7d.

Two Amendment 80 cooperatives have formed for the 2011 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2011 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2011, based on the harvest specifications effective on that date.

The 2012 Amendment 80 allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, which is the deadline for eligible participants to apply for participation in the Amendment 80 program. Amendment 80 applications for 2012 have not been submitted to NMFS, thereby preventing NMFS from calculating 2012 allocations. Thus, NMFS has not included 2012 allocations to the Amendment 80 cooperatives or Amendment 80 limited access sector in these proposed harvest specifications. NMFS will post 2012 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2012.

Section 679.21(e)(4)(i) authorizes the apportionment of the non-trawl halibut PSC limits into PSC bycatch allowances among six fishery categories. Table 7c lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Pursuant to section 3.6 of the FMP, the Council recommends, and NMFS agrees, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years after consultation with the Council, NMFS exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because (1) the pot gear fisheries have low halibut bycatch mortality, (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear, and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2010, total groundfish catch for the pot gear fishery in the BSAI was approximately 20,940 mt, with an associated halibut bycatch mortality of about 43 mt.

The 2010 jig gear fishery harvested about 344 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, as mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality is assumed because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors considered are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors.

The 2012 PSC limits for the Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until November 1, 2011, the deadline for participants to apply for participation in the Amendment 80. Because Amendment 80 applications for 2012 have not been submitted to NMFS, thereby preventing NMFS from calculating 2012 PSC limits, NMFS has not included 2012 PSC limits between Amendment 80 cooperatives and the Amendment 80 limited access sector in these proposed harvest specifications. NMFS will post 2012 Amendment 80 cooperative and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2012. NMFS proposes the Council's recommendation of the seasonal PSC apportionments in Table 7c to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 7a—PROPOSED 2011 AND 2012 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ [1]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ [1]	CDQ PSQ reserve [1]	Amendment 80 sector		BSAI trawl limited access fishery
						2011	2012	
Halibut mortality (mt) BSAI	900	832	3,675	3,349	393	2,375	2,325	875
Herring (mt) BSAI	n/a	n/a	1,974	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1 [1]	n/a	n/a	197,000	175,921	21,079	93,432	87,925	53,797
C. opilio (animals) COBLZ [2]	n/a	n/a	8,460,480	7,555,209	905,271	3,945,330	3,713,385	2,428,244
C. bairdi crab (animals) Zone 1 [2]	n/a	n/a	830,000	741,190	88,810	331,608	312,115	348,285
C. bairdi crab (animals) Zone 2	n/a	n/a	2,520,000	2,250,360	269,640	565,966	532,660	1,053,394

[1] Section 679.21(e)(3)(i)(A)(*2*) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[2] Refer to § 679.2 for definitions of zones.

TABLE 7b—PROPOSED 2011 AND 2012 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	169	n/a
Rock sole/flathead sole/other flatfish [1]	29	n/a
Greenland turbot/arrowtooth/sablefish [2]	14	n/a
Rockfish	10	n/a
Pacific cod	29	n/a
Midwater trawl pollock	1,508	n/a
Pollock/Atka mackerel/other species [3 4]	214	n/a
Red king crab savings subarea non-pelagic trawl gear [5]	n/a	49,250
Total trawl PSC	1,974	197,000

[1] "Other flatfish" for purposes of PSC accounting and monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[2] "Arrowtooth flounder" for purposes of PSC accounting and monitoring includes Kamchatka flounder.

[3] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[4] "Other species" for purposes of PSC accounting and monitoring includes sculpins, sharks, skates, and octopus.

[5] In October 2009 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (*see* § 679.21(e)(3)(ii)(B)(2)).

TABLE 7c—PROPOSED 2011 AND 2012 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	167	47,397	2,288,208	293,234	1,005,879
Rock sole/flathead sole/other flatfish [2]	0	0	0	0	0
Turbot/arrowtooth/sablefish [3]	0	0	0	0	0
Rockfish April 15–December 31	5	0	3,890	0	848
Pacific cod	453	6,000	97,247	50,816	42,424
Pollock/Atka mackerel/other species [4]	250	400	38,899	4,235	4,242
Total BSAI trawl limited access PSC	875	53,797	2,428,244	348,285	1,053,394

Non-trawl fisheries	Catcher processor	Catcher vessel
Pacific cod-Total	760	15
January 1–June 10	380	10
June 10–August 15	190	3
August 15–December 31	190	2
Other non-trawl-Total		58
May 1–December 31		58
Groundfish pot and jig		Exempt
Sablefish hook-and-line		Exempt
Total non-trawl PSC		833

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for purposes of PSC accounting and monitoring all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[3] "Arrowtooth flounder" for purposes of PSC accounting and monitoring includes Kamchatka flounder.
[4] "Other species" for purposes of PSC accounting and monitoring includes sculpins, sharks, skates, and octopus.

TABLE 7d—PROPOSED 2011 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Cooperatives	Prohibited species and zones[1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Amendment 80—Alaska Seafood Cooperative	1,643	63,637	2,547,203	233,442	390,500
Amendment 80—Alaska Groundfish Cooperative	732	29,804	1,398,127	98,167	175,465

[1] Refer to § 679.2 for definitions of zones.

Halibut Discard Mortality Rates (DMRs)

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch 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 approves the halibut DMRs developed and recommended by the IPHC and the Council for the 2011 and 2012 BSAI groundfish fisheries for use in monitoring the 2011 and 2012 halibut bycatch allowances (*see* Tables 7a–7c). The IPHC developed these DMRs for the 2010 to 2012 BSAI fisheries using the 10-year mean DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. The document justifying these DMRs is available in Appendix 2 in the final 2009 SAFE report dated November 2009 (*see* **ADDRESSES**). Table 8 lists the 2011 and 2012 DMRs.

TABLE 8—PROPOSED 2011 AND 2012 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot	11
	Other species	10
	Pacific cod	10
	Rockfish	9
Non-CDQ trawl	Arrowtooth flounder	76
	Atka mackerel	76
	Flathead sole	74
	Greenland turbot	67
	Non-pelagic pollock	73
	Pelagic pollock	89
	Other flatfish	72
	Other species	71
	Pacific cod	71
	Rockfish	81
	Rock sole	82
	Sablefish	75
	Yellowfin sole	81
Non-CDQ pot	Other species	8
	Pacific cod	8
CDQ trawl	Atka mackerel	85
	Flathead sole	88
	Non-pelagic pollock	84
	Pelagic pollock	85
	Rockfish	90
	Rock sole	90
	Yellowfin sole	84

TABLE 8—PROPOSED 2011 AND 2012 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI—Continued

Gear	Fishery	Halibut discard mortality rate (percent)
CDQ hook-and-line	Greenland turbot	87
	Pacific cod	85
CDQ pot	Pacific cod	4
	Sablefish	10

Central Gulf of Alaska Rockfish Pilot Program (Rockfish Program)

On June 6, 2005, the Council adopted the Rockfish Program to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). The basis for the BSAI fishing prohibitions and the catcher vessel BSAI Pacific cod sideboard limits of the Rockfish Program are discussed in detail in the final rule for Amendment 68 to the Fisheries Management Plan for Groundfish of the GOA (71 FR 67210, November 20, 2006). Pursuant to § 679.82(d)(6)(i), the catcher vessel BSAI Pacific cod sideboard limit is 0.0 mt, and in the final 2011 and 2012 harvest specifications this would effectively close directed fishing for BSAI Pacific cod in July for catcher vessels under the Rockfish Program sideboard limitations. The Rockfish Program will expire in December 2011, although the Council has proposed a new program to supersede the existing Rockfish Program by 2012. NMFS is developing a proposed rule to implement the Council's revised program and anticipates that it will be published in the **Federal Register** for public review and comment early in 2011. The revised program, if approved by the Secretary, may affect the harvest specifications for 2012.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Table 9 lists the proposed 2011 and 2012 catcher/processor sideboard limits. The basis for these proposed sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

All harvests of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 9. However, groundfish sideboard species that are delivered to listed AFA catcher/processors by catcher vessels will not be deducted from the proposed 2011 and 2012 sideboard limits for the listed AFA catcher/processors.

TABLE 9—PROPOSED 2011 AND 2012 BSAI GROUNDFISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/PS)

[Amounts are in metric tons]

Target species	Area	1995–1997			2011 and 2012 ITAC available to all trawl C/Ps [1]	2011 and 2012 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch of total catch		
Sablefish trawl	BS	8	497	0.016	1,063	17
	AI	0	145	0	434	0
Atka mackerel	Central AI					
	A season [2]	n/a	n/a	0.115	11,609	1,335
	HLA limit	n/a	n/a	n/a	6,965	801
	B season [2]	n/a	n/a	0.115	11,609	1,335
	HLA limit [3]	n/a	n/a	n/a	6,965	801
	Western AI					
	A season [2]	n/a	n/a	0.2	8,081	1,616
	HLA limit	n/a	n/a	n/a	4,849	970
	B season [2]	n/a	n/a	0.2	8,081	1,616
	HLA limit [3]	n/a	n/a	n/a	4,849	970
Yellowfin sole [4]	BSAI	100,192	435,788	0.23	190,209	43,748
Rock sole	BSAI	6,317	169,362	0.037	80,370	2,974
Greenland turbot	BS	121	17,305	0.007	3,145	22
	AI	23	4,987	0.005	1,420	7
Arrowtooth flounder [5]	BSAI	76	33,987	0.002	51,000	102
Kamchatka flounder [5]	BSAI	76	33,987	0.002	15,045	30
Flathead sole	BSAI	1,925	52,755	0.036	53,580	1,929
Alaska plaice	BSAI	14	9,438	0.001	34,000	34
Other flatfish	BSAI	3,058	52,298	0.058	14,705	853
Pacific ocean perch	BS	12	4,879	0.002	3,222	6
	Eastern AI	125	6,179	0.02	3,733	75
	Central AI	3	5,698	0.001	3,777	4
	Western AI	54	13,598	0.004	5,787	23
Northern rockfish	BSAI	91	13,040	0.007	6,197	43
Shortraker rockfish	BSAI	50	2,811	0.018	329	6

TABLE 9—PROPOSED 2011 AND 2012 BSAI GROUNDFISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/PS)—Continued

[Amounts are in metric tons]

Target species	Area	1995–1997			2011 and 2012 ITAC available to all trawl C/Ps [1]	2011 and 2012 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch of total catch		
Rougheye rockfish [6]	BS	50	2,811	0.018	416	7
	AI	50	2,811	0.018	36	1
Other rockfish	BS	18	621	0.029	412	12
	AI	22	806	0.027	472	13
Squid	BSAI	73	3,328	0.022	1,675	37
Sharks [7]	BSAI	553	68,672	0.008	382	3
Skates [7]	BSAI	553	68,672	0.008	25,500	204
Sculpins [7]	BSAI	553	68,672	0.008	25,530	204
Octopus [7]	BSAI	553	68,672	0.008	198	2

[1] Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

[3] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (*see* § 679.2). In 2010 and 2011, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts. These HLA limits are subject to change under ongoing Section 7 Consultation addressing impacts of the groundfish fisheries on endangered Steller sea lions.

[4] Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2011 and 2012 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (190,209 mt) is greater than 125,000 mt.

[5] Prior to 2011, Kamchatka flounder was managed as a component of the arrowtooth flounder complex.

[6] Prior to 2011, rougheye rockfish was managed as a single BSAI management area.

[7] Prior to 2011, sharks, skates, sculpins, and octopus were managed as the "other species" complex.

Section 679.64(a)(2) and Tables 40 and 41 to part 679 establish a formula for calculating PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 10 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the proposed 2011 and 2012 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a proposed 2011 or 2012 PSC sideboard limit listed in Table 10 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories according to regulations at § 679.21(e)(3)(iv).

TABLE 10—PROPOSED 2011 AND 2012 BSAI PROHIBITED SPECIES SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSORS

PSC species and area	Ratio of PSC to total PSC	Proposed 2011 and 2012 PSC available to trawl vessels after subtraction of PSQ [1]	Proposed 2011 and 2012 C/P sideboard limit [1]
Halibut mortality BSAI	n/a	n/a	286
Red king crab Zone 1 [2]	0.007	175,921	1,231
C. opilio (COBLZ) [2]	0.153	7,555,209	1,155,947
C. bairdi	n/a	n/a	n/a
Zone 1 [2]	0.14	875,140	122,520
Zone 2 [2]	0.05	2,652,210	132,611

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Refer to § 679.2 for definitions of areas.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 11 and 12 list the proposed 2011 and 2012 AFA catcher vessel sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the proposed 2011 and 2012 sideboard limits listed in Table 11.

TABLE 11—PROPOSED 2011 AND 2012 BSAI GROUNDFISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVS)

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2011–2012 initial TAC[1]	2011 and 2012 AFA catcher vessel sideboard limits
Pacific cod	BSAI.			
	Jig gear	0	2,413	0
	Hook-and-line CV			
	Jan 1–Jun 10	0.0006	188	0
	Jun 10–Dec 31	0.0006	181	0
	Pot gear CV			
	Jan 1–Jun 10	0.0006	7,906	5
	Sept 1–Dec 31	0.0006	7,596	5
	CV < 60 ft LOA using hook-and-line or pot gear.	0.0006	3,691	2
	Trawl gear CV			
	Jan 20–Apr 1	0.8609	30,315	26,098
	Apr 1–Jun 10	0.8609	4,506	3,879
	Jun 10–Nov 1	0.8609	6,145	5,290
Sablefish	BS trawl gear	0.0906	1,063	96
	AI trawl gear	0.0645	434	28
Atka mackerel[2]	Eastern AI/BS			
	Jan 1–Apr 15	0.0032	9,332	30
	Sept 1–Nov 1	0.0032	9,332	30
	Central AI			
	Jan–Apr 15	0.0001	11,609	1
	HLA limit	0.0001	6,965	1
	Sept 1–Nov 1	0.0001	11,609	1
	HLA limit	0.0001	6,965	1
	Western AI			
	Jan–Apr 15	0	8,081	0
	HLA limit	n/a	4,849	0
	Sept 1–Nov 1	0	8,081	0
	HLA limit	n/a	4,849	0
Yellowfin sole[3]	BSAI	0.0647	190,209	n/a
Rock sole	BSAI	0.0341	80,370	2,741
Greenland turbot	BS	0.0645	3,145	203
	AI	0.0205	1,420	29
Arrowtooth flounder[3]	BSAI	0.069	51,000	3,519
Kamchatka flounder[4]	BSAI	0.069	15,044	1,038
Flathead sole	BS trawl gear	0.0505	53,580	2,706
Alaska plaice	BSAI	0.0441	34,000	1,499
Other flatfish	BSAI	0.0441	14,705	648
Pacific ocean perch	BS	0.1	3,222	322
	Eastern AI	0.0077	3,733	29
	Central AI	0.0025	3,777	9
	Western AI	0	5,787	0
Northern rockfish	BSAI	0.0084	6,197	52
Shortraker rockfish	BSAI	0.0037	329	1
Rougheye rockfish[5]	BS	0.0037	36	0
	AI	0.0037	416	2
Other rockfish	BS	0.0048	412	2
	AI	0.0095	472	4
Squid	BSAI	0.3827	1,675	641
Sharks[6]	BSAI	0.0541	382	21
Skates[6]	BSAI	0.0541	25,500	1,380
Sculpins[6]	BSAI	0.0541	25,530	1,381
Octopus[6]	BSAI	0.0541	198	11

[1] Aleutian Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] Harvest specifications for Atka mackerel in the Aleutian Islands subarea are subject to change under ongoing Section 7 Consultation addressing impacts of the groundfish fisheries on endangered Steller sea lions.

[3] Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2011 and 2012 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

[4] Before 2011, arrowtooth flounder and Kamchatka flounder were managed as a single complex.

[5] Before 2011, rougheye rockfish was managed in a single BSAI area.

[6] Before 2011, sharks, skates, sculpins, and octopus were managed in the "other species" complex.

Halibut and crab PSC limits listed in Table 12 that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the proposed 2011 and 2012 PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and 679.21(e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a proposed 2011 and 2012 PSC sideboard limit listed in Table 12 is reached. The PSC by AFA catcher vessels while fishing for pollock in the Bering Sea subarea will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/ "other species" fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 12—PROPOSED 2011 AND 2012 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species	Target fishery category [2]	AFA catcher vessel PSC sideboard limit ratio	Proposed 2011 and 2012 PSC limit after subtraction of PSQ reserves [2]	Proposed 2011 and 2012 AFA catcher vessel PSC sideboard limit [2]
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish [3]	n/a	n/a	228
	Greenland turbot/arrowtooth/sablefish	n/a	n/a	0
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species [4]	n/a	n/a	5
Red king crab Zone 1	n/a	0.299	175,921	52,600
C. opilio COBLZ [5]	n/a	0.168	7,555,209	1,269,275
C. bairdi Zone 1 [5]	n/a	0.33	875,140	288,796
C. bairdi Zone 2 [5]	n/a	0.186	2,652,210	493,311

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] "Other flatfish" for purposes of PSC accounting and monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[4] "Other species" for purposes of PSC accounting and monitoring includes sculpins, sharks, skates, and octopus.
[5] Refer to § 679.2 for definitions of areas.

Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent 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 because it contains no implementing regulations.

NMFS prepared an EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision for the EIS. Copies of the EIS and Record of Decision for this action are available from NMFS (*see* **ADDRESSES**). The EIS analyzes the environmental consequences of the proposed groundfish harvest specifications and alternative harvest strategies on resources in the action area. The EIS found no significant negative environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA evaluates the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the exclusive economic zone off Alaska. The IRFA analyzed the methodology for establishing the relevant TACs. As set forth in the methodology, TACs are set to a level that fall within the range of ABCs recommended by the Science and Statistical Committee (SSC); the sum of the TACs must achieve optimum yield specified in the FMP. While the specific numbers that the methodology may produce vary from year to year, the methodology itself remains constant. Accordingly, NMFS is using the IRFA prepared for the EIS in association with this action. Pursuant to sections 3.2.3 and 3.2.4 of the FMP, the established methodology produces ABCs and TACs within specified ranges and the numbers in this proposed rule's preferred alternative are within those ranges. NMFS published notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 15, 2006 (71 FR 75460). A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble above. This IRFA meets the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). A copy of this analysis is available from NMFS (*see* **ADDRESSES**). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the existing harvest strategy in which TACs fall within the range of ABCs recommended by the SSC. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 204 small catcher vessels, fewer than 11 small catcher/processors, and six CDQ groups. The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State waters. These include entities operating catcher vessels and catcher/processor vessels within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher/processors were considered to be small entities if their annual gross receipts from all economic activities, including the revenue of their affiliated operations, totaled $4 million per year or less. Data from 2008 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the BSAI non-CDQ and

CDQ sectors were used as indices of the potential impacts of the alternative harvest strategies on small entities. Revenues were projected to decline from 2006 levels in 2007 and 2008 under the preferred alternative due to declines in ABCs for economically key groundfish species.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI optimum yield, in which case TACs would have been limited to the optimum yield. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rates. Alternative 4 would have set TACs equal to the lower limit of the BSAI optimum yield range. Alternative 5, the "no action" alternative, would have set TACs equal to zero.

Alternatives 3, 4, and 5 produced smaller first wholesale revenue indices for both non-CDQ and CDQ sectors than Alternative 2. Alternative 1 revenues were the same as Alternative 2 revenues in the BSAI for both sectors. Moreover, higher Alternative 1 TACs are associated with maximum permissible ABCs, which may be higher than Alternative 2 TACs, while Alternative 2 TACs are associated with the ABCs that have been recommended to the Council by the Plan Team and the SSC, and more fully consider other potential biological issues. For these reasons, Alternative 2 is the preferred alternative.

NMFS also prepared a supplemental IRFA (SIRFA) to more specifically evaluate the proposed specification of separate OFLs and TACs for sharks, octopus, skates, and sculpins in the BSAI, consistent with the previously selected harvest strategy, the Tier system in the FMP, Amendment 95 and 96 to the FMP, the Magnuson-Stevens Act, and other applicable law (*See* **ADDRESSES**). Amendment 95 and 96 to the FMP were approved by NMFS on September 22, 2010.

NMFS does not anticipate that the specification of TACs for sculpins or skates will have any additional economic impacts on small entities beyond those impacts analyzed in the existing harvest specification IRFA because the proposed OFLs and ABCs are relatively large compared to recent historical catches.

In contrast, the proposed OFLs and TACs for sharks and octopus could potentially result in some vessels choosing to shift the timing or location of their fishing activity in an effort to avoid high rates of incidental catch in an effort to avert the imposition of inseason management measures by NMFS to avoid overfishing. The impact of efforts undertaken by the fleet to avoid reaching the TAC and the potential closures that may follow are difficult to predict and would depend on the timing and location of incidental catches and the specific steps taken by the fleet to reduce the rate of incidental catch. Generally, however, the impact on these operations may be some combination of increased costs and/or decreased gross revenues as further described below.

The 2009 Economic SAFE (*see* **ADDRESSES**) identifies 215 small groundfish entities operating in the BSAI in 2008, with estimated average 2008 gross revenues from all sources of about $1.53 million. Most of these (204 of them) are catcher vessels, with estimated average gross revenues of $1.49 million. About half of the catcher-vessels (103) are trawlers, with average gross revenues of about $1.71 million, 46 are hook-and-line vessels, with average gross revenues of about $580,000, and 62 are pot vessels, with average gross revenues of about $1.70 million. The SAFE estimates that there were 11 small catcher-processors, a majority (7) of which were hook-and-line vessels, with average gross revenues of about $2.65 million. The SAFE may overstate the number of small entities, because it considers individual vessel gross revenues, but does not capture affiliations among vessels. All of these small entities would be directly regulated by the proposed action. As described below, however, certain small entities may be more likely than others to be adversely affected by the proposed action as a result of potential impacts associated with the incidental catch of sharks, octopus or skates in other target fisheries.

Sharks are incidentally caught in two fisheries primarily. Over half of the incidental catch (58 percent) occurs in the pelagic trawl fishery for pollock and another 28 percent occurs in the hook-and-line fishery for Pacific cod. Smaller amounts of sharks are taken in other trawl and non trawl gear fisheries. Any adverse impacts would be incurred by both large and small fishing entities in the BSAI. The key fleets impacted by the shark breakout are the pollock trawlers and the hook-and-line vessels fishing for Pacific cod. All of the pollock trawlers are believed to be large entities, either because the vessels themselves gross more than $4 million or because they are members of American Fisheries Act cooperatives, the affiliated members of which, when taken in aggregate, gross far in excess of the threshold. The BSAI hook-and-line vessels targeting Pacific cod are predominately large vessels. Two are believed to be small.

Most of the octopus catch (59 percent) occurs in the pot gear fishery for Pacific cod. The pot gear fishery targeting octopus, and the hook-and-line fishery for Pacific cod each took another 11 percent. Non-pelagic trawlers targeting Pacific cod took another nine percent. Most of the remainder of the catch was made by non-pelagic trawlers targeting one of several species. Although directed fishing for octopus is closed in Federal waters, directed fishing has occurred in State waters in the BSAI. Any adverse impacts would be incurred by both large and small fishing entities in the BSAI. The SAFE estimates of the numbers of small entities operating in the BSAI in 2008 were described in the section on BSAI sharks, above. Pot vessels targeting Pacific cod take a large proportion of the octopus catch. Most of the vessels in this fleet segment (which has an estimated 63 vessels) are small. Restrictions on this fleet may adversely impact 55 small vessels, with average gross revenues of about $1.78 million. The hook-and-line fishery for Pacific cod, which was discussed under sharks, takes a smaller proportion of octopus; two entities may be small. The pot fishery targeting octopus may include any of the 62 small pot vessels identified from the SAFE report. The non-pelagic trawl fishery for Pacific cod has 13 small entities with average gross revenues of about $810,000.

NMFS considered several alternatives to the proposed action of specifying separate OFLs and TACS for BSAI sculpins, sharks, octopus and skate species complexes. However, each of these alternatives has been eliminated from further consideration because it either does not accomplish the stated objectives of, or is in conflict with the requirements of, applicable statutes. Specifically, any alternative that did not create seperate OFLs and TACs for sculpins, sharks, octopus, and skates is inconsistent with the Magnuson-Stevens Act.

The proposed action is intended to fulfill the agency's mandate to establish catch limits that are based on the best available scientific information, and which will achieve optimum yield while preventing overfishing. The proposed action is the alternative that is both consistent with the agency's obligations under the Magnuson-Stevens Fishery Conservation and Management Act and the FMP and minimizes the likelihood that the specification of TACs and OFLs for the

sculpins, sharks, octopus and skate species complexes will adversely affect small entities.

NMFS considered dividing the TACs for each of the species complexes among different regulatory areas in the BSAI. Any such further division of the TACs would not change the total TACs for each species complex in the BSAI as a whole. However, the incidental catch of fishing vessels that operate within each of the regulatory areas would be counted against a reduced TAC and OFL, which would increase the likelihood that the TAC or OFL would be reached and that one or more area closures may be triggered.

NMFS considered excusing small entities from compliance with the TACs for each of the species complexes evaluated in this SIRFA. However, the Magnuson-Stevens Act requires NMFS to implement conservation and management measures that prevent overfishing. Authorizing unlimited incidental catch of these species complexes by small entities would present an unacceptable risk of overfishing, and would not be consistent with the agency's obligations under Magnuson-Stevens Act, nor with the requirements of the Council's FMP.

In order to minimize the economic impacts of the proposed action, NMFS considered allocating relatively large portions of the TACs for each of the species complexes to potentially affected small entities. However, any such allocation, which would be motivated solely by economic considerations under the RFA, would not be consistent with National Standard 5, which states that "no [conservation and management measure] shall have economic allocation as its sole purpose." 16 U.S.C. 1851(a)(5).

Finally, NMFS considered establishing a single group TAC for all four of the species complexes in the BSAI, which would substantially reduce the likelihood that incidental catch would reach or exceed the TAC or OFL and result in area closures of target fisheries. However, the establishment of a stock complex comprised of species with such disparate life histories would not be consistent with the statutory requirement to establish catch limits that prevent overfishing for stocks in the fishery, nor with the Council's intent in enacting Amendments 95 and 96.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS (*see* **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* Public Law 108–447.

Dated: December 2, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–30692 Filed 12–7–10; 8:45 am]

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Notices

Federal Register
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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

Food Safety and Inspection Service

[Docket No. FSIS–2010–0034]

Notice of Request for a New Information Collection (Public Health Information System)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection concerning its Web-based Public Health Information System.

DATES: Comments on this notice must be received on or before February 7, 2011.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705–5272.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0034. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250; (202) 720–0345.

SUPPLEMENTARY INFORMATION: *Title:* Public Health Information System (PHIS).

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C., *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled and packaged.

FSIS is developing a new Web-based system that will improve FSIS inspection operations and facilitate industry members' applications for inspection, export, and import of meat, poultry, and egg products. When the Agency implements PHIS, industry members will use current and new FSIS forms in PHIS. Industry will be able to submit some of these forms through a series of on-line screens in PHIS; other forms will be available in PHIS only as electronic forms. Paper forms will also be available to firms that do not wish to use PHIS, except for two forms, the Transfer Certificate and the Split/Consolidate Certificate. FSIS believes that these forms will be used only by large exporters who definitely will take advantage of PHIS.

To submit information through PHIS, firms' employees will need to register for a USDA eAuthentication account with Level 2 access. An eAuthentication account enables individuals within and outside of USDA to obtain user-identification accounts to access a wide range of USDA applications through the Internet. The Level 2 access will provide users the ability to conduct official electronic business transactions. To register for a Level 2 eAuthentication account, the user will need to have access to the Internet and a valid e-mail address. To learn more about eAuthentication and how to register for an account, visit the USDA Web site at *http://www.eauth.egov.usda.gov/.*

Consistent with its current procedures, when FSIS implements PHIS, FSIS will continue to collect information from firms regarding application for inspection and for the export and import of meat, poultry, and egg products. With the implementation of PHIS, firms may complete up to three new forms (on-line screen sets) in PHIS when exporting meat, poultry, and egg products (9 CFR 322.2, 381.107, and 590.200). FSIS Form 9080–4, Product List, will be used to provide details about products that each FSIS—regulated firm exports, thus enabling FSIS to verify whether that product is eligible for export to the specified country. A Transfer Certificate will be submitted by exporters to FSIS for only a few countries when product is transferred from one establishment/plant to another facility before export. A Split/Consolidated Certificate will be submitted by exporters to indicate that an export shipment approved by FSIS for export is being split and sent to two separate destinations or that two or more FSIS-approved export shipments to the same country are being combined.

FSIS Form 9080–3, Establishment Application for Export, is currently completed by exporters to specify countries where they wish to export product (9 CFR 322.2 and 381.105). FSIS uses this information to track the export of product. This form is currently approved for meat and poultry products (OMB Control Number 0583–0082). FSIS is requesting its use for egg products as well (9 CFR 590.200) and its conversion to a set of on-line screens for use in PHIS.

The Application for Export Certificate, FSIS Form 9060–6, is currently approved for the export of meat and poultry products (OMB Control Number 0583–0094). This form provides FSIS with important data necessary to facilitate the export of product (9 CFR 322.2 and 381.105). FSIS is requesting the additional use of the form for egg products and its conversion to a set of on-line screens for use in PHIS (9 CFR 590.200).

The exporter of product that is exported and then returned to this country is to complete FSIS Form 9010–1, Application for the Return of Exported Products to the United States, to arrange for the product's entry and to notify FSIS (9 CFR 327.17, 381.209, and 590.965). This form is currently approved under OMB Control Number 0853–0138. FSIS is now requesting its conversion to a series of on-line screens for inclusion in PHIS.

Importers that import meat and poultry products into the United States currently complete FSIS Form 9540–1 for re-inspection of the product by FSIS (9 CFR 327.5 and 381.198(a)). This form is currently approved for the import of meat and poultry products (OMB Control Number 0853–138). FSIS is requesting its use also for egg products (9 CFR 590.900) and its conversion to a series of on-line screens for inclusion in PHIS.

The following three forms will be available in PHIS but not as a series of on-line screens: FSIS Form 5200–2, Application for Federal Inspection; FSIS Form 5200–6, Application for Approval of Voluntary Inspection; and FSIS Form 5200–15, Hours of Operation.

All official establishments currently complete and submit FSIS Form 5200–2, Application for Federal Inspection, to receive a grant of inspection (9 CFR 304.1 and 381.17) (OMB Control Number 0583–0082). FSIS is requesting that the form be changed to include egg products (590.140 and 590.146).

Establishments that want voluntary inspection currently complete and submit FSIS Form 5200–6, Application for Approval of Voluntary Inspection (9 CFR 350.5, 351.4, 352.3, and 362.3) (OMB Control Number 0583–0082). FSIS is now requesting that the form be changed to include egg products (592.130 and 592.140).

FSIS is requesting use of the new FSIS Form 5200–15, Hours of Operation, as the means by which an establishment or plant will notify the Agency of a change in its hours of operation (9 CFR 307.4, 381.37, 590.124, and 592.96).

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 79.6 hours per year.

Respondents: Official establishments, official plants, importers, and exporters.

Estimated No. of Respondents: 770.

Estimated No. of Annual Responses per Respondent: 465.5.

Estimated Total Annual Burden on Respondents: 61,329 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence, SW., Room 6065, South Building, Washington, DC 20250; (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2010_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on December 2, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–30875 Filed 12–7–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Central Electric Power Cooperative, Inc.: Notice of Intent To Prepare an Environmental Impact Statement and Extend Scoping Comment Period

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and Extend Scoping Comment Period.

SUMMARY: The Rural Utilities Service (RUS) intends to prepare an Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), RUS's Environmental and Policies and Procedures (7 CFR part 1794), and the U.S. Forest Service's (USFS) National Environmental Policy Act Procedures (36 CFR part 220) in connection with

potential impacts related to a proposal by Central Electric Power Cooperative, Inc., (Central Electric) of Columbia, South Carolina. The proposal consists of constructing a 115 kilovolt (kV) transmission line through portions of Berkeley, Charleston, and/or Georgetown Counties, South Carolina, to the proposed McClellanville substation. Central Electric is requesting that RUS provide financial assistance for the proposal and may request that the USFS issue a special use permit for the proposal.

DATES: RUS has extended the public comment period to January 14, 2011. RUS will accept verbal and written comments regarding the proposal. Contact information for submitting comments is provided in the **ADDRESSES** section of this notice.

ADDRESSES: Send all written comments to the attention of Ms. Lauren McGee, Environmental Scientist, USDA Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Room 2244–S, Washington, DC 20250–1571. Comments may also be sent via fax: (202) 690–0649, or by e-mail: *lauren.mcgee@wdc.usda.gov.* RUS will also accept verbal comments at the following telephone number: (855) 806–8863.

SUPPLEMENTARY INFORMATION: Central Electric proposes to construct a 115-kV transmission line to Berkeley Electric Cooperative's proposed McClellanville substation. The proposal would provide long-term, reliable electric service to the McClellanville community and surrounding areas. The transmission line may originate from one of the following points: Belle Isle (Georgetown County), Britton Neck (Georgetown County), Jamestown (Berkeley County), Honey Hill (Berkeley County), Charity (Charleston County), or Commonwealth (Charleston County). This notice invites government agencies, organizations, and the public to provide input in the development of the EIS for the proposal.

An updated Alternatives Evaluation Study (AES) and Macro-Corridor Study (MCS) were prepared for the proposal. The AES and MCS discuss the purpose and need for the proposal as well as the alternatives considered in the proposal's development. A public scoping meeting was held on September 29, 2010, 5 p.m. to 9 p.m. at St. James-Santee Elementary School, 8900 Highway 17 North, McClellanville, SC 29458. RUS, Central Electric, and Mangi Environmental Group gave a presentation at 6 p.m. and 8 p.m., which provided an overview of: (1) The Federal action being considered by RUS; (2) an overview of NEPA and the EIS process; and, (3) the purpose, need and alternatives considered in the development of the proposal. The AES and MCS (both dated September 2010), in addition to materials from the public meeting, are available for public review at the following RUS Web site: *http://www.usda.gov/rus/water/ees/eis.htm.* Due to an error in the mailing list for this proposal, RUS has extended the comment period to January 14, 2011.

Among the alternatives that RUS will address in the EIS is the "No Action" alternative, under which the proposal would not be undertaken. In the EIS, the effects of the proposal will be compared to the existing conditions in the proposal area. Alternative transmission line corridors will be refined as part of the EIS scoping process and will be addressed in the EIS. Public health and safety, environmental impacts, and engineering aspects of the proposal will be considered in the EIS.

RUS is the lead Federal agency, as defined at 40 CFR 1501.5, for preparation of the EIS. The USFS is a cooperating agency. With this notice, Federally recognized Native American Tribes and Federal agencies with jurisdiction or special expertise are invited to be cooperating agencies. Tribes or agencies may request to be a cooperating agency by contacting the RUS contact provided in this notice.

RUS will use input provided during scoping in the preparation of the Draft EIS. The Draft EIS will be available for review and comment for 45 days. A Final EIS that considers all comments received will subsequently be prepared. The Final EIS will be available for review for 30 days. Following the 30-day review period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft EIS, the Final EIS, and the ROD will be published in the **Federal Register** and in local newspapers. The USFS may issue a separate ROD for the proposal, which may be subject to an appeals period as prescribed in USFS departmental regulations.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and Federal, State, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Dated: December 2, 2010.

Richard Fristik,

Acting Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2010–30898 Filed 12–7–10; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, February 11, 2011; 9:30 a.m. EST.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Briefing Agenda

This briefing is open to the public.

Topic: Disparate Impact in School Discipline Policies.

I. Introductory Remarks by Chairman.

II. Speakers' Presentations.

III. Questions by Commissioners and Staff Director.

IV. Adjourn Briefing.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: December 3, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–30932 Filed 12–6–10; 11:15 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, January 14, 2011; 9:30 a.m. EST.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Briefing Agenda

This briefing is open to the public.

Topic: Gender and the Wage Gap.

I. Introductory Remarks by Chairman.

II. Speakers' Presentations.

III. Questions by Commissioners and Staff Director.

IV. Adjourn Briefing.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: December 3, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–30933 Filed 12–6–10; 11:15 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, March 11, 2011; 9:30 a.m. EST.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Briefing Agenda

This briefing is open to the public.

Topic: The Civil Rights Implications of Eminent Domain Abuse.

I. Introductory Remarks by Chairman.

II. Speakers' Presentations.

III. Questions by Commissioners and Staff Director.

IV. Adjourn Briefing.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: December 3, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–30935 Filed 12–6–10; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029, (202) 482–7924, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2010, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico for the period July 1, 2008, through June 30, 2009. *See Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 47780 (August 9, 2010) (*Preliminary Results*). In the *Preliminary Results,* we invited parties to comment. In response to the Department's invitation to comment on the preliminary results of this review, respondent, ThyssenKrupp Mexinox S.A. (Mexinox) submitted (1) a request for a public hearing and (2) a case brief on September 8, 2010. *See* Letter from Mexinox, titled "Stainless Steel Sheet and Strip in Coils from Mexico—Case Brief," dated September 8, 2010 (Mexinox's Case Brief). Also on September 8, 2010, Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless (collectively, petitioners), submitted a case brief. *See* Letter from Petitioners, titled "Stainless Steel Sheet and Strip in Coils from Mexico—Petitioner's Case Brief," dated September 8, 2010 (Petitioners' Case Brief).

On September 9, 2010, the Department received a request from petitioners to extend the deadline to submit rebuttal briefs and on September 13, 2010, the Department granted this request. Petitioners timely submitted their rebuttal brief on September 15, 2010. *See* Letter from Petitioners, titled "Stainless Steel Sheet and Strip in Coils from Mexico—Petitioners' Rebuttal Brief," dated September 15, 2010 (Petitioners' Rebuttal Brief). Also on September 15, 2010, Mexinox submitted its rebuttal brief. *See* Letter from Mexinox, titled "Stainless Steel Sheet and Strip in Coils from Mexico—Rebuttal Brief," dated September 15, 2010 (Mexinox's Rebuttal Brief). On September 17, 2010, Mexinox withdrew its request for a hearing. *See* Letter from Mexinox, titled "Stainless Steel Sheet and Strip in Coils from Mexico—Withdrawal of Hearing Request," dated September 17, 2010.

On November 17, 2010, we issued a letter to petitioners notifying them that we were rejecting their Case Brief because it contained new information regarding the U.S. entities that petitioners believe are purchasers of certain merchandise. Also on November 17, 2010, we issued a letter to Mexinox stating that we were rejecting its Rebuttal Brief because it also contained new information regarding the U.S. entities that petitioners believe are purchasers of certain merchandise. On November 22, 2010, Mexinox submitted its revised Rebuttal Brief, and on November 23, 2010, petitioners submitted its revised Case Brief. The current deadline for the final results of this review is December 7, 2010.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120 day time period for the final results up to 180 days.

The Department finds that it is not practicable to complete this review within the original time frame because additional analysis must be performed with respect to several complex issues raised by the parties, such as Mexinox's cost of production, contemporaneous matching, etc. Accordingly, the Department is extending the time limit for completion of the final results of this administrative review until no later than January 6, 2011, which is 150 days after the date on which the preliminary results of review were published.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 2, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–30859 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 0909100442–0563–02]

Effectiveness of Federal Agency Participation in Standardization in Select Technology Sectors for National Science and Technology Council's Sub-Committee on Standardization

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for Information.

SUMMARY: The National Institute of Standards and Technology, on behalf of the National Science and Technology Council's Sub-Committee on Standards, invites interested parties to provide their perspectives on the effectiveness of Federal agencies' participation in the development and implementation of standards and conformity assessment activities and programs. This information will help the Sub-Committee on Standards develop case studies that Federal agencies can consider in their future engagement in standards development and conformity assessment, particularly for multi-disciplinary technologies, or for technologies involving engagement from multiple Federal agencies.

DATES: Comments are due on or before 11:59 p.m. on February 7, 2011.

ADDRESSES: Comments will be accepted by e-mail only. Comments should be sent to *SOS_RFI@nist.gov* with the subject line "Standardization feedback for Sub-Committee on Standards."

FOR FURTHER INFORMATION CONTACT: Ajit Jillavenkatesa, 100 Bureau Drive, Stop 1060, Gaithersburg, MD 20899–1060, 301–975–8519, *ajit.jilla@nist.gov.*

SUPPLEMENTARY INFORMATION: On March 24, 2010, the U.S. Chief Technology Officer and Associate Director for Technology in the White House Office of Science and Technology Policy, Aneesh Chopra, announced the establishment of a Sub-Committee on Standards under the National Science and Technology Council's Committee of Technology. (*http://www.whitehouse.gov/blog/2010/03/24/providing-leadership-standards-address-national-challenges*). The Sub-Committee includes leaders of executive branch agencies and commissions that have an interest in, or are involved with, technical standards. It is co-chaired by Patrick Gallagher (Director, National Institute of Standards and Technology, U.S. Department of Commerce). Information about agencies participating in this Sub-Committee, and its charter is available at: *http://www.standards.gov/standards_gov/nstcsubcommitteeonstandards.cfm.* By examining the various methods that Federal agencies use to engage in standards-development activities in partnership with the private sector, the Sub-Committee on Standards intends to develop information on how Federal agencies may engage more effectively in the standardization system in a manner that is consistent with the National Technology Transfer and Advancement Act of 1995 [1] and the Office of Management and Budget Circular A–119.[2] In support of this objective, the Sub-Committee is interested in perspectives on (1) the effectiveness of the methods Federal agencies have used to engage in standards-setting activities by identifying which methods have enhanced or limited the public-private standards-setting processes; (2) the effectiveness of Federal agencies coordination with the private sector; and (3) the adequacy and availability of Federal resources; and (4) other issues that arise and are considered during the standards setting process which impact the process, and the timeliness, adoption and use of the resulting standards.

Request for Information

The objective of this request is to inform the development of case studies that will examine the effectiveness of Federal agencies' participation in standards-setting efforts led by the private sector. The case studies would provide agencies information on lessons learned from Federal agency engagement in standards development for technologies that are complex, multi-disciplinary, exhibit system-type characteristics, and involve multiple government agencies, and addressed specific national priorities. Issues impacting U.S. competitiveness such as the interplay of standards with intellectual property, competition, and innovation are also significant considerations in these technology areas. These case studies may inform decisions about Federal agencies' engagement in standardization for technologies with similar characteristics. The questions below are intended to help frame the issues and should not be construed as a limitation on comments that parties may submit. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All comments will be made publicly available.

The Sub-Committee on Standards is specifically interested in comments that address the questions below as they relate to the following technologies:

1. Smart Grid.
2. Health Information Technology.
3. Cyber Security.
4. Emergency Communications Interoperability.
5. Radioactivity Detectors and Radiation Monitors (ANSI N42.3x and N42.4x).
6. Other technologies involving significant Federal agency participation in standards setting.

For the purposes of this notice, the term "standards" and the phrase "standards setting" is used in a generic manner to cover both standards and conformity assessment development. State and local governments, standards-setting organizations, industry, consumers, manufacturers, solution providers, and other stakeholders are invited to respond. Responses should identify the technologies involved as appropriate.

Standards-Setting Processes, Reasons for Participation and the Benefits of Standardization

Emerging technologies offer great potential for delivering new and improved products and services in the global economy. Standards can enable further innovation and enhance the value of these new technologies. Federal law and associated policy guidance has expressed a general preference for Federal agencies to rely on voluntary consensus standards, in lieu of government unique standards, through the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget Circular A–119, which encourage agency staff to participate in standards-development activities led by the private sector, as appropriate.

Recognizing that stakeholders participate in standards-setting activities for varying reasons, and in

[1] National Technology Transfer and Advancement Act of 1995, Public Law 104–113, 110 Stat. 775—784 (1996).

[2] OMB Circular A–119 Revised, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (rev. Feb. 10, 1998) ¶ 3, *available at http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html.*

order to evaluate the effectiveness of Federal agencies' participation in standards-setting efforts led by the private sector, the Sub-Committee invites organizations to provide information on their participation, and their perceptions of Federal participation in standards-setting activities related to the case-study technologies listed above, as well as the current status of the standardization process for these technologies. The Sub-Committee is interested in better understanding: Who participates in standards-setting activities? What are the most important reasons for participation? What are the benefits of developing standards for this sector? How do the standards impact organizations and their competitiveness? How has standardization spurred innovation in the technology sector(s) that is the subject of your comment? What is the current phase of the standards development process for this technology? How has the process worked so far? When developing standards, how are the standards-setting processes managed and coordinated? Is there a strategic plan that identifies the standards needs and defines the standards development life cycle? Are there barriers to developing high level strategies for standard-setting activities?

Perspectives on Government's Approach to Standards Activities

The Sub-Committee would like to identify and assess the methods by which Federal agencies work with standards-setting organizations, industry, State and local governments, and consumers to develop standards. The Federal Government approaches standard setting in various ways. Sometimes staff members from Federal agencies participate directly as subject matter experts in standards-setting activities that are led by the private sector. At other times, agencies identify their standards needs and requirements, and then reach out to the private sector to develop the standards. Sometimes, agencies fund private standards-setting activities to develop standards needed by that agency. At other times, agencies take an active role in both identifying standards needs and leading the standards development process in collaboration with the private sector. In many technology sectors, multiple Federal agencies with differing roles and mandates participate in standards-development activities.

Responses to the following questions will help the Sub-Committee to better understand which methods of engagement by Federal agencies are most effective and why. What methods of engagement are used by Federal agencies to participate in private sector-led standards development? How transparent is each method? How effective is each method? How could the methods be improved? What other methods should the Federal agencies explore? What impact have Federal agencies had on standards activities? How well do Federal agencies coordinate their roles in standards activities in the sector of interest? When Federal agencies have been involved in standards setting efforts in a technology sector, how has the progress of standards setting efforts in this technology sector changed after Federal agencies became involved? Are Federal agencies generally receptive to input from other participants in standards-setting activities? Does receptiveness tend to depend on whether the Federal agency is a regulator or a customer? In those sectors where Federal agencies plays a significant role in standards activities, how valuable and timely is the work product associated with this effort?

Issues Considered During the Standards Setting Process

Various factors (*e.g.,* technology, competition, innovation, intellectual property rights, foreign regulations, *etc.*) arise and are considered and addressed during standards development. These aspects play a role in the adoption and use of the standard. The Sub-Committee is interested in understanding the types of issues that have been considered, and how these have been addressed/are being addressed. Has Federal agency participation in standards-setting impacted the consideration and resolution of these issues, and the standards setting processes?

With respect to foreign regulations, the Subcommittee is interested in understanding how foreign technical regulations are considered and addressed during standards setting or conformity assessment activities. Are efforts made to determine whether there is potential for overlap or duplication with existing international standards? How are other appropriate international standards that may be of interest identified? Are efforts made to identify existing or planned regional or national standards that may be considered for use as the basis for foreign technical regulations, rather than the international standard being considered by the committee?

With respect to intellectual property, the Sub-Committee would like to understand the approaches you have experienced or found most appropriate for handling patents and/or other types of intellectual property rights that are necessary to implement a standard. How does the need for access to intellectual property rights by Federal agencies factor into the use or development of standards? To what extent, if any, has the development, adoption or use of a standard, by Federal agencies in this technology sector been affected by holders of intellectual property? How have such circumstances been addressed? Are there particular obstacles that either prevent intellectual property owners from obtaining reasonable returns or cause intellectual property owners to make IP available on terms resulting in unreasonable returns when their IP is included in the standard? What strategies have been effective in mitigating risks, if any, associated with hold-up or buyers' cartels?

Adequacy of Resources

The availability and commitment of financial resources, personnel, and industry expertise may impact the success of standards development. In some instances, changing priorities or changes in an organization's budget may impact the resources an agency commits to an ongoing project. The Sub-Committee would like to better understand the resources that both private sector organizations and Federal agencies commit to standards-setting activities, constraints on those resources, and how the level of resources affects the success of the effort. What resources are needed to successfully complete the efforts? Taking into account budget constraints and competing initiatives, have Federal agencies committed adequate resources? What resource constraints impact the successful completion of the standards efforts?

Process Review and Improvement Metrics

The success and limitations of standards-setting activities and the associated outcomes may be studied, understood and implemented for continuous process improvement. Such improvements can help ensure that Federal agencies participation in standards activities is cost-effective and will lead to optimal results. Responses to the questions that follow will help the Sub-Committee better understand what methods have facilitated or hindered Federal agencies participation in standardization, recognizing that some standards-setting activities in the case-study technologies may be not yet be completed. What lessons about standards development in complex

technologies have been learned so far? How have these lessons learned been implemented? Have there been any impediments to implementing these lessons? How has this information been documented or disseminated, and implemented? What kinds of performance metrics are appropriate to measure the effectiveness of the standards-setting process? If any such performance metrics have been used, what are the results?

Dated: December 2, 2010.

Patrick Gallagher,

Director, National Institute of Standards and Technology, Co-Chair, National Science and Technology Council's Sub-Committee on Technology.

[FR Doc. 2010–30864 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[File No. 781–1824]

RIN 0648–XZ66

Marine Mammals

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; receipt of application for permit amendment; extension of public comment period.

SUMMARY: On November 9, 2010, NMFS published a Notice of Receipt that the Northwest Fisheries Science Center (NWFSC, Dr. M. Bradley Hanson, Principal Investigator), 2725 Montlake Blvd. East, Seattle, Washington 98112–2097, had applied for an amendment to Scientific Research Permit No. 781–1824–01. Public comments were due by December 09, 2010. NMFS has extended the comment period to allow additional time for submission of public comments on this action.

DATES: The public comment period for this action has been extended for 14 days. Written comments must be received or postmarked by December 23, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 781–1824 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 781–1824 in the subject line of the email comment.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Laura Morse, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 9, 2010 (75 FR 68757), notice of receipt of an application to amend Permit No. 781–1824 was published specifying the date on which comments were due as December 09, 2010. This notice only extends the comment period. The revised comment deadline is specified in the **DATES** section of this notice. Please refer to the November 9, 2010 notice for a summary of the application.

Dated: December 3, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–30909 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[File No. 13602]

RIN 0648–XK54

Marine Mammals

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

ACTION: Notice; requested changes to application for permit amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has requested a change to the application for an amendment to Scientific Research Permit No. 13602.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 7, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 13602 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 13602 was requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

On May 20, 2010 (75 FR 28236), notice was published that an amendment to Permit No. 13602, issued on September 4, 2009 (74 FR 46569), had been requested by the permit holder to include physiological research on up to 18 captive Hawaiian monk seals (*Monachus schauinslandi*) in facilities in the United States, and opportunistic energetic assessments on stranded ESA-

listed marine mammals in rehabilitation in California, using methods currently approved in Permit No. 13602. The applicant is requesting permission to hold up to three Hawaiian monk seals at Long Marine Laboratory at any given time, an increase of one animal from that described in the amendment application. The amendment is requested for the duration of the permit.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 1, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–30873 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA071

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Applications for two new scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received two scientific research permit application requests relating to salmonids listed under the Endangered Species Act (ESA). The proposed research is intended to increase knowledge of the species and to help guide management and conservation efforts.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific standard time on January 7, 2011.

ADDRESSES: Written comments on these applications should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578–3435 or by e-mail to *FRNpermits.SR@noaa.gov.* The applications and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 575–6097 or fax (707) 578–3435.

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn, Santa Rosa, CA (ph.: 707–575–6097, e-mail: *Jeffrey.Jahn@noaa.gov*). Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to Federally threatened California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*), endangered Central California Coast (CCC) Coho salmon (*O. kisutch*), and threatened CCC steelhead (*O. mykiss*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (*see* **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 14513

Dr. Stephanie Carlson, University of California at Berkeley, is requesting a 5-year permit to take adult and juvenile CC Chinook salmon, CCC coho salmon, and CCC steelhead associated with four research projects in two watersheds in central California. In the four studies described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities. However, a low number of moribund CCC steelhead may be collected for analysis as part of Project 3, in Pescadero Lagoon.

Project 1 is a study on the summer ecology of juvenile salmonids in streams of the Lagunitas Creek (Marin County) and Pescadero Creek (San Mateo County) watersheds. The study will examine the variation in growth and survival of juvenile CCC coho salmon and CCC steelhead rearing in streams that experience elevated water temperatures and low stream flow volumes in summer. Annually, Dr. Carlson proposes to capture (backpack electrofisher, seine, dip-net), handle (identify, measure and weigh), mark (fin-clips, passive integrated transponder (PIT) tag), sample (scale collection), and release fish. Movements of PIT-tagged fish will be monitored throughout the summer using hand held and stationary PIT-tag readers. In September and October, the study areas will be re-sampled using the same methods as described above. Fish will be scanned for PIT-tags and those recaptured will be re-weighed and measured to determine growth rates. Throughout winter, fish will be monitored for their movements using hand held and stationary PIT-tag readers. Data gathered from this study will provide information on fish growth and survival rates and how these relate to abiotic and biotic variables within the watersheds.

Project 2 is a biotelemetry study of smolt migrations in the Lagunitas Creek and Pescadero Creek watersheds. In the Lagunitas Creek watershed, smolts will be captured in down migrant traps operated by the National Park Service (Permit 1046) and the Marin Municipal Water District (Permit 1047). In the Pescadero Creek Watershed, Dr. Carlson proposes to capture (fyke net, seine) CCC coho salmon and CCC steelhead smolts. In both study areas, Dr. Carlson proposes to anesthetize a subset of captured fish and implant acoustic tags in order to determine salmonid residence time and movements throughout the two estuary environments. Strategically placed acoustic receivers will track the movements of the tagged salmonids in each system. Data collected from tagged fish in these systems will be used to determine differences in survival between permanently-open versus seasonally-closed estuaries and the significance of estuary rearing on the timing of ocean entry.

Project 3 is a study on the ecology of juvenile salmonids in Tomales Bay, and Pescadero Lagoon and their overall dependence on estuarine resources based on an analysis of diet and fish growth. In the two estuaries, Dr. Carlson proposes to capture (hook-and-line, seine), handle (identify, measure, weigh), sample (fin-clip, scale collection, gastric lavage), and release smolts. In Pescadero Lagoon, a subset of fish will be implanted with PIT tags. Adults that are captured will be handled (identified, measured), sampled (scale

collection) and released. The data gathered from this project, in addition to Project 2, will provide information on the ecology of juvenile salmonids in estuarine environments, their feeding habits, and how they differ between systems with permanently-open (Tomales Bay) versus seasonally-closed (Pescadero Creek lagoon) estuaries/lagoons.

Project 4 examines smolt production in the Lagunitas Creek watershed by analyzing collected otoliths to determine where smolts that survived to breed as adults reared as juveniles. The otoliths will be obtained from carcasses encountered during annual spawner surveys conducted by the National Park Service and Marin Municipal Water District. Dr. Carlson proposes to conduct additional surveys in order to augment the otolith collection. The results of this project could provide important information on the habitat attributes associated with high productivity areas and could help identify areas of poor productivity that might be candidate sites for habitat restoration.

Permit 15548

Thomas R. Payne and Associates is seeking a ten-year permit to take listed adult and juvenile CCC steelhead while collecting biological data. The purpose of the research is to monitor the distribution, relative abundance and diversity, the condition and general health of fish populations and to describe the existing habitat conditions of Suisun Creek, Green Valley Creek, and Ledgewood Creek in Solano County and Napa County, California. The research would benefit CCC steelhead by producing data to support development of the Solano Habitat Conservation Plan under development as a requirement of a March 1999 biological opinion for the Solano Project Water Service Contract Renewal issued by the U.S. Fish and Wildlife Service. Monitoring activities will take place between July and October at multiple sites in the three creeks using a backpack electrofisher to stun and net fish. Captured fish will be anesthetized prior to handling and then identified, counted, measured, weighed, and released. The researchers do not intend to kill any captured fish but a small number may die as an unintended result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: December 2, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–30908 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0071]

Pilot Program for Extended Time Period To Reply to a Notice To File Missing Parts of Nonprovisional Application

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) previously published a notice requesting comments on a proposed change to missing parts practice in nonprovisional applications. The USPTO has considered the comments and is implementing a pilot program (Extended Missing Parts Pilot Program) in which an applicant can request a twelve-month time period to pay certain fees and to reply to a Notice to File Missing Parts of Nonprovisional Application. Under the Extended Missing Parts Pilot Program, applicant must file a nonprovisional application within twelve months of the filing date of a provisional application and directly claim the benefit of the provisional application, as well as submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application. In addition, applicant must not file a nonpublication request. Applicant will be given a twelve-month period to decide whether the nonprovisional application should be completed by paying the search fee, the examination fee, any excess claim fees, and the surcharge ($130.00 for non-small entity or $65.00 for small entity) for the late submission of the search fee and examination fee within that twelve-month period. The nonprovisional application will be published under the existing eighteen-month publication provisions. Therefore, applicant should also submit the basic filing fee, an executed oath or declaration, and application papers that are in condition for publication, on filing of the application with the request to participate in the pilot. If the basic filing fee, an executed oath declaration, and/or application papers that are in condition for publication are not submitted with the application and the request to participate in the pilot, applicant will need to submit these items within a two-month (extendable) time period. In view of the comments, the USPTO is cautiously moving forward by implementing the proposed procedure as a pilot program. Specifically, the pilot program will require applicant to submit a certification and request to participate in the pilot program, rather than automatically applying the procedure to all applicants. The USPTO is providing a certification and request form that includes educational information regarding domestic benefit claims, foreign filings, patent term adjustment (PTA) effects, the need for a complete disclosure of the invention, potential increase in fees, and the benefits of submitting a complete set of claims. In addition, the USPTO is implementing a number of educational initiatives to assist independent inventors and other applicants. The Extended Missing Parts Pilot Program will benefit applicants by permitting additional time to determine if patent protection should be sought—at a relatively low cost—and by permitting applicants to focus efforts on commercialization during this period. The Extended Missing Parts Pilot Program will benefit the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which applicants later decide not to pursue examination. Applicants are advised that the extended missing parts period does not affect the twelve-month priority period provided by the Paris Convention for the Protection of Industrial Property. Thus, any foreign filings must still be made within twelve months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within twelve months of the earliest application for which rights are left outstanding in order to be entitled to priority.

DATES: *Effective Date:* December 8, 2010.

Duration: The Extended Missing Parts Pilot Program will run for twelve months from its effective date. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed before December 8, 2011. The USPTO may extend the pilot program (with or

without modifications) depending on the feedback received and the effectiveness of the pilot program.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272–7701, or by electronic mail at *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: The USPTO published a notice requesting comments on a proposed change to missing parts practice in nonprovisional applications. *See Request for Comments on Proposed Change to Missing Parts Practice,* 75 FR 16750 (April 2, 2010), 1353 *Off. Gaz. Pat. Office* 223 (April 27, 2010). Specifically, the USPTO requested comments on whether the missing parts practice should be changed to provide applicants with an extended time period to reply to a Notice to File Missing Parts requiring fees in a nonprovisional application filed under 35 U.S.C. 111(a) that claims the benefit of a provisional application and meets certain conditions. The request for comments identified a number of potential benefits of such an extended time period to reply to a missing parts notice, including increased use of the eighteen-month publication system, more time for applicants to ascertain the value of their inventions and focus on commercialization efforts, and removal of applications from the USPTO's workload.

The USPTO received over forty comments from intellectual property organizations, universities, industry, a law firm, individual patent practitioners, and the general public. The USPTO acknowledges and appreciates the many comments that were submitted from the intellectual property community. The comments from those who will benefit from the extended time period were generally positive. Many comments expressed concerns over the potential for a loss of rights by some applicants, such as independent inventors. The USPTO has considered the written comments including those that raised concerns or provided suggestions. The USPTO is implementing a change to missing parts practice in nonprovisional applications as a pilot program (*i.e.,* Extended Missing Parts Pilot Program). The pilot program will allow the USPTO to proceed with caution, while placing emphasis on awareness and education of the public regarding the program. The USPTO will also be better able to evaluate the effectiveness of the program and make modifications or eliminate the program as deemed appropriate. Furthermore, those applicants who do not wish to participate in the pilot program should not be affected by the pilot program and do not need to change their practices. The pilot program will require applicant to submit a certification and request to participate in the pilot program, rather than automatically applying the procedure to all applicants. The USPTO is providing a certification and request form that includes educational information regarding domestic benefit claims, foreign filings, patent term adjustment (PTA) effects, the need for a complete disclosure of the invention, potential increase in fees, and the benefits of submitting a complete set of claims. In addition, the USPTO is implementing a number of educational initiatives to assist independent inventors and other applicants. Applicants who do not submit a request to participate in the pilot program will continue to receive a Notice to File Missing Parts of Nonprovisional Application that sets a two-month (extendable) time period to reply to the notice in an application that has been accorded a filing date but has items that are missing.

The USPTO cautions all applicants that, in order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within twelve months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement.

It is noted that this notice merely describes agency policy and procedures, and does not involve substantive rule making. While the missing parts practice in nonprovisional applications is set forth to some extent in 37 CFR 1.53(f), the rule does not set forth the specific time period that must be given in the notice to applicant that certain fees or an oath or declaration are required.

I. *Requirements:* In order for an applicant to be provided a twelve-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) Applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/SB/421 entitled "Certification and Request for Extended Missing Parts Pilot Program"; (2) the application must be an original nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous twelve months; the specific reference to the provisional application must be in the first sentence(s) of the specification following the title or in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(5)); and (4) applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, applicant will need to satisfy filing date requirements and publication requirements. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of eighteen months from the earliest filing date to which benefit is sought. Therefore, the nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) an executed oath or declaration in compliance with 37 CFR 1.63; (3) a specification in compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821–1.825 (if applicable). The USPTO also requires any petition under 37 CFR 1.47 to be granted, any compact disc requirements to be satisfied, and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, applicant will need to satisfy the publication requirements within a two-month extendable time period as discussed in section II of this notice.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/SB/421. For utility patent applications, applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of "Certification and Request for Missing Parts Pilot" for the certification and request on the EFS-Web screen. Form PTO/SB/421 will be available on the USPTO Web site at *http://www.uspto.gov/forms/index.jsp.* Information regarding EFS-Web is available on the USPTO Web site at *http://www.uspto.gov/ebc/index.jsp.* The utility application including the certification and request to participate in the pilot program may also be filed by mail or hand-carried to the USPTO. For plant patent applications, applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS-Web. *See Legal Framework for Electronic Filing System Web (EFS-Web),* 74 FR 55200 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 394 (Nov. 24, 2009).

It is strongly recommended that any new applications submitted by mail be filed using the "Express Mail Post Office to Addressee service" of the United States Postal Service (USPS) in accordance with 37 CFR 1.10 in order for the application to be considered filed with the USPTO on the date of deposit with the USPS. If the "Express Mail" service of the USPS (in accordance with 37 CFR 1.10) is not utilized, then the new application can only be accorded the date of actual receipt in the USPTO (and there is no remedy for an application that is lost in the mail). New applications cannot be submitted by facsimile transmission and, if submitted by facsimile transmission, are not accorded a filing or receipt date and may be returned to applicant. *See* 37 CFR 1.6(d) and 1.8(a)(2)(i)(A).

II. *Processing of Requests:* If applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send applicant a Notice to File Missing Parts of Nonprovisional Application that sets a twelve-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)–(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The twelve-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, *see Electronic Office Action,* 1343 *Off. Gaz. Pat. Office* 45 (June 2, 2009), and *http://www.uspto.gov/patents/process/status/e-Office_Action.jsp.* After an applicant files a timely reply to the Notice to File Missing Parts within the twelve-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

A. *Application Not in Condition for Publication:* If the application papers need to be corrected in order for the application to be in condition for publication (such as the specification pages contain improper margins or line spacing, or the drawings are not acceptable because they are not electronically reproducible), or if the basic filing fee or an executed oath or declaration is not submitted on filing, and applicant has submitted a certification and request to participate in the pilot program, the USPTO will accept the certification and request but send a Notice to File Missing Parts of Nonprovisional Application that: (1) Sets a two-month (extendable) time period for applicant to correct the application papers and/or submit the basic filing fee or executed oath or declaration and surcharge (if appropriate), and (2) sets a twelve-month (non-extendable) time period for applicant to submit the search fee, the examination fee, any excess claims fees, and the surcharge for the late filing of the search fee and examination fee (if appropriate). If the basic filing fee and/or an executed oath or declaration is not submitted on filing, applicant will be required to pay the surcharge under 37 CFR 1.16(f) for the late filing of the basic filing fee and/or executed oath or declaration within the two-month (extendable) time period. Applicants are advised that only a single surcharge under 37 CFR 1.16(f) is required in a nonprovisional application for filing any of the basic filing fee, the executed oath or declaration, the search fee, or the examination fee after the filing date of the application.

Example: On December 15, 2010, applicant files a nonprovisional utility application under 35 U.S.C. 111(a) that claims the benefit of a prior-filed provisional application filed December 20, 2009. The benefit claim to the provisional application is included in the first sentence of the specification of the nonprovisional application. The nonprovisional application is filed with a "Certification and Request for Extended Missing Parts Pilot Program" (Form PTO/SB/421). The nonprovisional application includes a specification in compliance with 37 CFR 1.52, drawings in compliance with 37 CFR 1.84, an abstract in compliance with 37 CFR 1.72(b), and an executed declaration in compliance with 37 CFR 1.63. No fees are submitted with the nonprovisional application. Thereafter, on January 3, 2011, the USPTO mails a Notice to File Missing Parts of Nonprovisional Application that sets: (1) A two-month (extendable) time period for applicant to submit the basic filing fee and the surcharge under 37 CFR 1.16(f), and (2) sets a twelve-month (non-extendable) time period for applicant to submit the search fee and the examination fee. In order to avoid abandonment of the application, applicant would need to either: (1) Pay the basic filing fee and the surcharge under 37 CFR 1.16(f) by March 3, 2011, if payment of the basic filing fee and the surcharge is being submitted without a petition for extension of time under 37 CFR 1.136(a) and extension fee; or (2) pay the basic filing fee and the surcharge by no later than August 3, 2011, if submitted with an appropriate petition for extension of time under 37 CFR 1.136(a) and extension fee. In addition, applicant would need to pay the search fee and the examination fee by January 3, 2012, to avoid abandonment of the application. Applicant would not need to pay another surcharge with the search and examination fees since the surcharge was paid with the basic filing fee.

B. *Improper Requests:* Requests to participate in the Extended Missing Parts Pilot Program will not be accepted in the following situations: (1) Where the certification and request is submitted in an application that is not eligible for the pilot program; (2) where the application is not entitled to a filing date; (3) where the certification and request is submitted after the filing date of the nonprovisional application; (4) where the nonprovisional application does not directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a provisional application filed within the previous twelve months; and (5) where a nonpublication request is filed with the nonprovisional application.

(1) *Application is Not Eligible:* Design applications, provisional applications, national stage applications under 35 U.S.C. 371, international (PCT) applications, reissue applications, and

reexamination proceedings are excluded from the Extended Missing Parts Pilot Program. In these situations, the USPTO will send a Notice to File Missing Parts that sets a two-month (extendable) time period to submit any missing items including fees.

(2) *No Filing Date:* If a nonprovisional application is submitted that does not meet the requirements under 35 U.S.C. 111(a) to be accorded a filing date, the USPTO will send a Notice of Incomplete Application that sets a two-month time limit for applicant to submit the items required for a filing date. In the situation where a Notice of Incomplete Application is sent, the certification and request to participate in the Extended Missing Parts Pilot Program may be accepted once the application is entitled to a filing date if the requirements of the Extended Missing Parts Pilot Program are met. It should be noted, however, that if the nonprovisional application is accorded a filing date that is more than twelve months after the provisional application's filing date, the certification and request to participate will not be accepted since the benefit claim to the provisional application would not be proper.

(3) *Untimely Request:* If applicant submits the certification and request for the Extended Missing Parts Pilot Program after the filing date of the nonprovisional application, the USPTO will not accept the request and the application will not be eligible for the program. Therefore, the USPTO will send a Notice to File Missing Parts that sets a two-month (extendable) time period to submit any missing items including fees.

(4) *No Proper Benefit Claim:* If applicant submits a certification and request to participate in the Extended Missing Parts Pilot Program, but does not include a claim for the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application, the USPTO will send applicant a Notice to File Missing Parts that only sets a two-month time period. In this situation, applicant may submit a proper benefit claim of a prior provisional application within four months from the filing date of the nonprovisional application if applicant still wants a twelve-month time period to submit the search fee, examination fee, any excess claims fees, and the surcharge (if appropriate). Applicant would need to timely file any other items required in the Notice to File Missing Parts. If applicant submits a proper benefit claim within four months, the USPTO would send a notice (*e.g.,* a Notice of Incomplete Reply) that states applicant has a twelve-month time period from the mailing date (or notification date) of the initial Notice to File Missing Parts to submit the search fee, examination fee, any excess claims fees, and the surcharge (if the surcharge is not required for the late filing of the basic filing fee or an executed oath or declaration). If it is more than four months from the filing date of the nonprovisional application, applicant would most likely need a petition under 37 CFR 1.78 to accept an unintentionally delayed claim for the benefit of a prior provisional application. Therefore, applicants will not be permitted to add or correct the benefit claim under 35 U.S.C. 119(e) and 37 CFR 1.78 for the purpose of being eligible for the pilot program if it is more than four months from the filing date of the nonprovisional application.

(5) *A Nonpublication Request is Filed:* If applicant submits a nonpublication request and a certification and request to participate in the Extended Missing Parts Pilot Program on filing of the application and thus the USPTO sends a Notice to File Missing Parts that only sets a two-month time period, applicant may submit a timely and properly signed rescission of the nonpublication request (*e.g.,* PTO/SB/36) if applicant still wants a twelve-month time period to submit the search fee, examination fee, any excess claims fees, and the surcharge (if appropriate). Applicant would need to timely file any other items required in the Notice to File Missing Parts. If applicant submits such a proper rescission of the nonpublication request, the USPTO would send a notice (*e.g.,* a Notice of Incomplete Reply) that states applicant has a twelve-month time period from the mailing date (or notification date) of the initial Notice to File Missing Parts to submit the search fee, examination fee, any excess claims fees, and the surcharge (if the surcharge is not required for the late filing of the basic filing fee or an executed oath or declaration).

C. *Authorization to Charge Fees:* If applicant wishes to participate in the Extended Missing Parts Pilot Program, applicant should not provide a general authorization to charge fees or a specific authorization to charge the search, examination, and/or excess claims fees to a deposit account. However, in the rare situation where applicant files a proper certification and request to participate in the Extended Missing Parts Pilot Program with the application on filing, and all other requirements set forth in this notice are satisfied, but applicant submits an authorization to charge fees to a deposit account that covers fees set forth in 37 CFR 1.16, the USPTO will: (1) Recognize the certification and request to participate in the Extended Missing Parts Pilot Program; (2) provide applicant a twelve-month (non-extendable) time period to pay the search and examination fees, any required excess claims fees, and the surcharge (if appropriate) in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program; and (3) charge the basic filing fee and any required application size fee if not otherwise submitted. In this situation, the Office will accept the authorization to charge fees to a deposit account for any fees that are due, excluding the search and examination fees and excess claims fees. Thus, applicant will be eligible for the Extended Missing Parts Pilot Program and must reply to the Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program within the twelve-month time period by paying the search and examination fees, any required excess claims fees, and any required surcharge, to avoid the abandonment of the application.

III. *Important Reminders:* Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112, first paragraph, which is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. *See* 35 U.S.C. 132(a). In order to be accorded a filing date, a nonprovisional application requires a specification as prescribed by 35 U.S.C. 112, which requires the specification to conclude with at least one claim, and drawings as prescribed by 35 U.S.C. 113, which requires drawings if necessary for an understanding of the invention. *See* 35 U.S.C. 111(a). While only one claim is required in a nonprovisional application for filing date purposes and applicant may file an amendment adding additional claims later during prosecution, applicant should consider the benefits of submitting a complete set of claims on filing of the nonprovisional application. This would reduce the likelihood of adding claims later during prosecution

that contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the twelve-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Thus, any foreign filings must still be made within twelve months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within twelve months of the earliest application for which rights are left outstanding in order to be entitled to priority.

The current patent term adjustment (PTA) provisions apply to all original utility or plant nonprovisional applications filed on or after May 29, 2000, which will include applications under the pilot program. Therefore, any PTA accrued by an applicant based on certain administrative delays by the USPTO is offset by a reduction for failing to reply to a notice by the USPTO within three months. *See* 37 CFR 1.704(b). If an applicant replies to a Notice to File Missing Parts more than three months after mailing (or notification) of the notice, the additional time will be treated as an offset to any positive PTA that is accrued by applicant.

In no event will a reduction under 37 CFR 1.704(b) reduce the twenty-year patent term. The "twenty-year patent term" refers to the term of a patent (other than a design patent) that begins on the date the patent issues and ends on the date that is twenty years from the date on which the application for patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121, or 365(c), twenty years from the filing date of the earliest of such application(s). *See* 35 U.S.C. 154(a)(2). Domestic benefit under 35 U.S.C. 119(e) to one or more provisional applications is not considered in the calculation of the twenty-year term. For more information on patent term, *see* section 2701 of the Manual of Patent Examining Procedure (MPEP) (8th ed. 2001) (Rev. 2, May 2004).

Applicants are also reminded that fees are subject to change and the fees that are due in an application are the fees in effect at the time of fee payment. Therefore, if the search fee, examination fee, excess claims fees, and/or the surcharge (or any other fees) have increased after the mailing (or notification) of a Notice to File Missing Parts that sets a time period to pay such fees, applicant will be required to pay the increased fee amounts. Applicants should consult the current fee schedule on the USPTO Web site before paying any fees that are due.

Form PTO/SB/421 will include an identification of the requirements of the Extended Missing Parts Pilot Program as well as various acknowledgments regarding the pilot program. Therefore, applicants requesting participation in the Extended Missing Parts Pilot Program should be aware of the requirements and the potential drawbacks of the pilot program.

IV. *Paperwork Reduction Act:* An applicant who wishes to participate in the pilot program must submit a certification and request to participate in the Extended Missing Parts Pilot Program, preferably by using Form PTO/SB/421. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/421 does not collect "information" within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, this notice does not involve information collection requirements which are subject to review by OMB.

The USPTO previously published the notice *Missing Parts Practice,* 75 FR 53631 (Sept. 1, 2010), requesting comments on the USPTO's proposal to collect information using Form PTO/SB/421. In light of OMB's determination that Form PTO/SB/421 does not collect information within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the USPTO is withdrawing the request for comments issued in the September 1, 2010 notice.

V. *Additional Information:* While the USPTO also requested comments on an optional service of having an international style search report prepared during the twelve-month extended missing parts period, the USPTO is not implementing such a service at this time.

Dated: November 19, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–30822 Filed 12–7–10; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0002]

Winter Bee, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e).[1] Published below is a provisionally-accepted Settlement Agreement with Winter Bee, Inc., containing a civil penalty of $200,000.00, to be suspended except for $40,000.00, to be paid over a period of 20 months as specified in the Order.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 23, 2010.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

[1] The Commission voted 4–1 to publish this notice of the provisional Settlement Agreement and Order. Commissioner Nord issued a statement, and the statement can be found at *http://www.cpsc.gov/pr/statements.html.*

Dated: December 1, 2010.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Winter Bee, Inc. ("Winter Bee") and the staff ("Staff") of the United States Consumer Product Safety Commission ("Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

Parties

2. The Staff is the staff of the Commission, an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 ("CPSA").

3. Winter Bee is a corporation organized and existing under the laws of California, with its principal offices located in Los Angeles, California. At all times relevant hereto, Winter Bee sold apparel.

Staff Allegations

4. From December 2004 to December 2008, Winter Bee manufactured and distributed in commerce children's hooded pullover and zipper sweatshirts with drawstrings at the neck ("Sweatshirts").

5. Winter Bee sold Sweatshirts to retailers.

6. The Sweatshirts are "consumer product[s]," and, at all times relevant hereto, Winter Bee was a "manufacturer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear ("Guidelines") to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act ("FHSA") section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Winter Bee informed the Commission that there had been no incidents or injuries associated with the Sweatshirts.

11. Winter Bee's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On June 10, 2009, the Commission announced Winter Bee's recall of the Sweatshirts.

13. Winter Bee had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Winter Bee had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Winter Bee to immediately inform the Commission of the defect and risk.

14. Winter Bee knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Winter Bee to civil penalties.

Winter Bee's Response

15. Winter Bee denies the Staff's allegations above that Winter Bee knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Winter Bee.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Winter Bee, or a determination by the Commission, that Winter Bee knowingly violated the CPSA.

18. In settlement of the Staff's allegations, a civil penalty in the amount of two hundred thousand dollars ($200,000.00) shall be imposed against Winter Bee. Based upon Winter Bee's representations in the correspondence and other documents that Winter Bee and its counsel submitted to the Staff concerning Winter Bee's financial condition and concerning Winter Bee's stated inability to pay the foregoing penalty (collectively, "Financial Representations"), and contingent upon the truthfulness, accuracy, and completeness of the Financial Representations, the foregoing civil penalty shall be suspended except for the amount of forty thousand dollars ($40,000.00).

19. Winter Bee shall pay the $40,000.00 nonsuspended portion of the civil penalty in four (4) installments as follows: $25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $5,000.00 shall be paid within one (1) year of the date of service of the Commission's final Order accepting the Agreement; $5,000.00 shall be paid within sixteen (16) months of the date of service of the Commission's final Order accepting the Agreement; and $5,000.00 shall be paid within twenty (20) months of the date of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

20. In negotiating and consenting to the terms of the Agreement, and in advising the Commission, the Staff has relied upon the Financial Representations. If, at any time, the Staff finds that any information provided as part of the Financial Representations was materially false, inaccurate, or incomplete, or that Winter Bee failed to disclose in the Financial Representations any asset or income, materially misrepresented in the Financial Representations the value of any asset or income, or made any other material misrepresentation or omission in or relating to the Financial Representations and the information therein, the Staff may petition the Commission to, or the Commission may on its own initiative, modify the Order: (a) By lifting the suspension of the $200,000.00 civil penalty; (b) by requiring that Winter Bee immediately pay the unpaid portion of the

$200,000.00 civil penalty; and/or (c) in any other manner that the Commission deems appropriate. Unless the Commission otherwise orders, the Agreement shall in all other respects remain in full force and effect.

21. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

22. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Winter Bee knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Winter Bee failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Agreement and the Order.

24. The Agreement and the Order shall apply to, and be binding upon, Winter Bee and each of its successors and assigns.

25. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Winter Bee and each of its successors and assigns to appropriate legal action.

26. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

27. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Winter Bee agree that severing the provision materially affects the purpose of the Agreement and the Order.

Winter Bee, Inc.

Dated: *10/15/10*

By:

Jai Nam Lee, *President,*
Winter Bee, Inc.,
4150 S. Main Street,
Los Angeles, CA 90037

Dated: *10/15/10.*

By:

John N. Politis, *Esq.*
Politis, Nangano & Politis,
1055 West 7th Street, Suite 2288,
Los Angeles, CA 90017,
Counsel for Winter Bee, Inc.

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik,
Assistant General Counsel
Office of the General Counsel.

Dated: *11/5/10.*

By:

Seth B. Popkin, *Lead Trial Attorney,*
Division of Compliance,
Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Winter Bee, Inc. ("Winter Bee") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Winter Bee, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that a civil penalty in the amount of two hundred thousand dollars ($200,000.00) be, and hereby is, imposed against Winter Bee. Based upon Winter Bee's representations in the correspondence and other documents that Winter Bee and its counsel submitted to the Commission staff concerning Winter Bee's financial condition and concerning Winter Bee's stated inability to pay the foregoing penalty (collectively, "Financial Representations"), and contingent upon the truthfulness, accuracy, and completeness of the Financial Representations, the Commission suspends the foregoing civil penalty except for the amount of forty thousand dollars ($40,000.00).

Further ordered, that Winter Bee shall pay the $40,000.00 nonsuspended portion of the civil penalty in four (4) installments as follows: $25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $5,000.00 shall be paid within one (1) year of the date of service of the Commission's final Order accepting the Agreement; $5,000.00 shall be paid within sixteen (16) months of the date of service of the Commission's final Order accepting the Agreement; and $5,000.00 shall be paid within twenty (20) months of the date of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

Further ordered, that the Commission staff's consent to this Order and the Commission's entry of this Order are premised upon the truthfulness, accuracy, and completeness of the Financial Representations. If, upon petition of the Commission staff, or upon the Commission's own initiative, the Commission finds that any information provided as part of the Financial Representations was materially false, inaccurate, or incomplete, or that Winter Bee failed to disclose in the Financial Representations any asset or income, materially misrepresented in the Financial Representations the value of any asset or income, or made any other material misrepresentation or omission in or relating to the Financial Representations and the information therein, then the Commission may modify the Order by lifting the suspension of the $200,000.00 civil penalty, by requiring that Winter Bee immediately pay the unpaid portion of the $200,000.00 civil penalty, and/or by making any other change to the Order that the Commission deems appropriate. Unless the Commission otherwise orders, the Agreement shall in all other respects remain in full force and effect.

Further Ordered, that upon the failure of Winter Bee to make any of the foregoing payments when due, the total amount of the $40,000.00 nonsuspended portion of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by Winter Bee at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 1st day of December, 2010.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety

Commission.

[FR Doc. 2010–30834 Filed 12–7–10; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed implementation of four forms and their electronic and print versions of the Request to Transfer a Segal Education Award Amount Form, the Accept/Decline Award Transfer Form, the Request to Revoke Transfer of Education Award Form, and the Rescind Acceptance of Award Transfer Form. The information collected identifies those qualified to transfer their award, the transfer amount, and those qualified to receive the award transfer, in accordance with the provisions of 42 U.S.C. 12501.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 7, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Attn: Bruce Kellogg, 8309C, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3492 Attn: Bruce Kellogg.

(4) Electronically through *http://www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by e-mail at *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: *The Corporation is particularly interested in comments that:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

The information is collected from qualified members who wish to transfer all or a part of their education award and from qualified recipients of the award transfer electronically via the My AmeriCorps Portal, the Corporation's secure online program management system. If members are unable to apply on-line, they can use printed forms and instructions to submit their application.

Current Action

This new information collection request implements provisions of the recently enacted Serve America Act (42 U.S.C. 12501) which authorizes AmeriCorps members to transfer all or a part of an education award, with limitations on who can transfer an award and on who can receive the transferred award.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Request to Transfer a Segal Education Award Amount Form, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form.

OMB Number: None.

Agency Number: None.

Affected Public: Qualifying AmeriCorps members and education award transfer recipients.

Total Respondents: 100.

Frequency: Annually.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 8.33.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 1, 2010.

William Anderson,

Chief Financial Officer.

[FR Doc. 2010–30699 Filed 12–7–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–73]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–73 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 1, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 2 9 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-73, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Denmark for defense articles and services estimated to cost $2.0 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-73

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) Prospective Purchaser: Denmark

(ii) Total Estimated Value:

Major Defense Equipment*	$1.0 billion
Other	$1.0 billion
TOTAL	$2.0 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 12 MH-60R SEAHAWK Multi-Mission Helicopters, 27 T-700 GE 401C Engines (24 installed and 3 spares), communication equipment, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SAD)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 29 November 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Denmark – MH-60R Multi-Mission Helicopters

The Government of Denmark has requested a possible sale of 12 MH-60R SEAHAWK Multi-Mission Helicopters, 27 T-700 GE 401C Engines (24 installed and 3 spares), communication equipment, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $2.0 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally which has been, and continues to be, an important force for political and economic stability in Europe.

The proposed sale of the MH-60R SEAHAWK helicopters will improve Denmark's anti-submarine and surface warfare capability and provide an improved search and rescue and anti-ship surveillance capability and to carry out international commitments for transport, surveillance, and search and rescue operations with the United States and other allies. Denmark will also use these aircraft to strengthen its homeland defense and protect critical infrastructure. Denmark, which currently operates Augusta Westland Lynx helicopters, will have no difficulty absorbing these additional helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Sikorsky Aircraft Corporation in Stratford, Connecticut, Lockheed Martin in Owego, New York, General Electric in Lynn, Massachusetts, and the Raytheon Corporation in Portsmouth, Rhode Island. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of ten contractor representatives to Denmark on an intermittent basis over the life of the case to support delivery of the MH-60R helicopters and provide support and equipment familiarization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-73

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MH-60R SEAHAWK Multi-Mission Helicopter contains new generation technology. It is equipped for a range of missions including: anti-submarine warfare (ASW), anti-surface warfare (ASuW), search and rescue, naval gunfire support, surveillance, communications relay, logistics support, personnel transfer, and vertical replenishment. The fully integrated glass cockpit is equipped with four 8in × 10in (20.3cm × 25.4cm) full-color multi-function mission and flight displays that are night-vision goggle compatible and sunlight readable. The pilots and aircrew have common programmable keysets, a mass memory unit, mission and flight management computers and MH-60R dedicated operational software. The navigation suite includes LN-100G dual embedded global positioning system and inertial navigation system. The helicopter is equipped with a fully digital communications suite, with Link 16, ARC-210 radios for voice, Ultra High Frequency / Very High Frequency (UHF/VHF), satellite communications, and a Harris Hawklink Ku-band datalink. The helicopter is fitted with an AN/ALQ-210 electronic support measures system (ESM). Electronic warfare systems include the AN/AAR-47 missile warning system, AN/ALQ-144 infrared jammer, and AN/ALE-39 chaff and flare decoy dispenser. The MH-60R, including the mission equipment, is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2010–30730 Filed 12–7–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–69]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–69 with attached transmittal, and policy justification.

Dated: December 1, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 2 9 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-69, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $36 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-69

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 36 million
Other	$ 0 million
TOTAL	$ 36 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 14,010 TP-T M831A1 120mm Cartridges, 16,110 TPCSDS-T M865 120mm Cartridges, and 3,510 HEAT-MP-T M830A1 120mm Cartridges

(iv) Military Department: Army (VCQ)

(v) Prior Related Cases, if any:
FMS case VCY-$10M-14Jul10
FMS case VDA-$34M-14Jul10
FMS case VDK-$67M-14Jul10
FMS case VDL-$65M-14Jul10
FMS case VPP-$684M-20Oct08

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 29 November 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – M1A1 Abrams Tank Ammunition

The Government of Iraq has requested a possible sale of 14,010 TP-T M831A1 120mm Cartridges, 16,110 TPCSDS-T M865 120mm Cartridges, and 3,510 HEAT-MP-T M830A1 120mm Cartridges. The estimated cost is $36 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the ammunition and support will advance Iraq's efforts to develop an integrated ground defense capability, a strong national defense, and a dedicated military force. This will enable the Iraqi Government to sustain its efforts to establish stability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be General Dynamics-Ordnance Tactical Systems in St Petersburg, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government and contractor representatives to Iraq.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–30729 Filed 12–7–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–72]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–72 with attached transmittal, and policy justification.

Dated: December 1, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 29 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-72, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $119 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-72

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 119 million
TOTAL	$ 119 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Installation and checkout of four previously procured Radar System Improvement Program (RSIP) Group A and B kits in E-767 Airborne Warning and Control Systems (AWACS). Also provided are the transportation of the E-767s to/from Japan, spare and repair parts, support and test equipment, publications and technical documentation, U.S. Government and contractor personnel support services, and other related program elements to ensure complete AWACS mission equipment supportability.

(iv) Military Department: Air Force (QDS)

(v) Prior Related Cases, if any:
FMS case QDE-$146M-02Aug06
FMS case QDO-$17M-20Jul07
FMS case QAN-$64M-25Sep09

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 29 November 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan – Mission Equipment for AWACS Aircraft

The Government of Japan has requested installation and checkout of four previously procured Radar System Improvement Program (RSIP) Group A and B kits in E-767 Airborne Warning and Control Systems (AWACS). Also provided are the transportation of the E-767s to/from Japan, spare and repair parts, support and test equipment, publications and technical documentation, U.S. Government and contractor personnel support services, and other related program elements to ensure complete AWACS mission equipment supportability. The estimated cost is $119 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist Japan with developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the region. The proposed sale is consistent with U.S. objectives and the 1960 Treaty of Mutual Cooperation and Security.

Japan previously purchased four sets of AWACS RSIP Group A and B kits.mission equipment to enhance the operational capability of its E-767 radar electronic counter-measures, and now requires this Installation and Checkout to integrate extended Airborne Early Warning (AEW) capability as well as enhanced command, control and communications (C3).

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Boeing Aerospace Company in Seattle, Washington. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–30728 Filed 12–7–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–65]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–65 with attached transmittal, and policy justification.

Dated: December 1, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 29 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-65, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $68 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 10-65

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 68 million
TOTAL	$ 68 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) Systems which includes, High Frequency, Ultra High Frequency, and Very High Frequency radios, Automatic Identification System, Surface Scan Radar System, Forward Looking Infrared System, Situational Display System, Mobile and Fixed Towers, Electro-Optical Cameras, Voice Over Internet Protocol, K Under Band Very Small Aperture Terminal upgrades, generators, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Navy (LAL)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 29 November 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) Systems

The Government of Iraq has requested a possible sale for Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) Systems which includes, High Frequency, Ultra High Frequency, and Very High Frequency radios, Automatic Identification System, Surface Scan Radar System, Forward Looking Infrared System, Situational Display System, Mobile and Fixed Towers, Electro-Optical Cameras, Voice Over Internet Protocol, K Under Band Very Small Aperture Terminal upgrades, generators, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $68 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the C4ISR system will ensure that the Iraqi Naval Force (INF) is better able to efficiently use its vessels and manpower to police Iraqi territorial waters and protect its strategic maritime assets. The C4ISR system will enable the Iraqi Government to assume more responsibility for its security and rely less on U.S. and coalition forces to establish stability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be The Raytheon Company in Waltham, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of three U.S. Government and four contractor representatives to Iraq for one month for the purpose of fielding and training and quality assurance during equipment delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–30727 Filed 12–7–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Under Secretary of Defense for Personnel and Readiness; Meeting of the Department of Defense Military Family Readiness Council (MFRC)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Department of Defense Military Family Readiness Council (MFRC). The purpose of the Council meeting is to review the military family programs which will be the focus for the Council for next year, review the status of warrior care, and address selected concerns of military family organizations.

The meeting is open to the public, subject to the availability of space. Persons desiring to attend may contact Ms. Melody McDonald at 571–256–1738 or e-mail *FamilyReadinessCouncil@osd.mil* no later than 5 p.m. on Friday, 10 December 2010 to arrange for parking and escort into the conference room inside the Pentagon.

Interested persons may submit a written statement for consideration by the Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed below no later than 5 p.m., Wednesday, 8 December 2010.

Due to internal DoD difficulties, beyond the control of the Department of Defense Military Family Readiness Council or its Designated Federal Officer, the Government was unable to process the **Federal Register** notice for the December 14, 2010 meeting of the Department of Defense Military Family Readiness Council as required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

DATES: 14 December 2010, 2–3 p.m.

Location: Pentagon Conference Center B1 (escorts will be provided from the Pentagon Metro entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4000 Defense Pentagon, Room 2E319, Washington, DC 20301–4000. Telephones (571) 256–1738; (703) 697–9283 and/or *e-mail: FamilyReadinessCouncil@osd.mil.*

SUPPLEMENTARY INFORMATION: Meeting agenda.

Tuesday, 14 December 2010

Welcome & Administrative Remarks.
Review and Comment on Council Action from November meeting.
Follow-up on Council's FY2009 Recommendations.
Discussion of Assessment Process.
Intentions for the 2011 activities and meetings.
Selection of priority areas to monitor during 2011.
Support for Families of Wounded Warriors.
Closing Remarks.

Note: Exact order may vary.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–30719 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (Subsequently Referred to as the Task Force)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10 (a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force). The purpose of the meeting is for the Task Force Members to convene and discuss the current year of effort. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Task Force. Individuals submitting a written statement must submit their statement through any of the means listed below in the Contact Information Section, NLT 5 p.m., Tuesday, December 28, 2010. Written statements must be sent either by fax, e-mail, or through a mail carrier; no hand delivered materials will be accepted. Materials sent through a mail carrier must be marked "Wounded Warrior Task Force—Time Sensitive January Meeting" on the exterior packaging. If a written statement is not received by Tuesday, December 28, 2010, prior to the meeting, which is the subject of this notice, it may not be provided to or considered by the Task Force until its next open meeting. The Designated Federal Officer will review all timely submissions for the January meeting with the Task Force Co-Chair and ensure all submissions are provided to the Members of the Task Force.

If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted as above and must identify it is being submitted for an oral presentation by the person making the submission. Identification information must be provided and at a minimum must include a name and a phone number. After reviewing the 2 minute written comments for oral presentation, the Co-Chair and the Designated Federal Officer will determine whom of the persons requesting an oral presentation will be able to make an oral presentation during the Public Forum portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on the submitted topics relevance to the Task Force's Charter. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/wwtf/* to view the Charter. Individuals making presentations will be notified by Tuesday, 4 January 2011. If you are not notified, you will not be making a presentation, however your materials will be provided to the Task Force members. Oral presentations will be permitted only on Friday January 7, 2011 from 9 a.m. to 9:15 a.m. before the full Task Force. Number of oral presentations will not exceed five, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes and will be asked to stop at their two-minute marks so Task Force members can ask questions.

Dates and Times: January 6, 2011, 2 p.m.–6 p.m., January 7, 2011 8:30 a.m–3 p.m.

Location: JW Marriott Washington, DC, 1331 Pennsylvania Ave, NW., Washington, DC 20004.

Contact Information: Mail Delivery service through Wounded Warrior Task Force, Hoffman Building II, 200 Stoval St, Alexandria, VA 22332–4013 "Mark as Time Sensitive for January Meeting." E-mails to *taskforce.woundedwarrior@wso.whs.mil.* Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION: The Wounded Warrior Task Force (WWTF) will provide the Department of Defense (DoD) with advice and recommendations on policies and programs relating to the care, management and transition of recovering service members and their families. This review will include assessing the establishment, effectiveness, and availability of support programs provided by the Military Services and the DoD. In addition, the Task Force will consider interagency matters that affect the transition from military service to civilian life.

Meeting Agenda

6 January 2011

8:30 a.m.–2 p.m. Not Open to the Public. Administrative Session

Open to Public

2 p.m. Welcome by Agency Officials
2:30 p.m. Welcome Opening Remarks Co-Chair
3 p.m. Break
3:15 p.m. Nominations/Discussion/Vote for Non DoD Co-Chair
3:45–6 p.m. Review of the Task Force Mandate

8:30 a.m.–3 p.m. Friday 7 January

Open to Public

8:30 a.m. Welcome and Opening Remarks
9 a.m. Public Forum
9:15 a.m. Review of the Mandate
9:30 a.m. 2010–2011 Study Plan
10:30 a.m. Break
10:45 a.m. Review of Installation Visits
11:30 a.m. Members Calendars/Meeting Schedule
12 p.m. Lunch

1 p.m. Briefing by the Defense Centers of Excellence
3 p.m. Closing

Note: This agenda is subject to change.

Special Accommodations: Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Joseph Jordon, (703) 325–6640, by Thursday, December 23, 2010.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–30722 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Reserve Forces Policy Board (RFPB)

AGENCY: Office of the Secretary of Defense Reserve Forces Policy Board, Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting:

Name of Committee: Reserve Forces Policy Board (RFPB).

Date: Tuesday and Wednesday, January 24th and 25th, 2011.

Time: 8 a.m.—4:30 p.m. (both days).

Location: Meeting address is Rm 3E863, Pentagon, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Purpose of the Meeting: An open meeting of the Reserve Forces Policy Board.

Agenda: The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy advisor to the Secretary of Defense on matters relating to the Reserve Components. The Board will set forth the 2011 meeting schedule focusing on concerns regarding the future of the Reserve Components.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. To request a seat, contact the Designated Federal Officer not later than 12/24/10 at 703–697–4486, or by e-mail, *RFPB@osd.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.* Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

FOR FURTHER INFORMATION CONTACT: Lt Col Julie A. Small, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. *Web site: http://ra.defense.gov/rfpb/.*

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2010–30724 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Defense Intelligence College Board of Visitors Closed Meeting

AGENCY: National Defense Intelligence College, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency National Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, January 18, 2011 (8 a.m. to 5 p.m.), and Wednesday, January 19, 2011 (8 a.m. to 12 p.m.).

ADDRESSES: National Defense Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Defense Intelligence College, Washington, DC 20340–5100 (202–231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–30723 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0157]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on January 7, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) 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, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155, Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 24, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 24, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E04

SYSTEM NAME:

Privacy Act Case Files (November 12, 2008 73 FR 6687.

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CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Washington Headquarters Services records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Educational Activity Records: Department of Defense Education Activity, Privacy Act Office, Executive Services Offices, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity and Uniformed Services University of Health Sciences (USUHS): TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have requested documents and/or appeals under the provisions of the Privacy Act (PA) from the Offices of the Secretary of Defense, DoD Education Activity and the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity; and attorneys representing individuals submitting such requests."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records created or compiled in response to Privacy Act requests and administrative appeals, individual's name, request number, original and copies of requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 552a, The Privacy Act of 1974, as amended; 10 U.S.C. 113, Secretary of Defense, DoD Directive 5110.4, Washington Headquarters Services (WHS); DoD 5400.11–R, Department of Defense Privacy Program; Administrative Instruction 81, Privacy Program; 10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; 20 U.S.C. 921–932, Overseas Defense Dependent's Education; DoD Directive 1342.20 Department of Defense Education Activity (DoDEA), DoD 5136.01, Assistant Secretary of Defense for Health Affairs (ASD(HA)); DoD Directive 5136.12, TRICARE Management Activity (TMA)."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in security containers with access only to officials whose access is based on requirements of assigned duties. Computer database access requires use of Common Access Card (CAC) login and role-based access by individuals who have a need-to-know."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "For Washington Headquarters Services records: Office of the Secretary of Defense/Joint Staff Privacy Office, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Privacy Office, Executive Services Office, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

For Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity records: TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA, 22041–3206."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

For Washington Headquarters Services records: Chief, OSD/JS Privacy Office, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the individual's name.

For DoD Education Activity records: Department of Defense Education Activity, Privacy Act Office, Executive Services Office, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Written requests must include this system of record notice name and number, be in writing, signed, and provide evidence of the requester's identity such as a copy of a photo ID or passport or similar document bearing the requester's signature.

For Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity records: TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA, 22041–3206.

Written requests should include the individual's name, mailing address and signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access their record should address written inquiries to:

For Washington Headquarters Services records: OSD/JS Freedom of Information Requester Service Center, Office of Freedom of Information, Executive Services Directorate, Washington, Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Privacy Act Office, Executive Services Office, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

For Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Requests for access must include this system of record notice name and number, be in writing, signed, and provide evidence of the requester's identity such as a copy of a photo ID or passport or similar document bearing the requester's signature.

Additionally for DoD Education Activity records: If a parent or legal guardian is requesting records pertaining to his or her minor child or ward, he/she must also provide evidence of that relationship. The parent may provide one of the following: A copy of the child's school enrollment form signed by the parent, a copy of a divorce decree or travel order that includes the child's name, an order of guardianship, or a declaration stating that he/she is the parent or legal guardian of the minor or incapacitated child."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager."

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DWHS E04

SYSTEM NAME:

Privacy Act Case Files.

SYSTEM LOCATION:

Washington Headquarters Services records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Educational Activity records: Department of Defense Education Activity, Privacy Act Office, Executive Services Offices, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity and Uniformed Services University of Health Sciences (USUHS): TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested documents and/or appeals under the provisions of the Privacy Act (PA) from the Offices of the Secretary of Defense, DoD Education Activity and the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity; and attorneys representing individuals submitting such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to Privacy Act requests and administrative appeals, individual's name, request number, original and copies of requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, The Privacy Act of 1974, as amended; 10 U.S.C. 113, Secretary of Defense, DoD Directive 5110.4, Washington Headquarters Services (WHS); DoD 5400.11–R, Department of Defense Privacy Program; Administrative Instruction 81, Privacy Program; 10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; 20 U.S.C. 921–932, Overseas Defense Dependent's Education; DoD Directive 1342.20 Department of Defense Education Activity (DoDEA), DoD 5136.01, Assistant Secretary of Defense for Health Affairs (ASD(HA)); DoD Directive 5136.12, TRICARE Management Activity (TMA).

PURPOSE(S):

Information is being collected and maintained for the purpose of processing Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name and/or request number.

SAFEGUARDS:

Records are maintained in security containers with access only to officials whose access is based on requirements of assigned duties. Computer database access requires use of Common Access Card (CAC) login and role-based access by individuals who have a need-to-know.

RETENTION AND DISPOSAL:

Responses granting access to all the requested records, destroy 2 years after the date of reply. Responding to requests for nonexistent records; to requesters who provide inadequate descriptions; and to those who fail to pay agency reproduction fees; destroy requests not appealed 2 years after date of reply; destroy appealed requests in accordance with the approved disposition instructions for related subject individual's records or 3 years after final adjudication by the courts, whichever is later. Responses denying access to all or part of the records requested, destroy requests not appealed 5 years after date of reply.

SYSTEM MANAGER(S) AND ADDRESS:

For Washington Headquarters Services records: Office of the Secretary of Defense/Joint Staff Privacy Office, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Privacy Office, Executive Services Office, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

For Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity records: TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA, 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

For Washington Headquarters Services records: Chief, OSD/JS Privacy Office, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the individual's name.

For DoD Education Activity records: Department of Defense Education Activity, Privacy Act Office, Executive Services Office, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Written requests must include this system of record notice name and number, be in writing, signed, and provide evidence of the requester's identity such as a copy of a photo ID or passport or similar document bearing the requester's signature.

For Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity records: TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA, 22041–3206.

Written requests should include the individual's name, mailing address and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access their record should address written inquiries to:

For Washington Headquarters Services records: OSD/JS Freedom of Information Requester Service Center, Office of Freedom of Information, Executive Services Directorate, Washington, Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Privacy Act Office, Executive Services Office, Office of the Chief of Staff, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

For Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Requests for access must include this system of record notice name and number, be in writing, signed, and provide evidence of the requester's identity such as a copy of a photo ID or passport or similar document bearing the requester's signature.

Additionally for DoD Education Activity records: If a parent or legal guardian is requesting records pertaining to his or her minor child or ward, he/she must also provide evidence of that relationship. The parent may provide one of the following: A copy of the child's school enrollment form signed by the parent, a copy of a divorce decree or travel order that includes the child's name, an order of guardianship, or a declaration stating that he/she is the parent or legal guardian of the minor or incapacitated child.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the Privacy Act; the agency records searched in the process of responding to such requests and appeals; Department of Defense personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the Department of Defense requests concerning Department of Defense records, or that have consulted with the Department of Defense regarding the handling of particular requests; and submitters or subjects of records or information that have provided assistance to the Department of Defense in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, Washington Headquarters Services hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2010–30715 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0162]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Information Systems Agency is altering a system of records notices 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 without further notice on January 7, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) 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, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705, or Ms. Jeanette M. Weathers-Jenkins at (703) 681–2409.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency system 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 **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 1, 2010 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 20, 1996, 61 FR 6427.

Dated: December 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.15 DoD

SYSTEM NAME:

Active Directory Enterprise Application and Services Forest (AD EASF) (November 15, 2010, 75 FR 69644).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "These include individual's name (last name, first name, middle initial); unique identifiers including Electronic Data Interchange Person Identifier (EDI PI), other unique identifier (not Social Security Number), Federal Agency Smart Credential Number (FASC–N), login name, legacy login name, and persona username; object class; rank; title; job title; persona type code (PTC); primary and other work e-mail addresses; persona display name (PDN); work contact information, including administrative organization, duty organization, department, company (derived), building, address, mailing address, country, organization, phone, fax, mobile, pager, Defense Switched Network (DSN) phone, other fax, other mobile, other pager, city, zip code, post office box, street address, State, room number, assigned unit name, code and location, attached unit name, code and location, major geographical location, major command, assigned major command, and base, post, camp, or station; U.S. government agency code; service code; personnel category code; non-U.S. government agency object common name; user account control; information technology service entitlements; and Public Key Infrastructure (PKI) certificate information, including Personal Identity Verification Authentication (PIV Auth) certificate issuer, PIV Auth certificate serial number, PIV Auth certificate principal name, PIV Auth Subject Alternative Name, PIV Auth Thumbprint, PIV Auth Issuer, PIV Auth Common name, Identity (ID) certificate issuer, ID certificate serial number, ID certificate principal name, ID Thumbprint, ID Common Name (CN), signature certificate e-mail address, Signature Subject Alternative Name UPN, Signature Thumbprint, Signature Issuer, Signature serial number, Signature CN, Encryption (Public Binary Certificate), Encryption Thumbprint, Certificate Issuer, Encryption Serial Number, Encryption CN, distinguished name, PKI login identity, e-mail encryption certificate, and other certificate information, Country of Citizenship, U.S. Citizenship Status Indicator Code, Cadency of name (*e.g.* Sr, Jr, III), Identity Certificate Serial Number, Persona E–Mail Address, Administrative Organization Code, DoD component, DoD sub-component, Non-DoD agency, Directory publishing restrictions, Reserve component code, Billet code and Pay grade."

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K890.15 DoD

SYSTEM NAME:

Active Directory Enterprise Application and Services Forest (AD EASF) (November 15, 2010, 75 FR 69644).

SYSTEM LOCATION:

System locations may be obtained from the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense (DoD) personnel who have been issued DoD Common Access Cards (CAC) or a DoD Class 3 Public Key Infrastructure (PKI) certificate to include civilian employees, military personnel, contractors and other individuals detailed or assigned to DoD Components.

CATEGORIES OF RECORDS IN THE SYSTEM:

These include individual's name (last name, first name, middle initial); unique identifiers including Electronic Data Interchange Person Identifier (EDI PI), other unique identifier (not Social Security Number), Federal Agency Smart Credential Number (FASC–N), login name, legacy login name, and persona username; object class; rank; title; job title; persona type code (PTC); primary and other work e-mail addresses; persona display name (PDN); work contact information, including administrative organization, duty organization, department, company (derived), building, address, mailing address, country, organization, phone, fax, mobile, pager, Defense Switched Network (DSN) phone, other fax, other mobile, other pager, city, zip code, post office box, street address, State, room number, assigned unit name, code and location, attached unit name, code and location, major geographical location, major command, assigned major command, and base, post, camp, or station; U.S. government agency code; service code; personnel category code; non-U.S. government agency object common name; user account control; information technology service entitlements; and Public Key Infrastructure (PKI) certificate information, including Personal Identity Verification Authentication (PIV Auth) certificate issuer, PIV Auth certificate serial number, PIV Auth certificate principal name, PIV Auth Subject Alternative Name, PIV Auth Thumbprint, PIV Auth Issuer, PIV Auth Common name, Identity (ID) certificate issuer, ID certificate serial number, ID certificate principal name, ID Thumbprint, ID Common Name (CN), signature certificate e-mail address, Signature Subject Alternative Name UPN, Signature Thumbprint, Signature Issuer, Signature serial number, Signature CN, Encryption (Public Binary Certificate), Encryption Thumbprint, Certificate Issuer, Encryption Serial Number, Encryption CN, distinguished name, PKI login identity, e-mail encryption certificate, and other certificate information, Country of Citizenship, U.S. Citizenship Status Indicator Code, Cadency of name (e.g. Sr, Jr, III), Identity Certificate Serial Number, Persona E–Mail Address, Administrative Organization Code, DoD component, DoD sub-component, Non-DoD agency, Directory publishing restrictions, Reserve component code, Billet code and Pay grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; DoD Directive 5105.19, Defense Information Systems Agency (DISA).

PURPOSE(S):

The AD EASF will control access and provide contact information for users of DoD Enterprise E–Mail, workspace and collaboration tools, file storage, and office applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Access to the type and amount of data is governed by privilege management software and policies developed and enforced by Federal government personnel. Defense-in-Depth methodology is used to protect the repository and interfaces, including (but not limited to) multi-layered firewalls, Secure Sockets Layer/Transport Layer Security (SSL/TLS) connections, access control lists, file system permissions, intrusion detection and prevention systems and log monitoring. Complete access to all records is restricted to and controlled by certified system management personnel, who are responsible for maintaining the AD EASF system integrity and the data confidentiality.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work e-mail address, telephone number, assigned office or unit, and complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work e-mail address, telephone number, assigned office or unit, and complete mailing address.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting content and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

RECORD SOURCE CATEGORIES:

The DoD Identity Synchronization Service (IdSS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–30726 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0161]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Information Systems Agency is altering a system of records notices 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 without further notice on January 7, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) 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, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705, or Ms. Jeanette M. Weathers-Jenkins at (703) 681–2409.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency system 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 **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 1, 2010 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 20, 1996, 61 FR 6427.

Dated: December 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.14 DoD

SYSTEM NAME:

Identity Synchronization Service (IdSS) (November 15, 2010, 7 FR 69645).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "These include individual's name (last name, first name, middle initial); unique

identifiers including Electronic Data Interchange Person Identifier (EDI PI), other unique identifier (not Social Security Number), Federal Agency Smart Credential Number (FASC–N), login name, legacy login name, and persona username; object class; rank; title; job title; persona type code (PTC); primary and other work e-mail addresses; persona display name (PDN); work contact information, including administrative organization, duty organization, department, company (derived), building, address, mailing address, country, organization, phone, fax, mobile, pager, Defense Switched Network (DSN) phone, other fax, other mobile, other pager, city, zip code, post office box, street address, State, room number, assigned unit name, code and location, attached unit name, code and location, major geographical location, major command, assigned major command, and base, post, camp, or station; US government agency code; service code; personnel category code; non-US government agency object common name; user account control; information technology service entitlements; and Public Key Infrastructure (PKI) certificate information, including Personal Identity Verification Authentication (PIV Auth) certificate issuer, PIV Auth certificate serial number, PIV Auth certificate principal name, PIV Auth Subject Alternative Name, PIV Auth Thumbprint, PIV Auth Issuer, PIV Auth Common name, Identity (ID) certificate issuer, ID certificate serial number, ID certificate principal name, ID Thumbprint, ID Common Name (CN), signature certificate e-mail address, Signature Subject Alternative Name UPN, Signature Thumbprint, Signature Issuer, Signature serial number, Signature CN, Encryption (Public Binary Certificate), Encryption Thumbprint, Certificate Issuer, Encryption Serial Number, Encryption CN, distinguished name, PKI login identity, e-mail encryption certificate, and other certificate information, Country of Citizenship, US Citizenship Status Indicator Code, Cadency of name (*e.g.* Sr, Jr, III), Identity Certificate Serial Number, Persona E–Mail Address, Administrative Organization Code, DoD component, DoD sub-component, Non-DoD agency, Directory publishing restrictions, Reserve component code, Billet code and Pay grade."

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K890.14 DoD

SYSTEM NAME:

Identity Synchronization Service (IdSS).

SYSTEM LOCATION:

System locations may be obtained from the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense (DoD) personnel who have been issued DoD Common Access Cards (CAC) or a DoD Class 3 Public Key Infrastructure (PKI) certificate to include civilian employees, military personnel, contractors and other individuals detailed or assigned to DoD Components.

CATEGORIES OF RECORDS IN THE SYSTEM:

These include individual's name (last name, first name, middle initial); unique identifiers including Electronic Data Interchange Person Identifier (EDI PI), other unique identifier (not SSN), FASC–N, login name, legacy login name, and persona username; object class; rank; title; job title; persona type code (PTC); primary and other work e-mail addresses; persona display name (PDN); work contact information, including administrative organization, duty organization, department, company (derived), building, address, mailing address, country, organization, phone, fax, mobile, pager, DSN phone, other fax, other mobile, other pager, city, zip code, post office box, street address, State, room number, assigned unit name, code and location, attached unit name, code and location, major geographical location, major command, assigned major command, and base, post, camp, or station; US government agency code; service code; personnel category code; non-US government agency object common name; user account control; information technology service entitlements; and PKI certificate information, including FASN–C, PIV Auth certificate issuer, PIV Auth certificate serial number, PIV Auth certificate principal name, PIV Auth Subject Alternative Name, PIV Auth Thumbprint, PIV Auth Issuer, PIV Auth Common name, ID certificate issuer, ID certificate serial number, ID certificate principal name, ID Thumbprint, ID CN, signature certificate e-mail address, Signature Subject Alternative Name UPN, Signature Thumbprint, Signature Issuer, Signature serial number, Signature CN, Encryption (Public Binary Certificate), Encryption Thumbprint, Certificate Issuer, Encryption Serial Number, Encryption CN, distinguished name, PKI login identity, e-mail encryption certificate, and other certificate information, Country Of Citizenship, US Citizenship Status Indicator Code, Cadency of name (*e.g.* Sr, Jr, III), Identity Certificate Serial Number, Persona E–Mail Address, Administrative Organization Code, DoD component, DoD sub-component, Non-DoD agency, Directory publishing restrictions, Reserve component code, Billet code and Pay grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; DoD Directive 5105.19, Defense Information Systems Agency (DISA).

PURPOSE(S):

The IdSS will populate and maintain persona-based user objects in DoD enterprise-level Domain Controllers, such as the Active Directory Enterprise Application and Services Forest (AD EASF) being implemented by DISA to provide DoD Enterprise E-Mail, workspace and collaboration tools, file storage, and office applications. In addition, DISA may use the IdSS to populate and maintain personal data elements in DoD Component networks and systems, such as directory services and account provisioning systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Access to the type and amount of data is governed by privilege management software and policies developed and enforced by Federal government personnel. Defense-in-Depth methodology is used to protect the repository and interfaces, including (but not limited to) multi-layered firewalls, Secure Sockets Layer/Transport Layer Security (SSL/TLS) connections, access control lists, file system permissions, intrusion detection and prevention

systems and log monitoring. Complete access to all records is restricted to and controlled by certified system management personnel, who are responsible for maintaining the IdSS system integrity and the data confidentiality.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work e-mail address, telephone number, assigned office or unit, and complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work e-mail address, telephone number, assigned office or unit, and complete mailing address.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting content and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system.

RECORD SOURCE CATEGORIES:

DoD Component directories (such as Army Enterprise Directory Service-Lite (EDS–Lite) and the Air Force Directory Service (AFDS)), the Defense Eligibility Enrollment Reporting System (DEERS), and the DISA DoD PKI Global Directory Service (GDS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–30725 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0159]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on January 7, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) 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, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 29, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P37

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Washington Headquarters Services (WHS), Human Resources Directorate (HRD), Labor and Management Employee Relations, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Employees of the Office of the Secretary of Defense, Joint Staff, Washington Headquarters Services, and Department of Defense (DoD) Agencies and Field Activities serviced by Washington Headquarters Services Human Resources Directorate who have submitted grievances covered by a negotiated grievance procedure or unfair labor practice charges."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Case file contains individual's name, case number, subject of grievance, background papers, and details pertaining to the case or issue. Case files may also contain the following information that is not solicited from individuals: Work and/or home addresses and telephone numbers and Social Security Numbers (SSN)."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 7121, Grievance Procedures; DoD 1400.25–M (Subchapter 771), DoD Civilian Personnel Manual (Administrative Grievance System); Washington Headquarters Services Administrative Instruction 37, Employee Grievances, and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Records are used in the administration, processing, and resolution of unfair labor complaints, grievance arbitrations, negotiability, and representation issues. De-identified statistical data may be used by management for reporting and policy evaluation purposes."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to the performance of their exclusive representation duties concerning personnel policies, practices, and matters affecting working conditions.

To representatives of the U.S. Office of Personnel Management (OPM) on matters relating to the inspection, survey, audit, or evaluation of civilian personnel management programs.

To the Comptroller General, or any of his authorized representatives, in the course of the performance of duties of the Government Accountability Office relating to the Labor-Management Relations Program.

To arbitrators, examiners, or other third parties appointed to inquire into or adjudicate labor-management issues.

The 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system of records."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper file folders and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Names of individuals initiating grievance procedures, case number, and/or by subject matter."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in areas only accessible to Labor Management Employee Relations personnel who must access the records to perform their official duties. The electronic records require a Common Access Card and can only be accessed by Labor Management Employee Relations personnel. Paper records are stored in locked file cabinets in secured offices and buildings that are locked and guarded during non-duty hours."

RETENTION AND DISPOSAL:

Delete entry and replace with "Grievance files are disposed of four years after the case is closed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Assistant Director for Labor and Management Employee Relations, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Director for Labor and Management Employee Relations, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests should include the individual's name, type of issue (*e.g.,* administrative grievance), the case subject or case number, a current telephone number and be signed and dated."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests should include the name and number of this system of records notice the type of issue (*e.g.,* administrative grievance) and the case subject or case number and be signed and dated."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Office of the Secretary of Defense's rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81, 32 CFR part 311, or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete and replace with "The individual, management officials involved with the incident leading to or adjudication of grievance or unfair labor practice charges, Washington Headquarters Service Labor Management Employee Relations personnel, arbitrator's office, the Federal Labor Relations Authority Headquarters and Regional Offices, and union officials."

* * * * *

DWHS P37

SYSTEM NAME:

Grievance and Unfair Labor Practices Records.

SYSTEM LOCATION:

Washington Headquarters Services (WHS), Human Resources Directorate (HRD), Labor and Management Employee Relations, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of the Secretary of Defense, Joint Staff, Washington Headquarters Services, and Department of Defense (DoD) Agencies and Field Activities serviced by Washington Headquarters Services Human Resources Directorate who have submitted grievances covered by a negotiated grievance procedure or unfair labor practice charges.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case file contains individual's name, case number, subject of grievance, background papers, and details pertaining to the case or issue. Case files may also contain the following information that is not solicited from individuals: work and/or home addresses and telephone numbers and Social Security Numbers (SSN).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7121, Grievance Procedures; DoD 1400.25–M (Subchapter 771), DoD Civilian Personnel Manual (Administrative Grievance System); Washington Headquarters Services Administrative Instruction 37, Employee Grievances, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are used in the administration, processing, and resolution of unfair labor complaints, grievance arbitrations, negotiability, and representation issues. De-identified

statistical data may be used by management for reporting and policy evaluation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to the performance of their exclusive representation duties concerning personnel policies, practices, and matters affecting working conditions.

To representatives of the U.S. Office of Personnel Management (OPM) on matters relating to the inspection, survey, audit, or evaluation of civilian personnel management programs.

To the Comptroller General, or any of his authorized representatives, in the course of the performance of duties of the Government Accountability Office relating to the Labor-Management Relations Program.

To arbitrators, examiners, or other third parties appointed to inquire into or adjudicate labor-management issues.

The 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Names of individuals initiating grievance procedures, case number, and/or by subject matter.

SAFEGUARDS:

Records are maintained in areas only accessible to Labor Management Employee Relations personnel who must access the records to perform their official duties. The electronic records require a Common Access Card and can only be accessed by Labor Management Employee Relations personnel. Paper records are stored in locked file cabinets in secured offices and buildings that are locked and guarded during non-duty hours.

RETENTION AND DISPOSAL:

Grievance files are disposed of four years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Labor and Management Employee Relations, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Director for Labor and Management Employee Relations, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests should include the individual's name, type of issue (*e.g.,* administrative grievance), the case subject or case number, a current telephone number and be signed and dated.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests should include the name and number of this system of records notice the type of issue (*e.g.,* administrative grievance) and the case subject or case number and be signed and dated.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense's rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81, 32 CFR part 311, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, management officials involved with the incident leading to or adjudication of grievance or unfair labor practice charges, Washington Headquarters Service Labor Management Employee Relations personnel, arbitrator's office, the Federal Labor Relations Authority Headquarters and Regional Offices, and union officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–30720 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0158]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on January 7, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) 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, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155, Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 24, 2010, to the House Committee on Oversight and

Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 24, 2010.

Morgan F. Park

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E02

SYSTEM NAME:

Freedom of Information Act Case Files (July 21, 2008, 73 FR 42330).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Washington Headquarters Services Records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Educational Activity Records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Financial & Business Operations Directorate, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

TRICARE Management Activity Records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have requested documents under the provisions of the Freedom of Information Act (FOIA) from the Office of the Secretary of Defense/Joint Staff, the DoD Education Activity, or the TRICARE Management Activity Freedom of Information Act (FOIA) Requester Service Centers; individuals whose requests and/or records have been processed under the Freedom of Information Act and referred by other Federal agencies; and attorneys representing individuals submitting such requests."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records created or compiled in response to Freedom of Information Act requests and administrative appeals, *i.e.,* original requests and administrative appeals (including requester's name, mailing address, Freedom of Information Act case number, and subject of the request, with some requesters also voluntarily submitting additional information such as telephone numbers and e-mail addresses); responses to such requests and administrative appeals; all related memoranda, correspondence, notes and other related or supporting documentation; and copies of requested records and records under administrative appeal."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 552, Public information; agency rules, opinions, orders, records and proceedings; 10 U.S.C. 113, Secretary of Defense; and DoD 5400.7–R, DoD Freedom of Information Act (FOIA) Program."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name of requester, subject matter, date of request, and Freedom of Information Act request case number."

SAFEGUARDS:

Delete entry and replace with "Paper records are maintained in security containers with access only to officials based on requirements of assigned duties. Computer databases are password protected and accessed by individuals with a common access card (CAC) who have a need-to-know."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Washington Headquarters Services records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Education Activity records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

TRICARE Management Activity records: TRICARE Management Activity, Freedom of Information Act Officer, 16401 East Centretech Parkway, Aurora, CO 80011–9066."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

For Washington Headquarters Services records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

For TRICARE Management Activity records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests should include the requester's name, mailing address, and signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to:

For Washington Headquarters Services records: Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, Washington Headquarters, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Financial & Business Operations Directorate, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Note: For Department of Defense Education Activity records, a non-custodial parent or legal guardian requesting records pertaining

to his or her minor child or ward must also provide evidence of that relationship. For example, such parent or legal guardian may provide a copy of a divorce decree or a child custody or guardianship order that includes the child's name.

For TRICARE Management Activity records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requester's signature. Requests must contain the requester's name, mailing address, Freedom of Information Act case number, name and number of this system of records notice and be signed."

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "During the course of a Freedom of Information Act action, exempt materials from other systems of records may, in turn, become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this Freedom of Information Act case record, Washington Headquarters Services, the DoD Education Activity, and the TRICARE Management Activity hereby claim the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager."

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DWHS E02

SYSTEM NAME:

Freedom of Information Act Case Files.

SYSTEM LOCATION:

Washington Headquarters Services Records: Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Educational Activity Records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Financial & Business Operations Directorate, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

TRICARE Management Activity Records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway Aurora, CO 80011–9066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested documents under the provisions of the Freedom of Information Act (FOIA) from the Office of the Secretary of Defense/Joint Staff, the DoD Education Activity, or the TRICARE Management Activity Freedom of Information Act (FOIA) Requester Service Centers; individuals whose requests and/or records have been processed under the Freedom of Information Act and referred by other Federal agencies; and attorneys representing individuals submitting such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to Freedom of Information Act requests and administrative appeals, *i.e.,* original requests and administrative appeals (including requester's name, mailing address, Freedom of Information Act case number, and subject of the request, with some requesters also voluntarily submitting additional information such as telephone numbers and e-mail addresses); responses to such requests and administrative appeals; all related memoranda, correspondence, notes and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Public information; agency rules, opinions, orders, records and proceedings; 10 U.S.C. 113, Secretary of Defense; and DoD 5400.7–R, DoD Freedom of Information Act (FOIA) Program.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing Freedom of Information Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the Freedom of Information Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by name of requester, subject matter, date of request, and Freedom of Information Act request case number.

SAFEGUARDS:

Paper records are maintained in security containers with access only to officials based on requirements of assigned duties. Computer databases are password protected and accessed by individuals with a common access card (CAC) who have a need-to-know.

RETENTION AND DISPOSAL:

Paper records that are granted are destroyed two years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, or do not state a willingness to pay fees, and records which are appealed or litigated are destroyed six years after final action.

Electronic records are deleted when no longer needed to support Directorate business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Washington Headquarters Services records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

DoD Education Activity records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

TRICARE Management Activity records: TRICARE Management

Activity, Freedom of Information Act Officer, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to:

For Washington Headquarters Services records: Chief, Freedom of Information Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Associate Director For Financial & Business Operations, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

For TRICARE Management Activity records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests should include the requester's name, mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to:

For Washington Headquarters Services records: Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, Washington Headquarters, 1155 Defense Pentagon, Washington, DC 20301–1155.

For DoD Education Activity records: Department of Defense Education Activity, Freedom of Information Act Requester Service Center, Executive Services Office, Financial & Business Operations Directorate, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

Note: For Department of Defense Education Activity records, a non-custodial parent or legal guardian requesting records pertaining to his or her minor child or ward must also provide evidence of that relationship. For example, such parent or legal guardian may provide a copy of a divorce decree or a child custody or guardianship order that includes the child's name.

For TRICARE Management Activity records: TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests for information should be in writing, signed, and provide evidence of the requester's identity, such as a copy of a photo ID or passport or similar document bearing the requester's signature. Requests must contain the requester's name, mailing address, Freedom of Information Act case number, name and number of this system of records notice and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals who submit initial requests and administrative appeals pursuant to the Freedom of Information Act; the agency records searched in the process of responding to such requests and appeals; Department of Defense personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the Department of Defense requests concerning Department of Defense records or that have consulted with the Department of Defense regarding the handling of particular requests; submitters of records; and information from those that have provided assistance to the Department of Defense in making Freedom of Information Act access determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Freedom of Information Act action, exempt materials from other systems of records may, in turn, become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this Freedom of Information Act case record, Washington Headquarters Services, the DoD Education Activity, and the TRICARE Management Activity hereby claim the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2010–30716 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 272. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 272 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* December 1, 2010.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 271. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 272 are updated rates for American Samoa.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA							
[OTHER]							
	01/01 - 12/31	100		71		171	1/1/2009
ADAK							
	01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]							
	05/01 - 09/15	181		97		278	4/1/2007
	09/16 - 04/30	99		89		188	4/1/2007
BARROW							
	01/01 - 12/31	159		95		254	10/1/2002
BETHEL							
	01/01 - 12/31	139		87		226	1/1/2009
BETTLES							
	01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB							
	01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT							
	01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER							
	05/01 - 09/30	125		84		209	1/1/2009
	10/01 - 04/30	95		81		176	1/1/2009
CORDOVA							
	01/01 - 12/31	95		77		172	3/1/2010
CRAIG							
	04/01 - 09/30	236		84		320	3/1/2010
	10/01 - 03/31	151		76		227	3/1/2010
DELTA JUNCTION							
	01/01 - 12/31	135		80		215	7/1/2008
DENALI NATIONAL PARK							
	06/01 - 08/31	135		80		215	3/1/2010
	09/01 - 05/31	90		74		164	3/1/2010

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DILLINGHAM						
04/15 - 10/15	185		83		268	1/1/2009
10/16 - 04/14	169		82		251	1/1/2009
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		86		207	1/1/2009
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
05/01 - 09/15	175		88		263	2/1/2009
09/16 - 04/30	75		79		154	2/1/2009
ELFIN COVE						
01/01 - 12/31	200		45		245	8/1/2010
ELMENDORF AFB						
05/01 - 09/15	181		97		278	4/1/2007
09/16 - 04/30	99		89		188	4/1/2007
FAIRBANKS						
05/01 - 09/15	175		88		263	2/1/2009
09/16 - 04/30	75		79		154	2/1/2009
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
01/01 - 12/31	135		80		215	7/1/2008
FT. RICHARDSON						
09/16 - 04/30	99		89		188	4/1/2007
05/01 - 09/15	181		97		278	4/1/2007
FT. WAINWRIGHT						
05/01 - 09/15	175		88		263	2/1/2009
09/16 - 04/30	75		79		154	2/1/2009
GLENNALLEN						
05/01 - 09/30	125		84		209	1/1/2009
10/01 - 04/30	95		81		176	1/1/2009
HAINES						
01/01 - 12/31	109		75		184	1/1/2009
HEALY						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/01	- 05/31	90		74		164	3/1/2010
06/01	- 08/31	135		80		215	3/1/2010
HOMER							
05/15	- 09/15	167		85		252	1/1/2009
09/16	- 05/14	79		78		157	1/1/2009
JUNEAU							
05/01	- 09/30	149		85		234	1/1/2009
10/01	- 04/30	109		80		189	1/1/2009
KAKTOVIK							
01/01	- 12/31	165		86		251	10/1/2002
KAVIK CAMP							
01/01	- 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA							
05/01	- 08/31	159		90		249	3/1/2010
09/01	- 04/30	79		82		161	3/1/2010
KENNICOTT							
01/01	- 12/31	259		94		353	1/1/2009
KETCHIKAN							
05/01	- 09/30	140		67		207	3/1/2010
10/01	- 04/30	99		63		162	3/1/2010
KING SALMON							
05/01	- 10/01	225		91		316	10/1/2002
10/02	- 04/30	125		81		206	10/1/2002
KLAWOCK							
10/01	- 03/31	151		76		227	3/1/2010
04/01	- 09/30	236		84		320	3/1/2010
KODIAK							
10/01	- 04/30	99		76		175	3/1/2010
05/01	- 09/30	141		80		221	3/1/2010
KOTZEBUE							
01/01	- 12/31	189		93		282	3/1/2010
KULIS AGS							
05/01	- 09/15	181		97		278	4/1/2007
09/16	- 04/30	99		89		188	4/1/2007

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
MCCARTHY						
01/01 - 12/31	259		94		353	1/1/2009
MCGRATH						
01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME						
09/16 - 04/30	75		79		154	2/1/2009
05/01 - 09/15	175		88		263	2/1/2009
NOME						
01/01 - 12/31	150		97		247	3/1/2010
NUIQSUT						
01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG						
01/01 - 12/31	100		71		171	7/1/2008
PORT ALEXANDER						
01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/1/2002
SELDOVIA						
05/15 - 09/15	167		85		252	1/1/2009
09/16 - 05/14	79		78		157	1/1/2009
SEWARD						
10/01 - 04/30	99		81		180	3/1/2010
05/01 - 09/30	174		89		263	3/1/2010
SITKA-MT. EDGECUMBE						
10/01 - 04/30	99		73		172	3/1/2010
05/01 - 09/30	119		75		194	3/1/2010
SKAGWAY						
05/01 - 09/30	140		67		207	3/1/2010
10/01 - 04/30	99		63		162	3/1/2010
SLANA						
05/01 - 09/30	139		55		194	2/1/2005
10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE						
05/01 - 09/30	141		80		221	3/1/2010

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01	- 04/30	99		76		175	3/1/2010
ST. GEORGE							
01/01	- 12/31	129		55		184	6/1/2004
TALKEETNA							
01/01	- 12/31	100		89		189	10/1/2002
TANANA							
01/01	- 12/31	150		97		247	3/1/2010
TOK							
05/01	- 09/30	129		76		205	3/1/2010
10/01	- 04/30	99		73		172	3/1/2010
UMIAT							
01/01	- 12/31	350		35		385	10/1/2006
VALDEZ							
05/01	- 09/30	179		91		270	3/1/2010
10/01	- 04/30	119		85		204	3/1/2010
WASILLA							
10/01	- 04/30	96		83		179	1/1/2009
05/01	- 09/30	151		89		240	1/1/2009
WRANGELL							
05/01	- 09/30	140		67		207	3/1/2010
10/01	- 04/30	99		63		162	3/1/2010
YAKUTAT							
01/01	- 12/31	105		76		181	1/1/2009
AMERICAN SAMOA							
AMERICAN SAMOA							
01/01	- 12/31	139		122		261	12/1/2010
GUAM							
GUAM (INCL ALL MIL INSTAL)							
01/01	- 12/31	159		94		253	7/1/2010
HAWAII							
[OTHER]							
01/01	- 12/31	121		104		225	5/1/2010
CAMP H M SMITH							
01/01	- 12/31	177		106		283	5/1/2008

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		106		283	5/1/2008
FT. DERUSSEY						
01/01 - 12/31	177		106		283	5/1/2008
FT. SHAFTER						
01/01 - 12/31	177		106		283	5/1/2008
HICKAM AFB						
01/01 - 12/31	177		106		283	5/1/2008
HONOLULU						
01/01 - 12/31	177		106		283	5/1/2008
ISLE OF HAWAII: HILO						
01/01 - 12/31	121		104		225	5/1/2010
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		108		288	5/1/2009
ISLE OF KAUAI						
01/01 - 12/31	198		115		313	5/1/2009
ISLE OF MAUI						
01/01 - 12/31	169		104		273	5/1/2009
ISLE OF OAHU						
01/01 - 12/31	177		106		283	5/1/2008
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	198		115		313	5/1/2009
KILAUEA MILITARY CAMP						
01/01 - 12/31	121		104		225	5/1/2010
LANAI						
01/01 - 12/31	229		124		353	5/1/2009
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		106		283	5/1/2008
MCB HAWAII						
01/01 - 12/31	177		106		283	5/1/2008
MOLOKAI						
01/01 - 12/31	135		91		226	5/1/2010
NAS BARBERS POINT						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	177		106		283	5/1/2008
PEARL HARBOR							
	01/01 - 12/31	177		106		283	5/1/2008
SCHOFIELD BARRACKS							
	01/01 - 12/31	177		106		283	5/1/2008
WHEELER ARMY AIRFIELD							
	01/01 - 12/31	177		106		283	5/1/2008
MIDWAY ISLANDS							
MIDWAY ISLANDS							
	01/01 - 12/31	125		49		174	5/1/2010
NORTHERN MARIANA ISLANDS							
[OTHER]							
	01/01 - 12/31	55		72		127	10/1/2002
ROTA							
	01/01 - 12/31	129		102		231	7/1/2010
SAIPAN							
	01/01 - 12/31	121		98		219	6/1/2007
TINIAN							
	01/01 - 12/31	85		71		156	7/1/2010
PUERTO RICO							
[OTHER]							
	01/01 - 12/31	62		57		119	10/1/2002
AGUADILLA							
	01/01 - 12/31	124		113		237	9/1/2010
BAYAMON							
	01/01 - 12/31	195		128		323	9/1/2010
CAROLINA							
	01/01 - 12/31	195		128		323	9/1/2010
CEIBA							
	01/01 - 12/31	210		141		351	11/1/2010
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]							
	01/01 - 12/31	210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	195		128		323	9/1/2010
HUMACAO							
	01/01 - 12/31	210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS							
	01/01 - 12/31	195		128		323	9/1/2010
LUQUILLO							
	01/01 - 12/31	210		141		351	11/1/2010
MAYAGUEZ							
	01/01 - 12/31	109		112		221	9/1/2010
PONCE							
	01/01 - 12/31	149		87		236	9/1/2010
SABANA SECA [INCL ALL MILITARY]							
	01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA							
	01/01 - 12/31	195		128		323	9/1/2010
VIRGIN ISLANDS (U.S.)							
ST. CROIX							
	04/15 - 12/14	135		92		227	5/1/2006
	12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN							
	04/15 - 12/14	163		98		261	5/1/2006
	12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS							
	04/15 - 12/14	240		105		345	5/1/2006
	12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND							
WAKE ISLAND							
	01/01 - 12/31	152		16		168	5/1/2009

[FR Doc. 2010–30732 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Air Force

Environmental Impact Statement (EIS) for Construction and Operation of a Panoramic Survey Telescope and Rapid Response System (Pan-STARRS) at the Summit of Mauna Kea, HI

ACTION: Cancellation of Pan-STARRS EIS.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulation (CFR) Parts 1500–1508), and U.S. Air Force (USAF) policy and procedures (32 CFR part 989), the USAF issued a notice on 10 Jan 07 advising the public of its intent to prepare an EIS evaluating potential environmental impacts associated with construction and operation of the proposed Panoramic Survey Telescope and Rapid Response System (Pan-STARRS) by the University of Hawaii (UH) Institute for Astronomy (IfA). Pan-STARRS was to be a USAF-funded, UH IfA research program to discover, characterize and track Near-Earth Objects (NEOs), primarily asteroids and comets, whose trajectories pass close enough to Earth that they may pose a danger of collision.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms. Connie Rankin, Office of Public Affairs, 377 ABW/PA, 3550 Aberdeen Ave., SE., Kirtland AFB, NM 87117–5776 (Phone: 505–846–4321; e-mail *Connie.Rankin@kirtland.af.mil*).

Bao-Anh Trinh,

GS–14, DAF, Air Force Federal Register Liaison Officer.

[FR Doc. 2010–30760 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Air Force and U.S. Army; Notice of Intent To Prepare an Environmental Impact Statement for the Modernization and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex in Alaska

ACTION: Notice of Intent.

SUMMARY: The U.S. Air Force and U.S. Army, on behalf of Alaskan Command (ALCOM), are issuing this notice to advise the public of their intent to prepare an environmental impact statement (EIS) evaluating potential environmental impacts associated with modernizing and enhancing current military ground and air training assets in Alaska.

This notice is published pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code [U.S.C] 4321, *et seq.*); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) 1500–1508); Executive Orders 11514 and 11991; the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); the Air Force Environmental Impact Analysis Process (32 CFR 989); and the "Environmental Analysis of Army Actions" (32 CFR 651). This Notice of Intent describes the Air Force's and Army's scoping process and identifies ALCOM's point of contact.

In accordance with the U.S. Department of Defense (DoD) Directive 1322.18, *Military Training,* and Commander U.S. Pacific Command (PACOM), Joint Training Program of Excellence, ALCOM as DoD's regional joint headquarters in Alaska, has coordinated with the Services to develop a joint strategy to identify joint training opportunities in Alaska, maximize the utilization of training resources, and improve joint training. The JPARC Modernization and Enhancement EIS will evaluate the elements of this strategy which are reasonably foreseeable.

At present, the Joint Pacific Alaska Range Complex (JPARC) consists of all land, air, and sea training areas used by the Army, Navy, and Air Force in Alaska. The military uses the JPARC to conduct testing, unit-level training, and to support various joint exercises and mission rehearsals. The JPARC was originally developed to support cold war weapons, tactics, and techniques. Its current configuration cannot fully meet the training requirement for forces and exercises located in Alaska. The proposed JPARC enhancements would enable realistic, joint training and testing to support emerging technologies, respond to recent battlefield experiences, and train with tactics and new weapons systems to meet combat and national security needs. JPARC enhancements would enable the Services to train realistically and jointly so military personnel could succeed in their mutually supportive combat roles when exposed to situations faced in actual combat.

The proposal would modernize existing military training and testing capabilities located in the interior of Alaska through expanding and/or establishing new Military Operations Areas, restricted airspace, airspace corridors, ground maneuver training areas, and training complexes to provide adequate airspace and controlled-access land to test and train under realistic and varied conditions. The EIS will analyze the environmental effects of the proposed changes and their alternatives.

All of the actions proposed in this EIS are independent of each other and have stand-alone value for improving training operations. While full implementation of all the proposed actions is desired and would result in the greatest training benefit for aircrew and ground troop training, each of the proposals, if implemented alone, would have a positive effect on the use and/or management of JPARC. Depending on decisions made and the availability of funding, it is possible that some of the actions being proposed could be implemented soon after a Record of Decision (ROD) is issued, some actions could be implemented quite some time after the ROD is issued, some actions may be deferred until such time as they are ripe for decision, and some proposed actions may not be implemented. The following projects are those currently proposed to be addressed in the *JPARC Modernization and Enhancement EIS.*

Fox 3 Military Operations Area (MOA) Expansion and New Paxon MOA: The Air Force and Army propose to expand the Fox 3 MOA and establish a new, adjacent Paxon MOA to provide the vertical and horizontal airspace structure needed to better accommodate low-altitude threat and multiple-axis mission activities during JPARC training exercises. The Air Force and Army intend to consider the following alternatives, as well as a No Action Alternative: Alternative A includes the proposed expanded Fox 3 MOA and the proposed new Paxon MOA with both

the high- and low-altitude MOAs; Alternative B includes only the Fox 3 MOA expansion (as in Alternative A) without the new Paxon MOA; Alternative C includes the Fox 3 MOA expansion without the low-altitude MOA; Alternative D proposes keeping the Fox 3 MOA boundaries the same as they currently exist, but separating the MOA into four subdivided sectors, as well as high- and low-altitude MOAs. The low-altitude MOA would extend from 500 feet above ground level (AGL) up to, but not including, 5,000 feet AGL. The high-altitude MOA elevation

Realistic Live Ordnance Delivery: As the range and lethality of modern weapons increase, so do the amounts of training area and airspace required to safely and effectively train with these weapons. The current ranges and restricted airspace of the JPARC are not capable of supporting realistic training with modern and emerging weapons. The Army and Air Force propose to establish a realistic air and ground training environment that would accommodate live ordnance delivery of modern and emerging weapons by considering the following alternatives, as well as a No Action Alternative: Alternative A proposes the use of existing targets in the Oklahoma Impact Area within Restricted Area 2202 (R–2202) with the expansion of this restricted airspace to the west to encompass the airspace and underlying lands; Alternative B proposes that live ordnance delivery make use of existing targets at the Oklahoma and Blair Lakes Impact Areas with new restricted airspace established that links R–2211 and R–2202. Based on the ceiling altitude of R–2211 as flight level (FL) 310 and the upper altitude of R–2202 being FL310, the proposed altitude for the restricted airspace linking these two restricted areas would also be FL310. Higher altitudes may be required for some live-fire ordnance profiles; Alternative C proposes weapons corridors through the Eielson Military Operations Area and overlying air traffic control assigned airspace that would provide two protective pathways for live ordnance use within the Oklahoma Impact Area. These corridors would be approximately 10 miles in width and extend from FL200 to FL310, as needed, to accommodate the delivery altitudes of the ordnance types being delivered.

Joint Combined Arms Live Fire (JCALF): Current tactics and techniques established in the Iraq and Afghanistan theaters of operation require the Army to regularly integrate attack aviation into collective and unit-level training. There are currently no facilities available in the JPARC which are capable of supporting this type of training. The Army proposes to establish restricted airspace to support JCALF training over the Battle Area Complex (BAX) located in the Donnelly Training Area (DTA), near Delta Junction, and the Digital Multipurpose Training Range located in the Yukon Training Area (YTA). The Army and Air Force intend to consider the following alternative, as well as a No Action Alternative, or other reasonable alternative developed during scoping: Alternative A proposes to establish new restricted airspace over the BAX in the DTA to support controlled firing areas and new restricted airspace located within YTA. This restricted airspace would provide protective areas for the hazardous activities and weapons surface danger zones of sufficient size for the types of ordnance used.

Night Joint Training: Combat situations during the hours of limited visibility require using advanced night vision technology. Training with this equipment can only be conducted at night. The Army and Air Force intend to consider the following alternatives, as well as a No Action Alternative: Alternative A proposes to extend the special use airspace hours to accommodate night training for major flying exercises (MFE) during March and October. The hours are currently set to cease training activities by 10 p.m., with landing by 11 p.m., local time; Alternative B proposes to extend the JPARC operating hours to allow tactical flight operations until midnight and landing by 1 a.m., local time, during March and October. This would allow night training during these months from a minimum of 1.5 hours to a maximum of 2.5 hours for each exercise; Alternative C proposes to extend the JPARC operating hours to allow tactical flight operations until midnight and landing by 1 a.m., local time, during all months of the year and for all training purposes, not just for MFEs, as is the current situation.

Remotely Piloted Aircraft (RPA)/ Unmanned Aerial Vehicle (UAV) Access: RPA/UAVs conduct reconnaissance and surveillance activities; RPA/UAV access throughout the JPARC ranges and airspace is critical to enhance JPARC training and exercises. The following RPA/UAV corridors have been developed as individual, standalone proposed actions and alternatives: Eielson Air Force Base (AFB) to Restricted Area 2211 (R–2211); Eielson AFB Class D airspace to R–2205; Allen Field to R–2202; R–2202 to R–2211; R–2205 to R–2202; Fort Wainwright to R–2211; and Fort Wainwright to R–2205. The Air Force and Army intend to consider the following alternatives, as well as a No Action Alternative: Alternative A would establish new restricted airspace for each RPA/UAV corridor identified above; Alternative B would establish restricted airspace via a Certificate of Authorization, or other suitable airspace designated by the Federal Aviation Administration for each RPA/UAV corridor identified above.

Enhanced Access to Existing Maneuver Space: Services currently lack year-round accessibility in the Tanana Flats, Donnelly, and Yukon Training Areas. The Army and Air Force intend to consider the following alternatives, as well as a No Action Alternative: Alternative A follows the proposed railroad alignment 11 miles and crosses the Tanana Flats along an existing winter-access trail to higher ground around Blair Lakes; Alternative B follows the proposed railroad alignment 8 miles before crossing the Tanana Flats toward Hill 1406. The route traverses the eastern slopes of Hill 1406, then a broad terrace southeast toward Blair Lakes, crossing Dry Creek near Blair Lakes; Alternative C follows existing trail systems southwest across the Tanana Flats toward Hill 1406, avoiding open areas as much as possible. From Hill 1406, two possible routes to Blair Lakes are being considered: The first traverses the eastern slopes of Hill 1406 and then a broad terrace southeast toward Blair Lakes, crossing Dry Creek near Blair Lakes; the second route remains on the flats north of Hill 1406, crossing Dry Creek where the creek enters the flats, then running up the Dry Creek Valley to the higher ground around Blair Lakes; Alternative D is similar to Alternative C, except it takes a more direct route from the Tanana River toward Hill 1406. From Hill 1406, two routes to Blair Lakes are being considered: The first traverses the eastern slopes of Hill 1406, then a broad terrace southeast toward Blair Lakes, crossing Dry Creek near Blair Lakes; the second route remains on the flats north of Hill 1406, crossing Dry Creek, and then running up the Dry Creek Valley to higher ground around Blair Lakes.

Joint Air-Ground Integration Complex (JAGIC): The Army requires a facility to train and test air and ground combat units on skills necessary to detect, identify, and effectively engage targets while directing Attack Aviation as in actual combat. A modern facility designed to support this type of training does not exist in the JPARC. The Army proposes to develop the JAGIC to provide this capability. The Army and Air Force intend to consider the following alternatives, as well as a No Action Alternative: Alternative A

proposes to locate the JAGIC in the central area of Donnelly Training Area-West, proximate to the western boundary of the Oklahoma Impact Area; Alternative B proposes to locate the JAGIC in the Stuart Creek Impact Area within the Yukon Training Area; Alternative C proposes to locate the JAGIC in the Blair Lakes Impact Area near the southern boundary of the Tanana Flats Training Area under the existing Restricted Area 2211 (R–2211).

Intermediate Staging Bases (ISBs): Currently, Soldiers and airmen spend up to 6 hours traveling to and from training sites within the JPARC. This travel reduces available training time and increases risks of traffic accidents. The Army proposes to locate and construct a 1,000- Soldier ISB near the existing Battle Area Complex (BAX), along with three 200- to 500-Soldier ISBs at Yukon Training Area (YTA), Donnelly Training Area-West (DTA-West), and Salcha to reduce travel time, increase safety, and increase available training time. The Army and Air Force intend to consider the following alternatives, as well as a No Action Alternative: Alternative A proposes to provide a permanent 1,000-Soldier ISB near existing BAX, along with three permanent 200- to 500-Soldier ISBs at YTA, DTA-West, and Salcha. The facility is intended for joint use. ISBs are proposed at key points along the planned rail corridor close to the planned bridge crossings; Alternative B proposes to use existing temporary "relocatable" ISB facilities over the next 7 years, and then replace them with permanent facilities.

Missile Live Fire for AIM–9X and AIM–120: The AIM–9X and AIM–120 missile systems are the main air-to-air armaments for the F–22 Raptor and F–15 Eagle. For effective training to be conducted with these systems, live training shots need to be executed as part of both individual pilot training and joint training exercises with other air and ground units. The Air Force and Army intend to consider the following alternative, as well as a No Action Alternative, or other reasonable alternative developed during scoping: Alternative A proposes to consider the existing Temporary Maritime Activities Area (300 nautical miles [NM] long by 150 NM wide; 0 feet above ground level [AGL]—flight level (FL) 600; includes subsurface operating areas), and Warning Area 612 (WA–612) (0 feet AGL–FL290) in the Gulf of Alaska for the missile live fire delivery of the AIM–9X and AIM–120 missiles by Air Force F–22 fighter aircraft.

Joint Precision Airdrop System (JPADS) Drop Zones: JPADS is a GPS [global positioning system]-guided precision airdrop system designed to deliver supplies and equipment to ground forces. JPADS is not currently used within the JPARC. Alaska-based airmen with the requirement to train on JPADS must currently travel to Yuma Proving Grounds in Arizona to conduct this training. The Army and Air Force propose to establish JPADS drop zones as part of JPARC training exercises. The Army and Air Force intend to consider the following alternatives, as well as a No Action Alternative: Alternative A proposes conducting JPADS operations at a reduced altitude sufficient to ensure the airdrop land within Restricted Area 2205 (R–2205) in the Yukon Training Area; Alternative B proposes conducting JPADS operations at a reduced altitude sufficient to ensure the airdrop land within in the Donnelly Training Area Oklahoma Impact Area. (The key distinction between Alternatives A and B is that R–2205 currently has more time and space available to accommodate JPADS drop zone training exercises.) The EIS will address environmental consequences to airspace, noise, safety, biological resources, socioeconomics, transportation, cultural resources, water resources, wetlands, air quality, land use, hazardous materials, recreation and visual resources, environmental justice and risks to children, subsistence, and cumulative impacts. Public and agency scoping may identify other environmental resources for consideration in the EIS.

The Army and Air Force will invite the Bureau of Land Management, Environmental Protection Agency, Federal Aviation Administration, National Marine Fisheries Service, National Park Service, and U.S. Fish and Wildlife Service to be cooperating agencies in preparation of this EIS.

ALCOM will coordinate government-to-government consultation with Federally recognized Tribes, following DoD policy.

Scoping Meetings: The Army and Air Force, with the support of ALCOM, will conduct public scoping meetings in communities likely to be affected by the proposed action to solicit public and agency input. The purpose of scoping is to obtain public, Alaska Native, and government input on the proposed action and alternatives, as well as to gain a better understanding of the potential issues and concerns related to this proposal. The schedule and locations of the scoping meetings are provided below:

Thursday, January 13, 2011: 6:30–8:30 p.m., Millennium Hotel, 4800 Spenard Road, Anchorage, Alaska.

Tuesday, January 18, 2011: 6:30–8:30 p.m., Caribou Hotel, Mile 186.5 Grand Highway, Glenallen, Alaska.

Wednesday, January 19, 2011: 6:30–8:30 p.m., Alaska Steakhouse and Hotel, 1420 Alaska Highway, Delta Junction, Alaska.

Thursday, January 20, 2011: 12–2 p.m. and 4–8 p.m., Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska.

Monday, January 24, 2011: 6:30–8:30 p.m., Motel Nord Haven, 249 George Parks Highway, Healy, Alaska.

Tuesday, January 25, 2011: 6:30–8:30 p.m., Swiss Alaska Inn, 22056 South F Street, Talkeetna, Alaska.

Wednesday, January 26, 2011: 6:30–8:30 p.m., Menard Memorial Sports Center, 1001 S. Mack Drive, Wasilla, Alaska.

Federal, State, and local agencies and interested groups, Alaska Native organizations, and individual persons are invited to attend the scoping open house meetings. All are encouraged to provide comments on the proposed actions either at the scoping meetings, by mail, or electronically, postmarked or electronically submitted no later than February 4, 2011, to ensure consideration in the draft EIS. All comments received during this scoping period will be considered in the preparation of the draft EIS.

Point of Contact: Please direct any written comments or requests for information to ALCOM Public Affairs, 9480 Pease Avenue, Suite 120, JBER, AK 99506, Phone: 907–552–2341, Fax: 907–552–5411 or submit them electronically at *http://www.jparceis.com.* You may also request handicap assistance or translation services for the public scoping meetings in advance through the ALCOM Public Affairs Office.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–30759 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Waiver of 10 U.S.C. 2534 for Certain Defense Items Produced in the United Kingdom

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of waiver of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom.

SUMMARY: The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation of 10 U.S.C. 2534 for certain defense items produced in the United Kingdom (UK). 10 U.S.C. 2534 limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of enumerated items from sources in the UK, unless otherwise restricted by statute.

DATES: *Effective Date:* This waiver is effective for one year, beginning December 23, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Grover, OUSD (AT&L), Office of the Director of Defense Procurement and Acquisition Policy, Contract Policy and International Contracting, Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 697–9352.

SUPPLEMENTARY INFORMATION:

Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to exercise the waiver authority in subsection (d), on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation "would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items" and if he determines that "that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country." The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition, Technology, and Logistics).

DoD has had a Reciprocal Defense Procurement Memorandum of Understanding (MOU) with the UK since 1975, most recently renewed on December 16, 2004.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation. This waiver applies to procurements under solicitations issued during the period from December 23, 2010 to December 22, 2011. Similar waivers have been granted since 1998, most recently in 2009 (74 FR 65763) on December 11, 2009.

List of Items To Which This Waiver Applies

1. Air circuit breakers.

2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.

3. Gyrocompasses.

4. Electronic navigation chart systems.

5. Steering controls.

6. Pumps.

7. Propulsion and machinery control systems.

8. Totally enclosed lifeboats.

Clare Zebrowski,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–30671 Filed 12–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent to Prepare a Draft Environmental Impact Statement (EIS), Initiate the Public Scoping Period and Host Public Scoping Meetings for the Great Lakes and Mississippi River Interbasin Study ("GLMRIS"); Correction, Clarification, Extension of the Public Scoping Period and Announcement of Additional Public Scoping Meeting Locations

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

ACTION: Notice.

SUMMARY: Reference the Notice of Intent published in the **Federal Register** on Tuesday, November 16, 2010, Volume 75, number 220, pages 69983–5. This notice contains corrections and clarifications to this November 16, 2010 notice, extends the public comment period and identifies additional locations for the GLMRIS public scoping meetings. The corrections are typographical errors found in the "*Scoping and Involvement*" section of the November 16, 2010 notice (75 FR 69983). Among the clarifications is information related to the timeframe of on-line registration for those wanting to make an oral comment at a public meeting, as well as the benefit of registering on-line. The registration process is found in the "*Scoping and Involvement*" section of the November 16, 2010 notice (75 FR 69983). For convenience, the **SUPPLEMENTARY INFORMATION** section of the November 16, 2010 notice (75 FR 69983) has been reprinted with corrections, clarifications, and new text announcing the locations where USACE will host scoping meetings and the extension of the public scoping period.

DATES: The public scoping period to be held pursuant the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.* (NEPA) has been extended from February 28, 2011 to March 31, 2011. The first NEPA public scoping meeting for GLMRIS is scheduled for December 15, 2010 in Chicago, Illinois. The dates of the remaining public meetings have not been finalized. Once final, these dates will be posted in a subsequent **Federal Register** notice. Please refer to the "*Scoping and Public Involvement*" section below for information regarding the public scoping meetings and instructions on how to submit public comments.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about GLMRIS, please contact USACE, Chicago District, Project Manager, Mr. David Wethington, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, or *by e-mail: david.m.wethington@usace.army.mil.*

For media inquiries, please contact the USACE, Chicago District, Public Affairs Officer, Ms. Lynne Whelan, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, *by phone:* 312.846.5330 or *by e-mail: lynne.e.whelan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background.* An aquatic nuisance species (ANS) is a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters. *See* 16 U.S.C. 4702(1) (2010).

As a result of international commerce, travel and local practices, ANS have been introduced throughout the Mississippi River and Great Lakes basins. These two basins are connected by man-made channels that, in the past, exhibited poor water quality, which was an impediment to the transfer of organisms between the basins. Now that water quality has improved, these canals allow the transfer of both indigenous and nonindigenous invasive species.

USACE, in consultation with other Federal agencies, Native American Tribes, State agencies, local governments and non-governmental organizations, is conducting this feasibility study. For GLMRIS, USACE will explore options and technologies, collectively known as ANS controls, that could be applied to prevent ANS transfer between the basins through aquatic pathways. Potential ANS controls may include, but are not limited to, hydrologic separation of the basins, waterway modifications, selective barriers, *etc.*

USACE will conduct a comprehensive analysis of ANS controls and will analyze the effects an ANS control or combination of ANS controls may have on current uses of: (1) The Chicago Area Waterway System (CAWS), the only known continuous aquatic pathway between the Great Lakes and Mississippi River basins; and (2) other aquatic pathways between these basins. For the CAWS, current waterway uses include, but are not limited to: Flood risk management; commercial and recreational navigation; recreation; water supply; hydropower; and conveyance of effluent from wastewater treatment plants and other industries. Additionally, this study will identify mitigation measures or alternative facilities necessary to offset and address impacted waterway uses and current significant natural resources.

GLMRIS will be conducted in accordance with NEPA and with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies,* Water Resources Council, March 10, 1983.

2. *Scoping and Public Involvement.* USACE will accept comments related to GLMRIS until March 31, 2011. *Note,* USACE will only consider comments that disclose the first name, last name and zip code of the commenter.

All forms of comments received during the scoping period will be weighted equally. Using input obtained during the scoping period, USACE will refine the scope of GLMRIS to focus on significant issues, as well as eliminate issues that are not significant from further detailed study.

Comments may be submitted in the following ways:

- *GLMRIS project Web site:* Use the Web comment function found at *http://glmris.anl.gov*;
- *NEPA Scoping Meeting:* USACE is hosting scoping meetings and asks those who want to make oral comments to register on the GLMRIS project Web site at *http://glmris.anl.gov*. Those registering to make oral comments through the project Web site may be given a preference over those that register to make oral comments at the meeting. The on-line registration for each individual meeting will close (1) day prior to that meeting date. Each individual wishing to make oral comments shall be given three (3) minutes, and a stenographer will document oral comments;
- *Mail:* Mail written comments to GLMRIS Scoping, 111 N. Canal, Suite 600, Chicago, IL 60606. Comments must be postmarked by March 31, 2011; and
- *Hand Delivery:* Comments may be hand delivered to the Chicago District, USACE office located at 111 N. Canal St., Suite 600, Chicago, IL 60606 between 8 a.m. and 4:30 p.m. Comments must be received by March 31, 2011.

At the scoping meetings, USACE will provide informational materials about the study's authorities and USACE study process. The meetings will begin with a brief presentation regarding the study followed by an oral comment period. During the meeting, USACE will also collect written comments on comment cards and computer terminals.

The first public scoping meeting is scheduled from 12 p.m. to 7 p.m. on Wednesday, December 15, 2010 at the Gleacher Center, located at 450 North Cityfront Plaza Drive, Chicago, IL 60611. Please see the GLMRIS project Web site at *http://glmris.anl.gov* for more information regarding the meeting and if you wish to make an oral comment.

In addition to Chicago, Illinois, USACE will host NEPA scoping meetings in the following metropolitan areas: Buffalo, New York; Cleveland, Ohio; St. Paul, Minnesota; Green Bay, Wisconsin; Traverse City, Michigan; Cincinnati, Ohio; Ann Arbor, Michigan; St. Louis, Missouri; Vicksburg, Mississippi. Specific meeting places and dates will be announced in a subsequent **Federal Register** notice, the GLMRIS project Web site, electronic media and news releases. For more information on NEPA scoping and study information, please visit the GLMRIS project Web site at *http://glmris.anl.gov*.

Comments received during the scoping period will be posted on the GLMRIS project Web site and will become a part of the EIS. You may indicate that you do not wish to have your name or other personal information made available on the Web site. However, USACE cannot guarantee that information withheld from the Web site will be maintained as confidential. Requests for disclosure of collected information will be handled through the Freedom of Information Act. Comments and information, including the identity of the submitter, may be disclosed, reproduced, and distributed. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you require assistance under the Americans with Disabilities Act, please contact Ms. Lynne Whelan via e-mail at *lynne.e.whelan@usace.army.mil* or phone at (312) 846–5330 at least seven (7) working days prior to the meeting to request arrangements.

3. *Significant Issues.* Issues associated with the proposed study are likely to include, but will not be limited to: Significant natural resources such as ecosystems and threatened and endangered species, commercial and recreational fisheries; current recreational uses of the lakes and waterways; ANS effects on water users; effects of potential ANS controls on current waterway uses such as flood risk management, commercial and recreational navigation, recreation, water supply, hydropower and conveyance of effluent from wastewater treatment plants and other industries; and statutory and legal responsibilities relative to the lakes and waterways.

4. *Availability of the Draft Environmental Impact Statement.* Availability of the Draft EIS is contingent upon sufficient allocation of funding for the study. Draft EIS availability will be announced to the public in the **Federal Register** in compliance with 40 CFR 1506.9 and 1506.10.

5. *Authority.* This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061, Public Law 110–114, 121 STAT. 1121, and the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.,* as amended.

Dated: December 1, 2010.

Susanne J. Davis,

Chief Planning Branch, Chicago District, Corps of Engineers.

[FR Doc. 2010–30820 Filed 12–7–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Programs

ACTION: Notice inviting applications for designation as an eligible institution.

Strengthening Institutions Program (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI), Native American Serving Nontribal Institutions (NASNTI), Developing Hispanic-Serving Institutions (HSI), Hispanic-Serving Institutions (STEM and ARTICULATION), Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA), and Predominantly Black Institutions (PBI) Programs for Fiscal Year (FY) 2011.

Purpose of Programs: The SIP, TCCU, ANNH, AANAPISI, NASNTI, and PBI Programs are authorized under Title III, Part A, of the Higher Education Act of 1965, as amended (HEA). Under these programs, institutions of higher education (IHEs or institutions) are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, IHEs are eligible to apply for grants under Title V of the HEA if they meet specific statutory and regulatory requirements. The HSI, HSI (STEM and ARTICULATION), and PPOHA Programs are authorized under Title V, Parts A and B of the HEA. In addition, under Title III of the HEA, institutions applying for grants under the AANAPISI and NASNTI Programs must be eligible institutions as defined in section 312(b) of the HEA. Institutions applying for grants under the PBI Program must be eligible institutions as defined in section 318(b)(1) of the HEA.

An IHE that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS), and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS, and SSS Programs are authorized under Title IV of the HEA. The UISFL Program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III or Title V Programs.

Special Note: To qualify as an eligible institution under the Title III or Title V Programs, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average educational and general (E&G) expenditures for a specified base year. The most recent data available for E&G expenditures are for base year 2008–2009. In order to award FY 2011 grants in a timely manner, we will use the most recent data available. Therefore, we use E&G expenditure threshold data from the base year 2008–2009. In completing your eligibility application, please use E&G expenditure data from the base year 2008–2009.

If you are designated as an eligible institution and you do not receive a new award under the Title III or Title V Programs in FY 2011, your eligibility for the non-Federal cost-share waiver under the FSEOG, the FWS, the SSS, and the UISFL Programs is valid for five consecutive years. You will not need to reapply for eligibility until 2016, *unless* you wish to apply for a new Title III or Title V grant. All institutions interested in applying for a new FY 2011 Title III or Title V grant *or* requesting a waiver of the non-Federal cost share, must apply for eligibility designation in FY 2011. Under the HEA, any institution interested in applying for a grant under *any of these programs* must first be designated as an eligible institution.

The notice for applying for designation as an eligible institution for FY 2010 was reopened on August 13, 2010, 74 FR 64059, and applications were due on September 13, 2010. That reopening of the application period applied only to those institutions that intended to apply for new awards in the specified program competitions. All institutions intending to apply for funding in any of the other Title III or V competitions held in 2011 must apply for designation as an eligible institution in accordance with this announcement.

Eligible Applicants: To qualify as an eligible institution under the Title III or Title V Programs, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction.

The eligibility requirements for the Title III Programs are found in 34 CFR 607.2 through 607.5. The regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html.*

The eligibility requirements for the Title V, HSI Program are found in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

The requirements for the PPOHA Program are found in the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44055) (PPOHA NFP). Among the requirements established for the PPOHA Program in the PPOHA NFP are the use of the regulations in 34 CFR 606.2(a) and (b), and 606.3 through 606.5.

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a) and, for the PPOHA Program, *Requirement 1—Eligibility Criteria (Use of 34 CFR 606.2(a) and (b), 606.3 through 606.5)* in the PPOHA NFP, an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2008–2009 must be more than the median for its category of comparable institutions provided in the 2008–2009 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice.

For the PBI Program, see section 318(b)(2) of the HEA for the definition of "Enrollment of Needy Students."

Educational and General Expenditures per FTE Student: An institution should compare its 2008–2009 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the 2008–2009 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice. The institution meets this eligibility requirement if its average E&G expenditures for the 2008–2009 base year are less than the average for its category of comparable institutions.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2008–2009 and the relevant average E&G expenditures per FTE student for the base year 2008–2009 for the four categories of comparable institutions:

Type of Institution	2008–2009 Median Pell Grant Percentage	2008–2009 Average E&G Expenditures per FTE Student
2-year Public Institutions	25.85	$11,111
2-year Non-profit Private Institutions	35.81	23,266
4-year Public Institutions	24.82	27,597
4-year Non-profit Private Institutions	25.53	45,093

Waiver Information: IHEs that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to "low-income" students or families. The regulations at 34 CFR 606.3(c) and 607.3(c) define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Bureau of the Census.

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2008 ANNUAL LOW–INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, D.C., and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$15,600	$19,500	$17,940
2	21,000	26,250	24,150
3	26,400	33,000	30,360
4	31,800	39,750	36,570
5	37,200	46,500	42,780
6	42,600	53,250	48,990
7	48,000	60,000	55,200
8	53,400	66,750	61,410

Note: The 2008 annual low-income levels are being used because those are the amounts that apply to the family income reported by students enrolled for the fall 2008 semester. For family units with more than eight members, add the following amount for each additional family member: $5,400 for the contiguous 48 States, the District of Columbia and outlying jurisdictions; $6,750 for Alaska; and $6,210 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on January 23, 2008 (73 FR 3971–3972).

The information about "metropolitan statistical areas" referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999 Publication, Order Number PB99–501538, from the National Technical Information Service, Document Sales, 5301 Shawnee Road, Alexandria, VA 22312, telephone number: 1–800–553–6847. There is a charge for this publication.

Applications Available: December 8, 2010.

Deadline for Transmittal of Applications: January 31, 2011 for an applicant institution that wishes to be designated as eligible to apply for a FY 2011 new grant under the Title III or Title V Programs and February 28, 2011 for an applicant institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS, or UISFL Programs.

Electronic Submission of Applications

Applications for designation of eligibility must be submitted electronically using the following Web site: *https://opeweb.ed.gov/title3and5/.*

To enter the Web site, you must use your institution's unique 8-digit identifier, *i.e.,* your Office of Postsecondary Education Identification Number (OPE ID Number). Your business office or student financial aid office should have the OPE ID Number.

If not, contact the Department using the e-mail addresses of the contact persons listed in this notice under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**. You will find detailed instructions for completing the application form electronically under the "eligibility 2010" link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a/index.html* or *http://www.ed.gov/hsi.*

If your institution is unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wishes to request a waiver of one or both of these requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *https://opeweb.ed.gov/title3and5/.*

Exception to Electronic Submission Requirement: You may qualify for an exception to the electronic submission requirement and may submit your application in paper format if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site; *and*
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., room 6033, Washington, DC 20006–8513. Fax: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail (using the U.S. Postal Service or commercial carrier) the application, on or before the application deadline date, to the Department at the following address: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6033, Washington, DC 20006–8513.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., Room 6033, Washington, DC 20006–8513.

Hand delivered applications will be accepted daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for the Title III Programs in 34 CFR part 607, and for the HSI Program in 34 CFR part 606. (c) The notice of final requirements for the PPOHA Program, published in the **Federal Register** on July 27, 2010 (75 FR 44055).

Note: There are no program-specific regulations for the AANAPISI, NASNTI, and PBI Programs. Accordingly, we encourage each potential applicant to read the HEA, the authorizing statute, for program-specific requirements for the AANAPISI, NASNTI, and PBI Programs.

For Applications and Further Information Contact: Kelley Harris or Carnisia Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6033, Request for Eligibility Designation, Washington, DC 20006–8513.

You can contact these individuals at the following e-mail addresses or phone numbers:

Kelley.Harris@ed.gov, 202–219–7083.

Carnisia.Proctor@ed.gov, 202–502–7606.

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

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audio tape, or computer diskette) on request to one of the contact persons listed in this section.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1057–1059g, 1067q and 1101–1103g.

Dated: December 3, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–30817 Filed 12–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–41–000]

Dominion Transmission, Inc.; Notice of Application

December 1, 2010.

Take notice that on November 19, 2010, Dominion Transmission, Inc. (Dominion) 120 Tredegar Street,

Richmond, Virginia 23219, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to: (i) Construct a new compressor station in Wyoming County, New York totaling 10,800 horsepower; (ii) construct a new meter and regulating (M&R) facility in Livingston County, New York; (iii) replace 2,875 feet of 8-inch diameter pipeline with 16-inch diameter pipeline in Livingston County, New York; (iv) replace two 8-inch diameter side valve assemblies with 16-inch diameter side valve assemblies in Livingston County, New York; (v) construct new pressure regulation facilities to yard piping at the Caledonia M&R Station in Potter County, Pennsylvania; and (vi) lease the resulting transmission capacity, 150,000 dekatherms per day, to Tennessee Gas Pipeline Company (Tennessee) (Ellisburg to Craigs Project). Tennessee has requested to lease the capacity, among other things, in Docket No. CP11–30–000. The estimated total cost of the Ellisburg to Craigs Project is $45,723,849, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Amanda K. Prestage, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, by telephone at (804) 771–4416, by facsimile at (804) 771–4804, or by e-mail at *Amanda.K.Prestage@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 7 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: December 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30751 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–3–000]

ConocoPhillips Company v. *Enterprise TE Products Pipeline Company LLC;* Notice of Complaint

December 1, 2010.

Take notice that on November 30, 2010, pursuant to Rule 206 of the Rules of Practice and Procedure, 18 CFR 385.206, section 343.2 of the Commission's Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2 and sections 1, 6, 13, and 15 of the Interstate Commerce Act (ICA), ConocoPhillips Company (ConocoPhillips or Complainant) filed a complaint against Enterprise TE Products Pipeline Company LLC (Enterprise TEPPCO or Respondent) alleging that Enterprise TEPPCO has refused to provide common carrier transportation of propane from ConocoPhillips' refinery in Trainer, Pennsylvania following a request by ConocoPhillips for such transportation. ConocoPhillips therefore requests that the Commission order Enterprise TEPPCO to list Trainer, Pennsylvania as an origin in its tariff. ConocoPhillips also requests that the Commission order Enterprise TEPPCO to include in its tariff the transportation of propane under exchange or backhaul agreements that use and depend on the physical facilities of the pipeline.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30756 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–9–000]

CAlifornians for Renewable Energy, Inc., (CARE), and Barbara Durkin v. National Grid, Cape Wind, and the Massachusetts Department of Public Utilities; Notice of Complaint

December 1, 2010.

Take notice that on December 1, 2010, pursuant to the Federal Power Act, 16 U.S.C. 824d, 824e, 825e, and 825h (2008) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, (2010), CAlifornians for Renewable Energy, Inc. (CARE) and Barbara Durkin (Complainants) filed a complaint against National Grid, Cape Wind, and the Massachusetts Department of Public Utilities (Collectively Respondents), alleging that the Respondents are violating the Federal Power Act by approving a contract for capacity and energy that exceeds the utilities' avoided cost cap and which also usurps the Commission's exclusive jurisdiction to determine the wholesale rates for electricity under its jurisdiction.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30755 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG10–65–000; EG10–66–000; EG10–67–000; EG10–68–000; EG10–69–000; EG10–70–000; EG10–71–000]

Top of the World Wind Energy, LLC; Kit Carson Windpower, LLC; Chestnut Flats Wind, LLC; Minco Wind, LLC; Arizona Solar One LLC; Criterion Power Partners, LLC; Sundevil Power Holdings, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

December 1, 2010.

Take notice that during the month of November 2010, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2010).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30752 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–14–000]

Columbia Gulf Transmission Company and Southern Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed East Cameron Block 23A Field Line Abandonment Project and Request for Comments on Environmental Issues

December 1, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the East Cameron Block 23A Field Line Abandonment Project involving abandonment of facilities by Columbia Gulf Transmission Company (Columbia Gulf) and Southern Natural Gas Company (Southern) in Cameron Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on January 3, 2011.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Columbia Gulf provided to landowners. This fact sheet addresses a number of typically-asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Columbia Gulf and Southern propose to abandon approximately 9.3 miles of pipeline in Cameron Parish, Louisiana. Approximately 3.0 miles of pipeline would be abandoned onshore, and approximately 6.3 miles of pipeline would be abandoned offshore.

The project would abandon:

- Approximately 6.3 miles of 16-inch diameter pipeline (known as Segment 5823 [OCS–G04321]) and appurtenances extending from the producer's platform located in East Cameron Block 23 Offshore Facilities to the shoreline;
- Approximately 3.0 miles of 16-inch diameter pipeline onshore to a point near the site of Meter No. 4216 where a blind flange would be installed that physically separates the offshore pipeline from the remainder of the onshore pipeline located in Cameron Parish, Louisiana;
- Meter No. 641 (near the producer's platform) and appurtenances; and
- The gas transportation services provided by Columbia Gulf and Southern through the East Cameron Block 23 Offshore Facilities, if any.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Abandonment of the facilities would disturb a total of about 0.37 acre (including all necessary workspaces) at three discrete onshore and offshore locations:

- One 60-foot by 20-foot excavation area within the existing pipeline right-of-way at Meter Station 4216 (29° 39′ 49.50″ North Latitude, 92° 43′ 51.00″ West Longitude);
- One 60-foot by 30-foot spoil placement area within and immediately adjacent to the existing pipeline right-of-way at Meter Station 4216; and
- One 15-foot by 25-foot excavation (hand-jetted) area within the existing right-of-way at a pipeline interconnect in State waters (29° 34′ 34.24″ North Latitude, 92° 45′ 9.83″ West Longitude).

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise; and
- Endangered and threatened species.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian Tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before January 3, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–14–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. With eFiling you can provide comments in a variety

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30757 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–4–000]

Coso Energy Developers; Coso Finance Partners; Coso Power Developers; Notice Of Filing

December 1, 2010.

Take notice that on November 18, 2010, Coso Energy Developers, Coso Finance Partners, and Coso Power Developers, pursuant to section 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2010), filed a request for waiver of the interconnection financial security (IFS) deposit requirement set forth in section 9.3.1 of the California Independent System Operator Corporation's Large Generator Interconnection Process for Queue Requests in a Cluster Window (Cluster LGIP).

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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30753 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–6–000]

Alta Wind I, LLC; Notice of Petition for Declaratory Order

December 1, 2010.

Take notice that on November 19, 2010, Alta Wind I, LLC filed a Petition for Declaratory Order requesting that the Federal Energy Regulatory Commission (Commission) disclaim jurisdiction, under section 201 of the Federal Power Act, over owner lessors and owner participants associated with a sale and leaseback transaction related to a generation project under development.

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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30754 Filed 12–7–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0975; FRL–8855–6]

Methomyl; Cancellation Order for Amendments To Terminate Use of Methomyl on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendments to terminate use, voluntarily requested by the registrant and accepted by the Agency, of products containing methomyl, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an October 24, 2007 **Federal Register** Notice of Receipt of Requests from the registrant listed in Table 2 of Unit II. to voluntarily amend to terminate the grape use from all product registrations. In the October 24, 2007 notice, EPA indicated that it would issue an order implementing the amendments to terminate use, unless the Agency received substantive comments within the 180 day comment period that would merit its further review of these requests, or unless the registrant withdrew the requests. On April 14, 2008, the registrant withdrew the voluntary cancellation of the grape use and submitted a Pesticide Registration Improvement Act (PRIA) action to modify the methomyl use on grapes. While this new information refined the dietary risk assessment, it was not sufficient to change the Agency's previous conclusion. As a result, the registrant withdrew the PRIA action on April 9, 2010. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate use. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The amendments are effective December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8589; fax number: (703) 308–7070; e-mail address: *myers.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 identification (ID) number EPA–HQ–OPP–2007–0975. 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. What action is the Agency taking?

This notice announces the amendments to delete certain uses, as requested by the registrant, of products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 2—METHOMYL PRODUCT REGISTRATION AMENDMENTS TO DELETE USE

EPA registration No.	Product name	Use deleted
352–342	Dupont Lannate SP Insecticide	Grapes.
352–384	Dupont Lannate LV Insecticide	Grapes.

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first

part of the EPA registration numbers of the products listed above.

TABLE 2—REGISTRANTS OF METHOMYL PRODUCTS

EPA company No.	Company name and address
000352	E.I. du Pont de Nemours and Company DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0030.

III. Summary of Public Comments Received and Agency Response to Comments

On April 14, 2008, during the public comment period the registrant withdrew the voluntary cancellation of the grape use and submitted a PRIA action consisting of a change in the use of methomyl on grapes along with grape residue monitoring data provided by grape growers. While this new information refined the dietary assessment, it was not sufficient to change the Agency's previous conclusion. As a result, the registrant withdrew the PRIA action on April 9, 2010. For this reason, the Agency does not believe that the information submitted during the comment period merits further review or a denial of the requests for voluntary use deletion.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of methomyl registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are amended to terminate the affected use. The effective date of the cancellations that are the subject of this notice is December 8, 2010. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on October 24, 2007 (72 FR 60634) (FRL–8153–3). The comment period closed on April 21, 2008.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

Now that EPA has approved product labels reflecting the requested amendments to delete uses, registrants are permitted to sell or distribute products listed in Table 1 of Unit II. under the previously approved labeling until June 8, 2012, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, products with the deleted uses.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 2, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–30865 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0588; FRL–8854–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Chlorpyrifos Physiologically-Based Pharmacokinetic/Pharmacodynamic (PBPK/PD) Modeling linked to the Cumulative and Aggregate Risk Evaluation System (CARES).

DATES: The meeting will be held on February 15–18, 2011, from 9 a.m. to approximately 5:30 p.m.

Comments. The Agency encourages that written comments be submitted by January 31, 2011 and requests for oral comments be submitted by February 8, 2011. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after January 31, 2011 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before December 22, 2010.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/SAP* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 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, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0588, 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–2010–0588. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT,** to obtain special instructions before submitting your comments. 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 e-mail. 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail 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.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–8382; e-mail address: *matten.sharlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). 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 DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. 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.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2010–0588 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES,** no later than January 31, 2011, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after January 31, 2011, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than February 8, 2011, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting, and to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.,* overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Risk assessment, organophosphate pesticides, cholinesterase inhibition, data-derived uncertainty factors (also referred to as chemical-specific adjustment factors), pharmacodynamic modeling, physiologically-based pharmacokinetic modeling, biomonitoring data, statistical modeling, probabilistic techniques, and dietary exposure to pesticides. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on, or, before December 22, 2010. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10–15 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://epa.gov/scipoly/sap,* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by the Food Quality Protection Act of 1996 (FQPA), established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

Chlorpyrifos (0,0-diethyl-0-3,5,6-trichloro-2-pyridyl phosphorothioate) is a broad-spectrum, chlorinated organophosphate (OP) insecticide. In 2000, nearly all residential uses were voluntarily cancelled by Dow AgroSciences, but agricultural uses remain. The 2000 human health risk assessment was largely based on adult laboratory animal data (rat or dog) for cholinesterase inhibition and the application of default uncertainty factors to address inter- and intra-species differences including susceptible populations. Currently, the Agency is developing a new human health risk assessment expected to be released in 2011. In 2008, the FIFRA Scientific Advisory Panel (SAP) reviewed a draft science issue paper on the human health effects of chlorpyrifos. Since that time, Dow AgroSciences has undergone a research effort to improve the existing physiologically-based pharmacokinetic/pharmacodynamic model (PBPK/PD) developed by Dr. Charles Timchalk and co-workers at Pacific Northwest National Laboratory. Dow AgroSciences has also developed a proposed approach for merging this PBPK/PD model with CARES Cumulative and Aggregate Risk Evaluation System, *see http://www.ilsi.org/ResearchFoundation/Pages/CARES.aspx,* a publically-available probabilistic exposure model. The purpose of the February 2011 SAP meeting will be to review the PBPK/PD model and to evaluate the proposed approach for linking this PBPK model to the probabilistic exposure model.

The linking of the chlorpyrifos PBPK/PD model with a probabilistic exposure model may provide opportunities to calculate distributions of exposure to chlorpyrifos and its metabolites with cholinesterase inhibition levels across the U.S. population. In addition, this

approach may allow estimation of data-derived uncertainty factors that consider use of toxicokinetic and toxicodynamic data to inform quantitative extrapolations for interspecies differences and human variability in dose response assessment. The topics to be covered in the February 2011 SAP are consistent with EPA's Office of Pesticide Programs continuing efforts to improve the scientific basis for risk assessment by broadening the application of probabilistic exposure techniques and PBPK models. The Agency has a conceptually similar effort on-going to link PBPK models for pyrethroids with Stochastic Human Exposure and Dose Simulator (SHEDS) exposure software, a probabilistic exposure model developed by the EPA's Office of Research and Development, which was reviewed by the SAP in July 2010. The current effort by Dow AgroSciences is a research effort which may, if sufficiently robust, inform future risk assessments; the February meeting is a key milestone in this research. The Agency will solicit feedback from the Panel on technical issues related to PBPK/PD model, the proposed approach for merging the PBPK/PD model with CARES, and the use of such merged models in risk assessment.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting), and the meeting agenda will be available by late January 2011. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 23, 2010.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2010–30630 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9236–6; Docket ID No. EPA–HQ–ORD–2010–0991]

Lymphohematopoietic Cancers Induced by Chemicals and Other Agents: Overview and Implications for Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 45-day public comment period for the draft document titled, "Lymphohematopoietic Cancers Induced by Chemicals and Other Agents: Overview and Implications for Risk Assessment" (EPA/600/R–10/095A). The draft document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. The draft document provides an overview of the types and mechanisms underlying the lymphohematopoietic cancers induced by chemical agents and radiation in humans, with a primary emphasis on leukemia and leukemia-inducing agents. In addition, the document also focuses on how mechanistic information on human leukemia-inducing agents can inform risk assessment.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. All public comments received will be provided to the peer reviewers at the beginning of the review process.

DATES: The 45-day public comment period begins December 8, 2010, and ends January 24, 2011. Technical comments should be in writing and must be received by EPA by January 24, 2011.

ADDRESSES: The draft "Lymphohematopoietic Cancers Induced by Chemicals and Other Agents: Overview and Implications for Risk Assessment" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; *telephone:* 703–347–8561; *facsimile:* 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the draft document title, "Lymphohematopoietic Cancers Induced by Chemicals and Other Agents: Overview and Implications for Risk Assessment."

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

For technical information, contact Nagu Keshava, NCEA; *telephone:* 919–541–3047; *facsimile:* 919–541–0245; or *e-mail: keshava.nagu@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This project was initiated to better understand the mechanisms underlying the lymphohematopoietic cancers induced by chemical agents in humans. A draft report was developed that provides an overview of types and mechanisms underlying the lymphohematopoietic cancers induced by both chemical agents and radiation in humans, with a primary emphasis on leukemia and leukemia-inducing agents.

II. How to Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0991, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket

Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0991. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 2, 2010.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–30848 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0548; FRL–8852–8]

Petition for a Ban on Triclosan; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice makes available for review and public comment a petition submitted by Beyond Pesticides, and Food & Water Watch (hereafter referred to as "the petitioners") to the Environmental Protection Agency (hereafter referred to as "EPA" or "the Agency"), asking EPA to use its authority under various statutes to regulate triclosan. Triclosan is an antimicrobial substance used in pesticide products, hand sanitizers, toothpaste, and other consumer products. The petitioners claim that the "pervasive and widespread use" of triclosan poses significant risks to human health and the environment. In addition, the petitioners claim that the agency failed to address the impacts posed by triclosan's degradation products on human health and the environment, failed to conduct separate assessments for triclosan residues in contaminated drinking water and food, and is complacent in seriously addressing concerns related to antibacterial resistance and endocrine disruption. EPA has established a public docket, which contains a copy of the petition and will contain all comments received in response to this notice. The docket may be accessed as described in this notice.

DATES: Comments must be received on or before February 7, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0548, 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–2010–0548. When commenting, please specify the statute to which your comments refer (FIFRA, FFDCA, SDWA, CWA, or ESA) and the specific issue(s) raised in the petition regarding that statute on which you are commenting. 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 e-mail. 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail 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: Timothy F. McMahon, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6342; fax number: (703) 308–8481; e-mail address: *mcmahon.tim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a business engaged in the manufacturing of pesticides and other agricultural chemicals. Potentially affected entities may include, but are not limited to:

- Pesticide and other agricultural and chemical manufacturing (NAICS 325320) *e.g.,* businesses engaged in the manufacture of pesticides.
- Pulp and paperboard industries (NAICS 322110 and 322130).
- Antimicrobial pesticides (NAICS 32561).

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 e-mail. 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

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 defines Environmental Justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to 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 bear disproportionate adverse impacts from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Through this notice, the Agency is making the petition and other correspondence submitted by Beyond Pesticides, and Food & Water Watch available for public review and comment. Any public comments received on this petition will be included in the electronic docket and reviewed by the Agency. Following review of the petition and any comments received in response to this notice, EPA will issue its decision and response to the petition.

Triclosan is an antimicrobial active ingredient that is contained in a variety of bacteriostats, fungistats, mildewstats, and deodorizer products. There are currently 20 antimicrobial registrations, which EPA regulates under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). There are also consumer uses of triclosan, such as its use in soaps and cleansers that are regulated by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act (FFDCA).

In 2008, EPA completed a Reregistration Eligibility Decision (RED) document for triclosan. This RED document described the conclusions of EPA's comprehensive review of the potential risks to human health and the environment resulting from the registered pesticidal uses of triclosan. In conducting the review for the RED, EPA considered all available data on triclosan, including data on endocrine effects, developmental and reproductive toxicity, chronic toxicity, and carcinogenicity. The 2008 EPA assessment also relied in part on 2003–2004 biomonitoring data available from the National Health and Nutrition Examination Survey (NHANES) which reported measurements of urinary concentrations of triclosan in the U.S. population. Therefore, the 2008 EPA assessment was inclusive of all triclosan-related exposures (*i.e.,* EPA and FDA regulated uses).

The 2008 RED also considered new research data on the thyroid effects of triclosan in laboratory animals made available through the EPA's Office of Research and Development (ORD). Since the 2008 assessment, additional data on effects of triclosan on estrogen have also been made available from ORD. The ORD studies on the thyroid and estrogen effects led EPA to determine that additional research on the potential health consequences of endocrine effects of triclosan is warranted. This research is underway and will help characterize the human

relevance and potential risk of the results observed from initial laboratory animal studies. In addition, EPA will be updating the assessment of triclosan exposure in the 2008 RED using the newly released 2005–2006 NHANES urinary monitoring results. The Agency will pay close attention to this ongoing research and will amend the regulatory decision if the science supports such a change. Also, the Agency has previously indicated that because of the amount of research being planned and currently in progress, it will undertake another comprehensive review of triclosan beginning in 2013.

Triclosan is also recognized as an emerging contaminant of concern by EPA's Office of Water. Through its authority under the Clean Water Act, EPA is conducting an effects assessment for triclosan that may be used by States and authorized Tribes to establish water quality standards for triclosan.

Under the Safe Drinking Water Act, EPA evaluated triclosan for inclusion on the third contaminant candidate list (CCL 3). The CCL 3 was published on October 8, 2009 (74 FR 51850) and includes contaminants that are currently unregulated in drinking water, that are known or anticipated to occur in public water systems, and which may require regulation under the Safe Drinking Water Act. EPA developed the CCL 3 using a multi-step process recommended by the National Academies of Science and the National Drinking Water Advisory Council. EPA considered the best available occurrence and health effects data to evaluate a universe of approximately 7,500 contaminants, from which EPA identified the list of 116 contaminants that present the greatest public health concern in drinking water. Triclosan was included in the universe of contaminants evaluated. However, EPA determined triclosan did not present as great a public health concern in drinking water as the contaminants that were selected for the CCL 3 list.

A related petition was filed with FDA by the same organizations that filed the EPA petition. The Agency is also aware of FDA's ongoing effort to finalize the topical antimicrobial over-the-counter (OTC) drug monograph under which some products containing triclosan are regulated. EPA and FDA intend to collaborate and share information throughout the public comment and petition response process as well as FDA's ongoing rule development.

III. Summary of the Petition

The Agency received a petition from Beyond Pesticides, and Food & Water Watch on January 28, 2010 that seeks relief under several regulatory statutes. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), the petitioners ask EPA to act to cancel and suspend the registration of pesticides containing triclosan. Under the Clean Water Act (CWA), the petitioners request that the Administrator impose technology-based effluent limitations, health-based toxic pollutant water quality pretreatment requirements, and biosolids regulation for triclosan. Under the Safe Drinking Water Act (SDWA), the petitioners request that the Administrator conduct a comprehensive assessment of the appropriateness of regulating triclosan under SDWA. Under the Endangered Species Act (ESA), the petitioners request that the Administrator comply fully with ESA, including consultation and biological assessment requirements. EPA has established a public docket, which contains a copy of the petition and will contain all comments received in response to this Notice. The docket may be accessed as described in this Notice. The statutes mentioned and the specific relief requested under each statute is summarized as follows:

- *FIFRA.* The petition states that "The hazards associated with Triclosan use and exposure during the pendency of a long review does not meet EPA's statutory duty to protect health and the environment. That is, because scientific studies demonstrate that the substance is used so pervasively that it is present in most people's bodies, EPA must take the most protective steps provided for under the statute to protect public health. In this regard, petitioners request that EPA (1) issue a notice of cancellation of the registrations of all products containing triclosan, pursuant to 7 U.S.C. 136d(b)(1), and (2) at the same time issue an emergency order pursuant to 7 U.S.C. 136d(c)(3) to suspend immediately those registrations."
- *Clean Water Act.* The petition states that "numerous studies, including those of EPA, have established the substantial presence, and therefore serious threat, of triclosan to human health and the environment through the means of pollution of the nation's navigable waters. EPA's failures in this regard, in petitioners' view, are "arbitrary, capricious," and otherwise "not in accordance with law." Therefore, the Administrator should use her authority under the Act to evaluate these health and environmental effects thoroughly and act decisively, based on the abundance of scientific evidence and the express requirements of the CWA, to require proper regulation of triclosan. She should use her authority to impose technology-based effluent limitations, health-based pollutant water quality pretreatment requirements, and biosolids regulation.
- *Safe Drinking Water Act.* The petition states that "EPA's reregistration decision sets the stage for a violation of the SWDA, in that triclosan would be allowed to contaminate drinking water at levels that threaten human health and the environment. For this reason, petitioners request that the Administrator conduct a comprehensive assessment of the appropriateness of regulating triclosan under the SDWA."
- *Endangered Species Act.* The petition states that "because triclosan is present in the large environment, EPA's registration of that substance creates potential jeopardy for listed threatened and endangered species and may destroy or adversely modify designated critical habitats. This presence has been abundantly demonstrated throughout this petition. Accordingly, Petitioners request that the Administrator comply fully with the ESA, including the consultation and biological assessment requirements. Petitioners note, in this regard, that notwithstanding FIFRA's primary rule in regulating pesticides, courts have held that EPA must comply with ESA in its administration of FIFRA."

List of Subjects

Environmental protection, Antimicrobials, triclosan, Pesticides and pests.

Dated: December 2, 2010.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2010–30850 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0008; FRL–8852–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before January 7, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number specified within Unit II., 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 specified for the pesticide of interest as shown in the registration application summaries. 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 e-mail. 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail 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 is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: 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 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 e-mail. 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). If you are commenting in a docket that addresses multiple products, please indicate to which registration numbers your comment applies.

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. Registration Applications

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *Registration numbers:* 100–895, 100–898, 100–1154, 100–1259, and 100–

1351. *Docket number:* EPA–HQ–OPP–2010–0619. *Company name and address:* Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Avermectin B_1. *Proposed use:* Bulb onion crop subgroup 3–07A; beans, dry; and chives, fresh and dried. *Contact:* Thomas Harris, (703) 308–9423, *harris.thomas@epa.gov.*

2. *Registration number:* 241–382. *Docket number:* EPA–HQ–OPP–2010–0760. *Company name and address:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709–3582. *Active ingredient:* Dimethomorph. *Proposed use:* Grapes, removal of regional restriction. *Contact:* Shaunta Hill, (703) 347–8961, *hill.shaunta@epa.gov.*

3. *Registration number:* 241–427. *Docket number:* EPA–HQ–OPP–2010–0760. *Company name and address:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709–3582. *Active ingredient:* Dimethomorph. *Proposed use:* Grapes, removal of regional restriction. *Contact:* Shaunta Hill, (703) 347–8961, *hill.shaunta@epa.gov.*

4. *Registration numbers:* 264–566 and 264–600. *Docket number:* EPA–HQ–OPP–2010–0845. *Company name and address:* Bayer CropScience, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. *Active ingredient:* Isoxaflutole. *Proposed use(s):* Tolerant soybeans. *Contact:* James M. Stone, (703) 305–7391, *stone.james@epa.gov.*

5. *Registration numbers:* 4787–55 and 67760–75. *Docket number:* EPA–HQ–OPP–2010–0875. *Company name and address:* Cheminova A/S, C/O Cheminova, Inc. and Cheminova Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209–2510. *Active ingredient:* Flutriafol. *Proposed uses:* Corn, grapes, peanuts, pome fruit (group 11), stone fruit (group 12), sugar beets, and wheat. *Contact:* Tamue L. Gibson, (703) 305–9096, *gibson.tamue@epa.gov.*

6. *Registration number:* 7969–188. *Docket number:* EPA–HQ–OPP–2010–0780. *Company name and address:* BASF, 26 Davis Dr., Research Triangle Park, NC 27709. *Active ingredient:* Prohexadione calcium (calcium 3-oxido-5-oxo-4-propionylcyclohex-3-enecarboxylate). *Proposed use:* Sweet cherries. *Contact:* Rose Kearns, (703) 305–5611, *kearns.rose@epa.gov.*

7. *Registration number/File symbol:* 11678–57 and 66222–ERT. *Docket number:* EPA–HQ–OPP–2010–0466. *Company name and address:* Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Rd., NC 27609. *Active ingredient:* Novaluron. *Proposed use:* Food or feed handling establishments. *Contact:* Jennifer Gaines, (703) 305–5967, *gaines.jennifer@epa.gov.*

8. *Registration numbers:* 11678–57 and 66222–35. *Docket number:* EPA–HQ–OPP–2010–0471. *Company name and address:* Makhteshim Agan of North America, Inc., 4515 Falls of Neuse Rd., NC 27609. *Active ingredient:* Novaluron. *Proposed use:* Sweet corn. *Contact:* Jennifer Gaines, (703) 305–5967, *gaines.jennifer@epa.gov.*

9. *Registration numbers:* 80289–1 and 80289–8. *Docket number:* EPA–HQ–OPP– 2010–0583. *Company name and address:* Isagro S. p. A., 430 Davis Dr., Suite 240, Morrisville, NC 27560. *Active ingredient:* Tetraconazole. *Proposed use:* Small fruit vine climbing subgroup, except fuzzy kiwifruit and low growing berry subgroup. *Contact:* Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov.*

10. *Registration numbers:* 80289–1 and 80289–7. *Docket number:* EPA–HQ–OPP–2010–0864. *Company name and address:* Isagro S. p. A., 430 Davis Dr., Suite 240, Morrisville, NC 27560. *Active ingredient:* Tetraconazole. *Proposed use:* Corn, field, forage; field, grain; field, stover; pop, grain; and pop, stover. *Contact:* Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 23, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–30489 Filed 12–7–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the FCC Communications Security, Reliability, and Interoperability Council will hold its fourth meeting on December 13, 2010, at 9 a.m. in the Commission Meeting Room of the Federal Communications Commission.

DATES: December 13, 2010.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer of the FCC's CSRIC, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (e-mail); or Lauren Kravetz, Deputy Designated Federal Officer of the FCC's CSRIC, 202–418–7944 (voice) or *lauren.kravetz@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The notice of this meeting was first published in the **Federal Register** on November 30, 2010, only 14 days in advance of the meeting. While the publication did not meet the 15-day requirement for advance publication, exceptional circumstances warrant proceeding with the meeting on December 13, 2010. CSRIC members were informed of the December 13th meeting at the October public meeting of the Council and have been informed informally of the December meeting date on more than one occasion since then. A significant number of Council members have made business and travel plans in accordance with this schedule, and there is no date within one month of the planned date that will accommodate Council members' schedules. Delaying the meeting will also cause undue financial burdens on many of the members who have made travel arrangements.

In addition, it is not possible at this time to schedule a half-day meeting in the FCC's Commission Meeting Room for any date within one month of December 13, 2010. As the Council's meeting planned for March 2011 is scheduled to be the final meeting of the CSRIC before expiration of the CSRIC charter on March 18, 2011, delaying the meeting scheduled for December 13, 2010 threatens the Council's ability to complete its work. As a significant amount of the Council's work focuses on public safety issues, it is critical that the December 13, 2010 meeting proceed as planned so as not to delay implementation of solutions and best practices for public safety communications and cybersecurity. Recognizing the one-day delay in **Federal Register** publication, the agency issued a Public Notice of this meeting on November 29, 2010 to mitigate the late **Federal Register** publication and as an additional way of advising the public of this meeting and their right to attend. As the December 13, 2010 meeting date was announced at the October public meeting of the Council, the meeting has now been broadly announced to the public more than once. The November 30, 2010, **Federal Register** notice is available at *http://frwebgate3.access.gpo.gov/cgi-bin/*

PDFgate.cgi?WAISdocID=66VJ7e/2/2/0&WAISaction=retrieve.

The FCC Public Notice announcing the meeting is available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1129/DA-10-2170A1.pdf.*

Additional information regarding the CSRIC can be found at: *http://www.fcc.gov/pshs/advisory/csric/.*

Federal Communications Commission.

Timothy A. Peterson,

Chief of Staff, Public Safety and Homeland Security Bureau.

[FR Doc. 2010–30858 Filed 12–7–10; 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 http://*www.fmc.gov* or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011545–003.

Title: Agreement Between CSAV and Mitsui.

Parties: Compania Sud Americana de Vapores, S.A. and Mitsui O.S.K. Lines, Ltd.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment expands the geographic scope of the agreement to include ports in Turkey and North Europe, including the United Kingdom.

Dated: December 3, 2010.

By Order of the Federal Maritime Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–30882 Filed 12–7–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

CIL Freight Inc. (NVO & OFF), 1990 Lakeside Parkway, #300, Tucker, GA 30084. Officers: Pui Pui So, Vice President, (Qualifying Individual), Jianjun Gan, President/Secretary/Treasurer, Application Type: Add NVO Service.

Continental Services & Carrier Inc. (NVO & OFF), 6045 NW. 87th Avenue, Miami, FL 33178. Officers: Rodolfo Luciani, Vice President, (Qualifying Individual), Mirtha Lopez, President, Application Type: Add OFF Service.

Global Cargo Express, Inc. (NVO), 2063 S. Atlantic Blvd., Suite 307, Monterey Park, CA 91754. Officer: Yufu Xing, President/Secretary/Treasurer, (Qualifying Individual), Application Type: Add OFF Service.

IAL Container Line (USA) Inc. (NVO & OFF), 50 Cragwood Road, #115, South Plainfield, NJ 07080. Officers: Peter George, President/Secretary/Treasurer, (Qualifying Individual), Arjun Menon, Director, Application Type: QI Change.

KSB Shipping & Logistics LLC (NVO & OFF), 50 Cragwood Road, Suite 123, South Springfield, NJ 07080. Officer: Satish K. Sharma, Member/Manager, (Qualifying Individual), Application Type: Add OFF Service.

North Atlantic International Ocean Carrier Inc. (NVO), 1550 Matassino Road, New Castle, DE 19720. Officer: Efren D. Jimenez, President, (Qualifying Individual), Application Type: Business Structure Change/Add OFF Service.

Payless Overseas Shipping LLC (NVO & OFF), 21120 LOP 494, New Caney, TX 77357. Officers: Khaldoon Barakat, CEO, (Qualifying Individual), Hossam (Sam) Barakat, President/General Manager, Application Type: Name Change.

T.V.L. Global Logistics (N.Y.) Corp. (NVO), 36–54 Main Street, Flushing, NY 11354. Officers: Tony Lu, Vice President, (Qualifying Individual), Application Type: QI Change.

Dated: December 3, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–30879 Filed 12–7–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
020208F	Ghanem Forwarding, LLC, 3327 Hollins Ferry Road, Halethorpe, MD 21227	October 20, 2010.
020253NF	Concord International Transport, Inc., 10100 NW. 116th Way, Suite 14, Medley, FL 33178	October 22, 2010.
020281NF	Freightsolutions LLC dba Freight Solutions dba Santa Cruz Ocean Line, 1775 NW. 70th Avenue, Suite 10, Miami, FL 33126.	September 5, 2010.
021600N	LTH Logistics, Inc. dba LTH Express, 837 East Sandhill Avenue Carson, CA 90746	October 30, 2010.
021890F	Empire Global Logistics, LLC, 160–51 Rockaway Blvd., Suite 206, Jamaica, NY 11434	October 31, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–30877 Filed 12–7–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR

part 515, effective on the corresponding date shown below:

License Number: 3007F.

Name: Berardino & Associates Incorporated.

Address: 188 Industrial Drive, Suite 427, Elmhurst, IL 60126.

Date Revoked: November 9, 2010.

Reason: Surrendered license voluntarily.

License Number: 022766N.

Name: Atlantic Integrated Freight Inc.

Address: 19 Princeton Drive, Dix Hills, NY 11746.

Date Revoked: November 5, 2010.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–30878 Filed 12–7–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 10 a.m. (Eastern Time); December 13, 2010.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open to the public.

Matters To Be Considered

1. Approval of the minutes of the November 16, 2010 Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

a. Monthly Participant Activity Report.

b. Monthly Investment Performance Report.

c. Legislative Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 6, 2010.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2010–30969 Filed 12–6–10; 4:15 pm]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Docket 2010–0005; Sequence 14]

Draft Concept for Government-Wide "ExpertNet" Platform and Process To Elicit Expert Public Participation in Response to Government Questions

AGENCY: U.S. General Services Administration.

ACTION: Notice; request for public comment.

SUMMARY: With this notice, the U.S. General Services Administration (GSA) requests input, comment, and ideas from the public on a draft concept for next-generation citizen consultation, namely a government-wide software tool and process to elicit expert public participation (working title "ExpertNet"). ExpertNet would tap the expertise of the public in a manageable and structured format. The goal of ExpertNet is to enable government officials to search for and communicate with citizens who have expertise on a topic, giving them the opportunity to participate in a public consultation relevant to their areas of interest and know-how, and pose questions to and interact with the public to receive useful, relevant, and manageable feedback. This Request for Information (RFI) will be active from December 8, 2010 to January 7, 2011. Respondents are invited to provide comments about or edits directly to the draft of the concept paper via an online discussion forum and wiki hosted by the White House Open Government Initiative and GSA and located at *http://expertnet.wikispaces.com* (the "Wiki"). In addition, respondents who cannot access the Wiki are welcome to download a copy of the concept paper at *http://www.whitehouse.gov/open* and e-mail comments to *expertnet@ostp.gov.*

DATES: Comments must be posted at *http://expertnet.wikispaces.com* or received via e-mail by January 7, 2011.

Comments submitted in response to this notice whether via the Wiki or e-mail will be available to the public online. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

FOR FURTHER INFORMATION CONTACT: *expertnet@ostp.gov.* This inbox will close on January 8, 2011.

Background: On his first full day in office, President Obama issued the *Memorandum on Transparency and Open Government* in which he declared: "Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge." Upon signing the Memorandum, the President explained the Administration's commitment to creating opportunities for Americans to participate in government:

> Our commitment to openness means more than simply informing the American people about how decisions are made. It means recognizing that government does not have all the answers and that public officials need to draw on what citizens know.

Invitation To Comment

To that end, GSA is soliciting your feedback on a draft concept for a consultation platform to obtain timely, manageable, and relevant information for making decisions. The explanation of this concept (also known as a "use case") states in broad terms how the envisioned software platform and process for soliciting public expertise would work to:

- Enable government officials to circulate notice of opportunities for the public to share its expertise on a topic.
- Provide the public with a mechanism to provide useful, relevant, and manageable feedback to government officials.

The proposed platform is intended to be complementary to two of the ways the Federal government currently obtains expertise to inform decision-making, namely by convening Federal Advisory Committees and announcing public comment opportunities in the **Federal Register**.

We are looking for respondents to read the concept paper and provide:

1. Any refinements or suggestions to improve the process as described.

2. Any issues (legal, policy, technical) raised by the features described.

3. Information about any tools that perform the process described in that step.

4. Pointers to organizations (public or private) that have a similar platform in place.

To be clear, there is currently no funding identified for building this platform nor is it clear if future funding will be available. Hence, respondents should be sure that feedback, when possible, addresses opportunities for implementing solutions at little to no cost, including multi-sector partnerships.

○ There are three ways to provide feedback:

○ Respondents may make edits directly to the use case via the Wiki.

○ Alternatively, respondents may review each section of the use case and provide comments via an online discussion forum on the Wiki.

○ In the event respondents cannot access the Wiki, they may e-mail comments to *expertnet@ostp.gov.*

Dated: December 3, 2010.

Keith D. Thurston,

Assistant Associate Administrator, Citizen Services and Innovative Technologies.

[FR Doc. 2010–30861 Filed 12–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New]

Agency Information Collection Request; 30-Day Public Comment Request

Agency: Office of the Secretary, Office of the National Coordinator for Health Information Technology (ONC), HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 30-days.

Proposed Project: Evaluation of the IT Professionals in Health Care—OMB No. 0090–NEW—Office of the National Coordinator for Health Information Technology's (ONC).

Abstract: Currently, the Office of the National Coordinator for Health Information Technology's (ONC) Office of the Chief Scientist is soliciting comments on a series of data collection efforts for the evaluation of the IT Professionals in Health Care ("Workforce") Program. The Workforce Program, created under Section 3016 of the Public Health Service Act (PHSA), as added by Title XIII in Division A of the American Recovery and Reinvestment Act of 2009, directed the Secretary of Health and Human Services to provide "assistance to institutions of higher education (or consortia thereof) to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies."

The evaluation of the Workforce Program is a new information collection activity which will explore program challenges, provide critical formative feedback to the Workforce grantee institutions on their activities, and determine whether the Workforce Program overall was successful in helping to build a skilled workforce equipped to meet the heightened demands of the current environment. The data collection efforts include: A Web-based baseline survey of community college students; course evaluation forms; focus groups with students, faculty members, and competency exam takers; and a Web-based survey of community college faculty.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
Web-based Student Baseline Survey.	Students enrolled in Workforce program ..	1,233	1	20/60	411
Focus groups with students	Students enrolled in Workforce program ..	256	1	1.5	384
Focus groups with faculty	Instructors from Workforce program	50	1	1.5	75
Focus groups with Exam takers	Competency exam takers not enrolled in Workforce program.	32	1	1.5	48
Web-based Faculty Survey	Instructors from Workforce program	300	1	10/60	50
Total	.....	.....	.....	.....	968

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–30869 Filed 12–7–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might

more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

Meeting Dates: December 13, 2010, 9:30 a.m. to 5 p.m. and December 14, 2010, 8:30 a.m.–1 p.m. *e.t.*

ADDRESSES: The meeting will be held at HHS Centers for Medicare and Medicaid Services headquarters located at 7500 Security Blvd., Baltimore, Maryland 21244, Conference Room B.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T. Oellerich (202) 690–8410, *Don.oellerich@hhs.gov.* **Note:** Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Thursday, December 9, 2010, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: *Topics of the Meeting:* The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. The Panel will likely hear presentations from Medicare public trustees on issues they wish the panel to address. This may be followed by HHS staff presentations regarding long range growth. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 2, 2010.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–30838 Filed 12–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0679]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Division of Heart Disease and Stroke Prevention Management Information System—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's Division of Heart Disease and Stroke Prevention (DHDSP) is currently approved to collect progress and activity information from awardees funded through two programs: The National Heart Disease and Stroke Prevention Program (NHDSPP), and the Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) program. Information is collected semi-annually through an electronic Management Information System (MIS). The current approval is scheduled to expire 5/31/2011 (OMB No. 0920–0679).

CDC plans to request OMB approval to continue information collection, with changes, for three years. A net reduction in the number of respondents will result in a net reduction in burden hours. Although there will be an increase in the number of state-based heart disease and stroke prevention (HDSP) programs funded through the NHDSPP, reporting requirements involving the MIS will be discontinued for awardees funded through the WISEWOMAN program. No changes are proposed to the information collection instrument, the burden per response, or the frequency of information collection.

In 1998, Congress provided CDC with initial funding to establish the NHDSPP, authorized under sections 301(a) and 317b(k)(2) of the Public Health Service (PHS) Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The program currently supports population-based heart disease and stroke prevention efforts in selected States and the District of Columbia. As funding allows, CDC's strategic plan calls for expanding the program to health departments in all U.S. States and territories. CDC works with HDSP program awardees to implement and evaluate evidence-based public health prevention and control strategies that address risk factors and reduce disparities, disease, disability, and death from heart disease and stroke. Awardees are encouraged to work at the highest levels within priority environments to change policies and systems that will improve cardiovascular outcomes.

All HDSP program awardees are required to submit continuation applications and semi-annual progress reports to CDC. The DHDSP MIS provides a standardized, electronic interface for the collection of this progress information, which includes work plans, objectives, partners, data sources, and policy and environmental assessments. The MIS also produces both state-specific and aggregate reports that are used for performance

monitoring, program evaluation, and technical assistance. The monitoring and evaluation plan for the HDSP program is part of an overall initiative within CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to promote more efficient ways of using resources and achieving greater health impact. CDC plans to increase the number of HDSP awardees reporting through the MIS from 33 to 42.

CDC will discontinue approval to use the DHDSP MIS for collecting information from WISEWOMAN program awardees. The WISEWOMAN program is a demonstration program that extends cardiovascular disease-related services to a subset of women who also receive services through the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). Although approval was obtained to use the DHDSP MIS for collecting progress and activity information from WISEWOMAN awardees, the information collection was not implemented due to a change in plans for monitoring these awardees. The current WISEWOMAN data collection is described in OMB No. 0920–0612 (WISEWOMAN Reporting System, exp. 3/31/2013).

CDC will continue to use the information collected through the DHDSP MIS to identify state-specific heart disease and stroke prevention priorities and objectives, and to describe the impact and reach of program interventions. Respondents will be 42 health departments in 41 States and the District of Columbia (DC). Respondents will continue to submit their progress and activity information to CDC semi-annually. The estimated burden per response is six hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State-Based HDSP Programs	42	2	6	504

Dated: December 2, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–30764 Filed 12–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–11–0770]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Carol Walker, Acting CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National HIV Behavioral Surveillance System (NHBS) (OMB no. 0920–0770, exp. 03/31/2011)—Extension—National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors related to Human Immunodeficiency Virus (HIV) infection among persons at high risk for infection in the United States. The primary objectives of the NHBS system are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community based organizations, community planning groups and other stakeholders.

This project addresses the goals of the National HIV/AIDS Strategy for the United States, which calls for State and local health departments to monitor progress towards the national goal of reducing new HIV infections by 25% by 2015. NHBS contributes to this national goal by describing and monitoring the HIV risk behaviors, HIV seroprevalence and incidence, and HIV prevention experiences of persons at highest risk for HIV infection.

The Centers for Disease Control and Prevention request approval for a 3-year extension for the previously approved National HIV Behavioral Surveillance System (NHBS), OMB number 0920–0770, which expires 03/31/2011. Data are collected through anonymous, in-person interviews conducted with persons systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States; these 25 MSAs were chosen based on having high AIDS prevalence. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), injecting drug users (IDU), and heterosexuals at increased risk of HIV (HET). A brief screening interview will be used to determine eligibility for participation in the behavioral assessment.

The data from the behavioral assessment will provide frequency estimates of behavior related to the risk of HIV and other sexually transmitted diseases, prior testing for HIV, and use of HIV prevention services. All persons interviewed will also be offered an HIV test, and will participate in a pre-test counseling session. No other Federal agency systematically collects this type of information from persons at risk for HIV infection. These data will have a

substantial impact on prevention program development and monitoring at the local, State, and national levels.

CDC estimates that NHBS will involve, per year in each of the 25 MSAs, eligibility screening of 50 to 200 persons and eligibility screening plus the behavioral assessment with 500 eligible respondents, resulting in a total of 37,500 eligible survey respondents and 7,500 ineligible screened persons during a 3-year period. Data collection will rotate such that interviews will be conducted among one group per year: MSM in year 1, IDU in year 2, and HET in year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group.

Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (in hours)
Year 1:					
Men Approached at Eligible Venue.	Screener	17,500	1	5/60	1,458
Eligible Men	Behavioral Assessment	12,500	1	60/60	12,500
Year 2:					
Injecting Drug Users Referred by Peer Recruiters.	Screener	13,750	1	5/60	1,146
Eligible Injecting Drug Users	Behavioral Assessment	12,500	1	85/60	17,708
Year 3:					
Heterosexual Men and Women Referred by Peer Recruiters.	Screener	13,750	1	5/60	1,146
Eligible Heterosexual Men and Women.	Behavioral Assessment	12,500	1	70/60	14,583
Total		45,000	1		48,541

Dated: December 2, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–30763 Filed 12–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3234–N]

Medicare Program; Renewal of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC)

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

ACTION: Notice.

SUMMARY: This notice announces the renewal of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC).

ADDRESSES: *Copies of the Charter:* To obtain a copy of the Secretary's Charter for the MEDCAC submit a request to: *See* **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing the establishment of the Medicare Coverage Advisory Committee (MCAC). The Secretary signed the initial charter for the MCAC on November 24, 1998. The MCAC was originally established to provide independent guidance and expert advice to CMS on specific clinical topics. In 2007 the Charter was renewed and the name MCAC was modified to Medicare Evidence Development and Coverage Advisory Committee (MEDCAC) to more accurately reflect the Committee's role. The MEDCAC is advisory, with the final decision on all issues resting with CMS. Under the current charter, the MEDCAC advises the Secretary of the Department of Health and Human Services (DHHS) and the Administrator of the CMS, on the quality of evidence on clinical topics under review by CMS.

The MEDCAC consists of a pool of 100 appointed members. Members are selected from authorities in clinical medicine of all specialties, administrative medicine, public health, biologic and physical sciences, health care data and information management and analysis, patient advocacy, the economics of health care, medical ethics and other related professions such as epidemiology and biostatistics, and methodology of trial design. There are 94 at-large standing voting members. Six of the members are patient advocates and six are nonvoting members representing the industry interest.

II. Provisions of this Notice

This notice announces the signing of the MEDCAC charter renewal by the Secretary on November 23, 2010. The new charter makes the following changes:

- There are 4–8 meetings per year.
- A period of service for the Chair and Vice-Chair of no more than 4 years.

The MEDCAC functions on a committee basis. The MEDCAC—(1) Hears public testimony; (2) reviews medical literature, technology assessments and other relevant evidence and advises CMS on the strength and weaknesses of that evidence; (3) advises CMS of any evidence gaps that may exist and recommends the types of evidence that should be developed to fill those evidentiary gaps. The Committee may be asked to develop recommendations about specific clinical issues under review and to review and comment upon proposed or existing Medicare coverage policies. The Committee may also be asked to comment on pertinent aspects of

proposals being considered and other policies. The Committee works from an agenda provided by the designated Federal official that lists specific issues.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: November 16, 2010.

Barry M. Straube,

CMS Chief Medical Officer, Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–30761 Filed 12–7–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0602]

Biologics Price Competition and Innovation Act of 2009; Meetings on User Fee Program for Biosimilar and Interchangeable Biological Product Applications; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to request that public stakeholders, including patient and consumer advocacy groups, health care professionals, and scientific and academic experts, notify FDA of their intent to participate in consultation meetings relating to the development of a user fee program for biosimilar and interchangeable biological product applications submitted under the Public Health Service Act (PHS Act). FDA is holding these consultation meetings to satisfy the requirement in the Patient Protection and Affordable Care Act that FDA consult with such public stakeholders regarding the development of recommendations to present to Congress with respect to the goals, and plans for meeting the goals, for the process for the review of biosimilar and interchangeable biological product applications for fiscal years (FYs) 2013 through 2017. To ensure continuity and to support the development of recommendations for establishing a user fee program for biosimilars and interchangeable products, the Agency requests stakeholder representation throughout this consultation process.

DATES: Submit notification of intention to participate by January 10, 2011. Stakeholder discussions with FDA will occur during negotiations with the regulated industry.

ADDRESSES: Submit notification of intention to participate in stakeholder meetings by e-mail to *Biosimilars UserFeeProgram@fda.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Sunanda Bahl, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, rm. 1168, Silver Spring, MD 20993–0002, 301–796–3584, FAX: 301–847–8443, *e-mail: sunanda.bahl@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148). The Affordable Care Act contains a subtitle called the Biologics Price Competition and Innovation Act of 2009 (BPCI Act) that amends the PHS Act and other statutes to create an abbreviated approval pathway for biological products shown to be highly similar (biosimilar) to, or interchangeable with, an FDA-licensed reference biological product. (*See* sections 7001 through 7003 of the BPCI Act.) Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, allows a company to submit an application for licensure of a biosimilar or interchangeable biological product.

The BPCI Act amends section 735 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379g) to include 351(k) applications for biosimilar or interchangeable biological products in the definition of "human drug application" for the purposes of the prescription drug user fee provisions. (*See* section 7002(f)(3)(A) of the BPCI Act.) The authority conferred by the FD&C Act's prescription drug user fee provisions expires in September 2012. The BPCI Act directs FDA to develop recommendations for a user fee program for biosimilar and biological product applications for FYs 2013 through 2017. (*See* section 7002(f)(1) of the BPCI Act.)

II. FDA Consultation With Stakeholders

FDA is required to develop recommendations to present to Congress by January 15, 2012, that address the goals, and plans for meeting the goals, for the process for the review of biosimilar and interchangeable biological product applications for FYs 2013 through 2017. (*See* section 7002(f)(1) of the BPCI Act.) In developing such recommendations, FDA must consult with a range of groups, including scientific and academic experts; health care professionals; representatives of patient and consumer advocacy groups; and regulated industry. (*See* section 7002(f)(1) of the BPCI Act.) FDA initiated this consultation process on November 2 and 3, 2010, by holding a public hearing at which stakeholders and other members of the public were given an opportunity to present their views on issues associated with the implementation of the BPCI Act. To facilitate identification of regulated industry, in the **Federal Register** notice that announced the November 2010 public hearing, FDA requested that comments identify companies that would be affected by a user fee program for biosimilar or interchangeable biological products, as well as industry associations representing such companies. (*See* 75 FR 61497, October 5, 2010.)

FDA is issuing this **Federal Register** notice to request that other stakeholders, including patient and consumer advocacy groups, health care professionals, and scientific and academic experts, notify FDA of their intent to participate in consultation meetings related to the development of recommendations for a user fee program for biosimilar and interchangeable biological product applications. FDA believes that consistent stakeholder representation at these consultation meetings will be important to ensure progress in the discussions. If you wish to participate in this process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions as needed. Stakeholders who identify themselves through this notice will be included in future stakeholder discussions as FDA negotiates with regulated industry. These discussions will satisfy the requirement for consultation with public stakeholders in section 7002(f)(1) of the BPCI Act.

III. Additional Information on the BPCI Act

There are several sources of information on FDA's Web site that may serve as useful resources for stakeholders intending to participate in consultation meetings:

- The **Federal Register** notice that announced the November 2 and 3, 2010, public hearing and requested public comments is available at *http://edocket.access.gpo.gov/2010/pdf/2010–24853.pdf*.

• Comments submitted in response to the November 2010 public hearing notice can be found at *http://www.regulations.gov* using Docket No. FDA–2010–N–0477.

• Additional information regarding implementation of the BPCI Act is available at: *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/UCM215031*.

IV. Notification of Intent To Participate in Consultation Meetings

If you intend to participate in stakeholder consultation meetings regarding the development of recommendations for a user fee program for biosimilar and interchangeable biological product applications for FYs 2013 through 2017, please provide notification by e-mail to *BiosimilarsUserFeeProgram@fda.hhs.gov* by January 10, 2011. Your e-mail should contain complete contact information, including name, title, affiliation, address, e-mail address, telephone number, and notice of any special accommodations required because of disability. Stakeholders will receive confirmation and additional information about the first meeting once FDA receives their notification.

Dated: December 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30713 Filed 12–7–10; 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, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary 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: Data Collection Tool for Rural Health Community-Based Grant Programs (OMB No. 0915–0319)—[Revision]

On May 20, 2008, OMB approved the Agency's request for the collection of data related to program and clinical measures (OMB No. 0915–0319) and set an expiration date of May 31, 2011. The Agency is now proceeding to submit a revised package which will include program specific measures that are further aligned with the agency's updated clinical measures. These measures were modified based on the feedback received from grantees and to reflect ORHP and HRSA's current priorities and clarify certain measures across all 330A programs. In addition, these revisions will enhance data collection and analysis in an effort to strengthen the value of the data collection tool.

There are currently six rural health grant programs that operate under the authority of Section 301 of the Public Health Service (PHS) Act. These programs include: (1) Rural Health Care Services Outreach Grant Program (Outreach); (2) Rural Health Network Development Grant Program (Network Development); (3) Small Healthcare Provider Quality Grant Program (Quality); (4) Delta States Rural Development Network Grant Program (Delta); (5) Network Planning Grant Program and (6) Rural Health Workforce Development Grant Program. These grants are to provide for the expanded delivery of health care services, the planning and implementation of integrated health care networks, and the planning and implementation of quality improvement and workforce activities—all in rural areas.

For these programs, performance measures were drafted to provide data useful to the programs and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993. These measures cover the principal topic areas of interest to ORHP, including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development, and (g) health related clinical measures. Several measures will be used for all six programs. All measures will speak to the Office's progress toward meeting the goals set.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Rural Health Care Services Outreach Grant Program	111	1	111	2.75	305.25
Rural Health Network Development	49	1	49	2	98
Delta States Rural Development Network Grant Program	12	1	12	3	36
Small Health Care Provider Quality Improvement Grant Program	59	1	59	6	354
Network Development Planning Grant Program	30	1	30	1	30
Rural Health Workforce Development Program	20	1	20	1.75	35
Total	281		281		858.25

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 1, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–30894 Filed 12–7–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. A Tolerance Approach to Xenotransplantation.

Date: January 20, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–451–2666. *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30811 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: January 20, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: 1:15 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Andrew P. Mariani, PhD, Executive Secretary, National Advisory Eye Council, National Eye Institute, National Institutes of Health. 301–451–2020. *amp@nei.nih.gov.*

Any person interested may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30812 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 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 on Drug Abuse Special Emphasis Panel Developing Implementation Packages for Evidenced-based HIV Prevention Intervention Materials for Drug Users (5563).

Date: December 14, 2010.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Rapid Portable Devices to Measure Drug Use (1206).

Date: December 20, 2010.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive

Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel N43DA–11–5564: Developing, Validating, Refining Tools for Ecologic Momentary Assessment.

Date: January 6, 2011.

Time: 10 a.m. to 12 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: Kristen V. Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1433. *huntleyk@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Development of a Device for Auto-administering Naloxone to Overcome Overdose (2223).

Date: January 7, 2011.

Time: 1 p.m. to 3 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: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1432. *liangm@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Confirming Compliance with Experimental Pharmacotherapy Treatment of Drug Abuse (2225).

Date: January 11, 2011.

Time: 9:30 a.m. to 12 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: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel New Techniques for the Large Scale Production and Purification of Antibodies or Vaccines for the Treatment of Substance Use Disorders (8898).

Date: January 11, 2011.

Time: 1 p.m. to 3 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: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1432. *liangm@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Tool Development for New or Improved Capture Reagents (7779).

Date: January 11, 2011.

Time: 1 p.m. to 4 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: Jose F. Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 451–3086. *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Real-time Activity as a Potential Diagnostic Marker for Pain or Drug-craving (4413).

Date: January 12, 2011.

Time: 1 p.m. to 3 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: Scott A. Chen, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 443–9511. *chensc@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Improving Measures of Addiction Risk (5562).

Date: January 13, 2011.

Time: 9:30 a.m. to 1:00 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: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1439. *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Development of a Device to Assess Hyperalgesia at the Bed Side by the Cold Pressor (2224).

Date: January 13, 2011.

Time: 1 p.m. to 4 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: Scott A. Chen, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 443–9511. *chensc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30813 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: February 7, 2011.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive,

Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: February 7, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: February 7, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: February 7, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Allergy, Immunology and Transplantation Subcommittee.

Date: February 7, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: May 23, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: May 23, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: May 23, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: May 23, 2011.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892,

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30810 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel MBRS Score Grant Applications Review.

Date: December 21, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. (Telephone Conference Call).

Contact: Lisa Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. 301–594–2849. *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30825 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 28, 2010, 8 a.m. to December 29, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 29, 2010, 75 FR 73114–73115.

The meeting will be held January 6, 2011 to January 7, 2011. The meeting time and location remain the same. The meeting is closed to the public.

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30823 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: CIMG and GMPB.

Date: December 21, 2010.

Time: 12 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: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169. *greenwep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30821 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory and Vestibular Neuroscience.

Date: December 13, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30818 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, December 14, 2010, 8 a.m. to December 14, 2010, 2 p.m., Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on November 17, 2010, FR2010–28981.

The meeting location changed from Doubletree Hotel Bethesda to Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30816 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: February 7, 2011.

Time: 1 p.m. to 5:30 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: May 23, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 19, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601. 301–435–3732.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 2, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30808 Filed 12–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: HHS Approval of Entities That Certify Medical Review Officers (MROs).

SUMMARY: The recent revisions to the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) which took effect on October 1, 2010 address the role and qualifications of Medical Review Officers (MROs) and HHS approval of entities that certify MROs.

Subpart M–Medical Review Officer (MRO), Section 13.1(b), "Who may serve as an MRO?" states as follows: "Nationally recognized entities that certify MROs or subspecialty boards for physicians performing a review of Federal employee drug testing results that seek approval by the Secretary must submit their qualifications and a sample examination. Based on an annual objective review of the qualifications and content of the examination, the Secretary shall publish a list in the **Federal Register** of those entities and boards that have been approved."

HHS has completed its review of entities that train and certify MROs, in accordance with requests submitted by such entities to HHS.

(1) The HHS Secretary approves the following MRO certifying entities that offer both MRO training and certification through examination:

American Association of Medical Review Officers (AAMRO), P.O. Box 12873, Research Triangle Park, NC 27709. Phone: (800) 489–1839, Fax: (919) 490–1010, E-mail: *cferrell@aamro.com.* Web site: *http://www.aamro.com/.*

Medical Review Officer Certification Council (MROCC), 836 Arlington Heights Road, #327, Elk Grove Village, IL 60007. Phone: (847) 631–0599, Fax: (847) 483–1282, E-mail: *mrocc@mrocc.org.* Web site: *http://www.mrocc.org/.*

(2) The HHS Secretary approves the following entities that offer MRO training as a prerequisite for MRO certification:

American College of Occupational and Environmental Medicine (ACOEM), 25 Northwest Point Boulevard, Suite 700, Elk Grove Village, IL 60007–1030, Phone: (847) 818–1800, Fax: (847) 818–9266, Contact Form: *http://www.acoem.org/contactacoem.aspx.* Web site: *http://www.acoem.org/.*

American Society of Addiction Medicine (ASAM), 4601 N. Park Avenue, Upper Arcade #101, Chevy

Chase, MD 20815. Phone: (301) 656–3920. Fax: (301) 656–3815. E-mail: *email@asam.org.* Web site: *http://www.asam.org/.*

DATES: HHS approval is effective December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Sean J. Belouin, PharmD, Division of Workplace Programs (DWP), Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), 1 Choke Cherry Road, Room 2–1031, Rockville, MD 20857; Telephone: (240) 276–0545; E-mail: *sean.belouin@samhsa.hhs.gov.*

Dated: November 30, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–30700 Filed 12–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–25]

Notice of Proposed Information Collection for Public Comment; Procedure for Obtaining Certificates of Insurance for Capital Program Projects

AGENCY: Office of the Assistant Secretary for Public and Indian 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:* February 7, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Department Reports Management Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400, (this is not a toll-free number) or e-mail Ms. *Colette_Pollard@hud.gov.* 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. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; *telephone:* 202–402–4109. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Procedure for Obtaining Certificates of Insurance for Capital Program Projects.

OMB Control Number: 2577–0046.

Description of the need for the information and proposed use: Public Housing Agencies must obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing projects or the modernization of an existing project. The certificates of insurance provide evidence that worker's compensation and general liability, automobile liability insurance are in force before and construction work is started.

Agency form number, if applicable: Not applicable.

Members of affected public: Business or other For-Profit, State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 3,000 annually with four responses per respondent. The average number for each response and record keeping is 0.5 hours, for a total reporting burden of 6,000 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. 2010–30845 Filed 12–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No FR–5382–N–17]

Notice of Proposed Information Collection for Public Comment: County Data Record Project

AGENCY: Office of Policy Development and Research, 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:* February 7, 2011.

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: Ashaki Robinson-Johns, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Suite 8120, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ashaki Robinson-Johns, (202) 402–7545, (this is not a toll free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of

the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Title of Proposal: Data Collection Plan for the County Data Record Project.

Description of the need for the information and proposed use: The Department of Housing and Urban Development (HUD), under contract to Abt Associates Inc. and its subcontractors, Fairview Industries and Smart Data Strategies, is conducting a project to collect existing parcel data from 127 pre-selected counties and 27 corresponding States to construct a standardized parcel database for HUD's usage. The main objective of the project is to provide HUD with reliable and currently collected information on housing market and neighborhood conditions in counties and States identified by HUD as recipients of HUD funding so that HUD can perform three types of activities. First, this database will give HUD an ability to track home sales, foreclosures and tax assessments and also respond efficiently to economic and natural disasters that may occur in the near future. Second, the information collected by this project is intended to support future evaluations of HUD programs such as the Neighborhood Stabilization Program (NSP), the HOME Investment Partnership Program, and the Disaster Recovery Assistance program. Third, the process of data collection will be used to assess the feasibility of constructing an ongoing parcel database that could be extended to have a national coverage and also be available to the public as aggregates by geography.

Members of Affected Public: Public servants at local government agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total estimated burden hours are 112.4 hours for the 127 counties and 27 corresponding States. For each of the 127 counties, an average of two departments will be contacted. At each department, two staff members will be contacted by phone. The first will be the official who has the authority to approve data transfer and the second will be the technical staff who can transfer the data. Each phone call is expected to last 12 minutes on average. For each of the 27 States, two staff members will be contacted by phone at only one department. The first will be the official who has the authority to approve data transfer and the second will be the technical staff who can transfer the data. Each phone call is expected to last 12 minutes on average.

Status of the proposed information collection: New.

Authority: Public Law 91–609 84; Name of Law: Research and Development Programs.

Dated: December 1, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–30842 Filed 12–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–49]

Notice of Proposed Information Collection: Comment Request; Requisition for Disbursement of Sections 202 & 811 Capital Advance/ Loan Funds

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:* February 7, 2011.

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: Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Aretha Williams, Housing Program Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (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: Requisition for Disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Control Number, if applicable: 2502–0187.

Description of the need for the information and proposed use: This information collection is used by Owner entities and submitted to HUD on a periodic basis (generally monthly) during the course of construction for the purpose of obtaining Section 202/811 capital advance/loan funds. The information will also be used to identify the Owner, the project, the type of disbursement being requested, the items to be covered by the disbursement, and the name of the depository holding the Owner's bank account, including the account number.

Agency form numbers, if applicable: HUD–92403–CA and HUD–92403–EH.

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 estimated total number of hours needed to prepare the information collection is 1,230, the number of respondents is 266 generating approximately 2,460 annual responses, the frequency of response is monthly and on occasion, the estimated time needed to prepare the response is approximately 30 minutes.

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: December 2, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–30694 Filed 12–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5467–N–01]

Notice of Intent To Prepare Environmental Impact Statement for the HOPE SF Development at Alice Griffith Public Housing Development, San Francisco, CA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice intent.

SUMMARY: HUD gives notice to the public that the City and County of San Francisco's Mayor's Office of Housing (MOH) as the Responsible Entity in accordance with 24 CFR 58.2, intends to prepare a Draft Environmental Impact Statement (EIS) for redevelopment of the Alice Griffith Public Housing as part of its HOPE SF development program. Funding for the project may include HUD funds from programs subject to regulation by 24 CFR part 58; these include, but are not limited to, Community Development Block Grant (CDBG) funds under Title I of the Housing and Community Development Act of 1974 and Home Investment Partnership Program (HOME) grants under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 as amended, Project Based Section 8 Vouchers under the United States Housing Act of 1937, Section 8(o)(13) and Public Housing operating subsidies for mixed income developments authorized under the U.S. Housing Act of 1937, Section 35. This notice is in accordance with regulations of the Council on Environmental Quality (CEQ). Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a "Cooperating Agency."

A Draft EIS will be prepared for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below within 30-days after publication of this notice.

This EIS will be a NEPA document intended to satisfy requirements of Federal environmental statutes. In accordance with specific statutory authority and HUD's regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has provided for assumption of its NEPA authority and NEPA lead agency responsibility by the City and County of San Francisco.

ADDRESSES: All interested agencies, groups, and persons are invited to submit written comments on the project named in this notice, and the Draft EIS to the contact person shown below. The office of the contact person should receive comments and all comments so received will be considered prior to the preparation and distribution of the Draft EIS. Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates that the EIS should consider, and recommended mitigation measures and alternatives associated with the proposed action. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interest and indicate their readiness to aid in the EIS effort as a "Cooperating Agency."

FOR FURTHER INFORMATION CONTACT: Eugene Flannery, Environmental Compliance Manager, Mayor's Office of Housing, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103; Phone: (415) 701–5598; FAX: (415) 701–5501; e-mail: *eugene.flannery@sfgov.org.*

SUPPLEMENTARY INFORMATION:

A. Background

The MOH, acting under authority of section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)), section 288 of the HOME Investment Partnerships Act (42 U.S.C. 12838), section 26 of the United States Housing Act of 1937 (42 U.S.C. 1437x) and HUD's regulations at 24 CFR part 58, in cooperation with other interested agencies, will prepare an EIS to analyze potential impacts of the Alice Griffith Public Housing revitalization program under HOPE SF (Cal 118). The proposed development would be located on approximately 20 net acres in the southeastern portion of San Francisco on the San Francisco South Quadrangle 7.5-minute U.S.G.S. topographic quadrangle map. The project site is bounded by Gilman Avenue on the south, Hawes Street on the west, Carroll Avenue on the north, and Arelious Walker Drive on the east. This EIS will be a NEPA document intended to satisfy requirements of Federal environmental statutes.

The proposed action would demolish and replace the existing 256 public housing units at the Alice Griffith Public Housing Development which were built in 1962. The proposed action would proceed in phases and would not displace existing residents. The initial phases would develop currently vacant portions of the Alice Griffith site, and existing residents would then occupy replacement public housing units before existing structures would be demolished in subsequent phases. Overall, the Project would develop a total of up to 1,210 units of public housing, affordable housing, below-market rate housing, and market-rate housing at the Alice Griffith site. It will provide new affordable housing that is targeted to the lower income levels of the Bayview population, including new units that are suitable for families, seniors, and young adults on 20 net acres along with development of adjacent non-SFHA property. Housing would include one-for-one replacement of 256 public housing units currently on the site, and 954 market-rate and below-market for-sale and rental units. Maximum buildings height would be up to 65 feet. A new 1.4-acre Alice Griffith Neighborhood Park would extend for several blocks near the center of the neighborhood.

There are three alternatives to the proposed action to be analyzed in the EIS. The alternatives are all variation of the project density. Alternative sites for the project were explored early in the process and it was determined that no other more viable site was available.

Alternative B, Replacement of the Alice Griffith Housing Units

Number of Units: 256.
Acreage: 15 acres.
No neighborhood park.
Percent Reduction: 79 percent.

Alternative C, Reduced Development Alternative

Number of Units: 875 units, distributed as follows:

256 Alice Griffith 1:1 Replacement Housing.

248 Affordable Housing Units <60% AMI.

37 Inclusionary Housing Units 80–120% AMI.

111 Workforce Housing Units 120–160% AMI.

223 Market Rate Housing Units.

Acreage: 20 acres.

New 1.4-acre Alice Griffith Neighborhood Park.

Percent Reduction: 27 percent.

Alternative D, No Project Alternative

No changes to the existing conditions.

The proposed redevelopment is consistent with requirements for a mixed-use, mixed-income housing project. The project site currently contains 256 residential units, a community center, a boys and girls club and a pump house. The residential units are in primarily two story structures. Much of the existing infrastructure would be demolished, and replaced, also in phases. Additional community space will be developed to provide a range of community uses (*e.g.,* social services space, educational facilities, library, neighborhood services, commercial uses).

B. Need for the EIS

The proposed project may constitute an action significantly affecting the quality of the human environment and an EIS will be prepared on this project by the City and County of San Francisco's MOH in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Responses to this notice will be used to: (1) Determine significant environmental issues, (2) identify data that the EIS should address, and (3) identify agencies and other parties that will participate in the EIS process and the basis for their involvement.

C. Scoping

A public EIS scoping meeting will be held on a date within the comment period and after at least 15 days of publishing this Notice of Intent. Notices of the scoping meeting will be mailed when the date has been determined. The EIS scoping meeting will provide an opportunity for the public to learn more about the project and provide input to the environmental process. At the meeting, the public will be able to view graphics illustrating preliminary planning work and talk with MOH staff, and members of the consultant team providing technical analysis to the project. Translators will be available. Written comments and testimony concerning the scope of the EIS will be accepted at this meeting.

D. EIS Issues

The MOH has preliminarily identified the following environmental elements for discussion in the EIS: Earth (geology, soils, topography); air quality; water (surface water movement/quantity, runoff/absorption, flooding, groundwater movement/quantity/ quality); plants and animals; energy use; noise; land use and socioeconomic factors (land use patterns, relationship to plans/policies and regulations; population; housing and relocations); environmental justice (disproportionately high and adverse effects on minority and low income populations); historic and cultural resources; aesthetics, light and glare; parks and recreation; public services and utilities (fire, police, parks/ recreation, communications, water, stormwater, sewer, solid waste); and transportation (transportation systems, parking, movement/circulation, traffic hazards).

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: December 2, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–30844 Filed 12–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5469–N–01]

Federal Housing Administration (FHA): FHA Maximum Loan Limits for 2011

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that FHA has posted on its Web site the single-family maximum loan limits for 2011. The loan limit limits can be found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/.*

FOR FURTHER INFORMATION CONTACT: Karin B. Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–2121 (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: The FHA maximum loan limits for 2011 apply to mortgages insured under the following sections of the National Housing Act: Sections 203(b) (FHA's basic 1–4 family mortgage insurance program, including condominiums), 203(h) (mortgages for disaster victims), 203(k) (rehabilitation mortgage insurance) and 255 (Home Equity Conversion Mortgages). The loan limits apply to forward loans that were originated and received credit approval within the stated effective date for all programs herein except for Section 255 (HECM). The loan limits are applicable to all HECMs that have been assigned a FHA case number within the period January 1, 2011 through September 30, 2011.

FHA's regulations at 24 CFR 203.18b provide for requests to be made to FHA to change the established area loan limits. The regulations at 24 CFR 203.18b provide the procedures by which changes are to be requested and the procedures can also be found in FHA Mortgagee Letter 2007–01. Requests to changes to the maximum area loan limits should be made no later than the date specified in the mortgagee letter announcing the 2011 maximum loan limits. The 2007–01 Mortgagee Letter and, again, the Mortgagee Letter announcing 2011 maximum loan limits can be found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/.*

Dated: November 29, 2010.

Karin Hill,

Director, Office of Single Family Program Development.

[FR Doc. 2010–30687 Filed 12–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5463–N–01]

Notice of Web Availability and Opportunity for Public Comment on Updated Guidance for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons With Disabilities Programs Draft Notice

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its Web site of a draft notice updating HUD's guidance for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs. HUD's draft notice provides revised procedures relating to processing activities after selection of Section 202 and Section 811 applications for fund reservations, including mixed-finance transactions. HUD will accept and consider comments from the public. Public comments must be submitted in

accordance with the instructions in the **ADDRESSES** section of this notice. HUD's draft notice will be posted and is available at *http://www.hud.gov/offices/hsg/mfh/progdesc/progdesc.cfm.*

Comment Due Date: January 18, 2011.

ADDRESSES: Interested persons are invited to submit comments on HUD's draft Section 202/811 Program Guidance. Communications must refer to the above docket number and title. There are two methods of submitting public comments:

1. *Submission of Comments by Mail.* Comments may be submitted by mail posted by the due date to the Department of Housing and Urban Development, Attention: Section 202/811 Processing Guidance, 451 7th Street, SW., Room 6134, Washington, DC 20410.

2. *Submission of comments by e-mail.* Comments may be submitted by e-mail to *202/811Mixed-Finance@hud.gov.*

Facsimile (Fax) comments will not be accepted.

All communications must refer to the above docket number and title. Comments must specifically identify the page and paragraph number to which they refer.

FOR FURTHER INFORMATION CONTACT: Kerry Mulholland, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6128, Washington, DC 20410, telephone 202–708–3000 Ext. 2649.

Carol J. Galante,

Deputy Assistant Secretary for Multifamily Housing Programs.

[FR Doc. 2010–30689 Filed 12–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Cherokee Nation of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 16.61 acres of land into trust for the Cherokee Nation of Oklahoma on November 10, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1 and is published to comply with the requirements of 25 CFR Part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian Tribes and individual Indians before transfer of title to the property occurs. On November 10, 2010, the Assistant Secretary—Indian Affairs decided to accept approximately 16.61 acres of land into trust for the Cherokee Nation of Oklahoma under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 16.61 acres are located within the former reservation boundaries of the Cherokee Nation in Cherokee County, Oklahoma. The parcel will be used for a gaming establishment. The 16.61 acre parcel located in Cherokee County, Oklahoma is described as follows:

A tract of land lying in and being a part of the SE¼ SW¼ of Section 16, Township 16 North, Range 22 East, I.B.&M., Cherokee County, Oklahoma, more particularly described as follows, to-wit:

BEGINNING at the SE corner of said SE¼ SW¼; thence North 89°54′ West along the South Boundary of said SE¼ SW¼, 420.68 feet to a point on the Easterly Boundary of Oklahoma State Highway No. 82; thence North 36°26′02″ West along the Easterly Boundary of Oklahoma State Highway No. 82, 300.1 feet; thence in a Northerly direction, on a curve to the right, having a radius of 651.2 feet; an arc distance of 570.56; thence North 36°16′57″ East, 283.22 feet; thence North 53°43′03″ West, 55.0 feet to a point on the Easterly boundary of U.S. Highway No. 62; thence Northeasterly, along the Easterly boundary of U.S. Highway No. 62, on a curve to the left; having a radius of 3645.99 feet; an arc distance of 27.29 feet; thence South 42°55′ East, 183.0 feet; thence North 34°10′ East, 135.0 feet; thence North 32°03′ East, 325.3 feet; thence South 89°53′ East, 197.6 feet to the NE corner of said SE¼ SW¼; thence South 0°07′ West, 1319.75 feet to the POINT OF BEGINNING; LESS AND EXCEPT:

A strip, piece or parcel of land lying in part of the SE¼4 SW¼4 of Section 16, Township 16 North, Range 22 East. Said parcel of land being described by meters and bounds as follows: BEGINNING at a point on the South line of said SE¼ SW¼; a distance of 399.49 feet (121.764 meters) West of the SE corner of said SE¼ SW¼; thence West along said South line a distance of 21.19 feet (6.457 meters) to a point on the present East rights of way line of State Highway No. 82. thence Northwesterly along said right of way line a distance of 449.32 feet (136.953 meters), thence South 38°18′29″ East a distance of 460.63 feet (140.400 meters) to a POINT OF BEGINNING, containing 0.15 acres (0.061 hectares), more or less, of new right of way, the remaining area included in the above description being right of way occupied by the present highway. All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Dated: November 10, 2010.

Donald Laverdure,

Deputy Assistant Secretary.

[FR Doc. 2010–30867 Filed 12–7–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC0100000.L12200000.IA0000.241A.0; 4500012836]

Notice of Final Supplementary Rules for Public Lands in Idaho: Blue Creek Bay Recreation Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) Coeur d'Alene Field Office (CdAFO) is finalizing supplementary rules to regulate conduct on public lands within the Blue Creek Bay Recreation Management Area (BCBRMA). These supplementary rules are needed to implement decisions set out in the Blue Creek Bay Recreation Project Plan Environmental Assessment (EA) (2009) and in the Coeur d'Alene Resource Management Plan (RMP), to protect public lands, resources, and public health and provide for public safety.

DATES: These rules are effective January 7, 2011.

ADDRESSES: You may direct inquiries to the Bureau of Land Management, Coeur d'Alene Field Office, 3815 Schreiber

Way, Coeur d'Alene, ID 83815; or e-mail *Brian_White@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Brian White, Bureau of Land Management Outdoor Recreation Planner (208) 769–5031 or e-mail: *Brian_White@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Through a series of transactions over a 10-year period, the BLM acquired 736 acres of public land surrounding Blue Creek Bay on Lake Coeur d'Alene. The acquisition generated considerable public interest and required a substantial investment of public funds. The parcels were acquired with the intent of providing public access to the lake while retaining many of the natural elements in close proximity to a rapidly growing urban/suburban area. The key issues of management concern are public health and safety and long-term management of public recreational access to the property.

In developing a recreation plan for this area, the BLM conducted extensive public outreach in 2007 and 2008 and analyzed alternative levels of development and different management strategies for the area. The plan considered the physical location and characteristics of the area, natural resource values, recreational opportunities, and public input. The Blue Creek Bay Recreation Project Plan (BCBRPP), approved in January 2009, identified a modest level of development designed for day use only of new waterfront facilities that will include a parking area, docks, vault toilet and picnic sites, development of an upland trailhead and non-motorized trails, and the installation of an accessible nature trail with interpretive displays for environmental education. The BCBRPP identified six supplementary rules necessary for the safety of the adjacent landowners, public land users, and other visitors to the area.

II. Discussion of Public Comments

The BLM CdAFO proposed these supplementary rules in the **Federal Register** on July 13, 2009 (74 FR 33469). Public comments were accepted for a 30-day period ending on August 12, 2009. The BLM received no public comments during the comment period.

III. Discussion of Supplementary Rules

The final supplementary rules apply to the public lands within the BCBRMA. The BCBRMA includes specific management actions that restrict certain activities and define allowable uses which were identified and analyzed in the BCBRPP EA. The final supplementary rules implement these management actions within the BCBRMA. These final supplementary rules are necessary to protect natural resources on public land and provide for the public's health and safety. Please see the preamble to the proposed rule (74 FR 33469–33470) for discussion of the supplementary rules.

The final supplementary rules do not incorporate any substantive changes from the proposed supplementary rules. Internal review led to some technical changes. The legal land description added the term "above Yellowstone Road" in order to clarify that the specified lots were above Yellowstone Road. However, this addition does not alter the reading of the land description. The proposed supplementary rules included an "Enforcement" section, which was changed to "Penalties" to reflect current BLM nomenclature. The final rules do not reference 43 CFR 2932.57(b) in the Penalties section because these regulations apply to Special Recreation Permits, which are not relevant for the supplementary rules.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not significant and are not subject to review by the Office of Management and Budget under Executive Order (EO) 12866. These supplementary rules will not have an effect of $100 million or more on the economy, nor will they adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients nor do they raise novel legal or policy issues. The supplementary rules will not affect legal commercial activity, but merely contain rules of conduct for public use of a limited area of public lands.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined that under the RFA these final supplementary rules do not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules are not considered a "major rule" as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than $100 million per year; nor do they have a significant or unique effect on State, local or Tribal governments or the private sector. The final supplementary rules merely establish rules of conduct for public use of a limited area of public lands and have no effect on State, local or Tribal governments and do not impose any requirements on any of these entities. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The final supplementary rules do not address property rights in any form, and do not cause the impairment of one's property rights. Therefore, the BLM has determined that these rules do not cause a "taking" of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These final supplementary rules will not have a substantial direct effect on the States, on the relationship between

the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These final supplementary rules do not conflict with any Idaho State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Idaho State Office of the BLM has determined that these final supplementary rules do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM found that these supplementary rules would not include policies that have Tribal implications. Since the rules do not change BLM policy and do not involve Tribal lands, resources, or religious rights, the BLM has determined that additional Tribal consultation is not necessary.

Paperwork Reduction Act

These final supplementary rules do not contain any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed supplementary rules is exempt from the provisions of the Paperwork Reduction Act of 1995, as provided at 44 U.S.C. 3518(c)(1).

National Environmental Policy Act (NEPA)

The BLM prepared an EA (ID–410–2008–EA–60) and an associated Finding of No Significant Impact (FONSI) for the BCBRPP, for which a Decision Record was issued January 9, 2009. The proposed rules and their environmental effects were analyzed in the EA, and the Decision Record adopted the supplementary rules. The supplementary rules are consistent with and necessary to carry out the direction of the RMP and the BCBRPP. They establish rules of conduct for public use within the BCBRMA to protect public health and safety and improve the protection of the resources. The BLM has placed the EA, FONSI and Decision Record on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

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

These final supplementary rules do not comprise a significant energy action. The supplementary rules do not have an adverse effect on energy supplies, production, or consumption. They have no connection with energy policy.

Author

The principal author of this supplementary rule is Brian White, Outdoor Recreation Planner, Coeur d'Alene Field Office, Bureau of Land Management.

For the reasons stated in the preamble, and under the authority for supplementary rules found at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Idaho State Director, Bureau of Land Management, issues supplementary rules for public lands managed by the BLM in Idaho, to read as follows:

Supplementary Rules for Blue Creek Bay

Recreation Management Area

These final supplementary rules apply, except as specifically exempted, to the following described public land comprising the entire 736-acre Blue Creek Bay Recreation Management Area, all of which are contiguous lands in Boise Meridian, Kootenai County, Idaho:

T. 50 N., R. 2 W., Section 31: lots 5, 6, 7, 8, and E½ NE¼ SW¼. T. 50 N., R. 3 W., Sec. 26: portion of SW¼ south and west of Sunnyside Road and Sec. 35: portions of lots 1, 2, 7 above Sunnyside Road; lots 4, 5, 6, and N½ NW¼, W½ NE¼.

T. 49 N., R. 2 W., Sec. 6: lot 4. T. 49 N., R. 3 W., Sec. 1: portions of lots 1, 2, 5, 6 above Yellowstone Road.

Containing 736 acres more or less.

1. You must not occupy or use the Blue Creek Bay public lands from one hour after sundown to one hour before sunrise.

2. You must not moor any boat overnight on any BLM-managed structure or shoreline.

3. You must not start or maintain any open campfires, except when completely contained within permanently installed steel fire grates or cooking grills.

4. You must not discharge a firearm (powered by compressed gas or gunpowder) for hunting, target practice or other purposes, except that:

A. Waterfowl hunters may hunt waterfowl below the high water mark of Lake Coeur d'Alene within Blue Creek Bay.

5. You must not use motor vehicles off county roads.

6. You must not cut or collect firewood.

Exceptions

These supplementary rules do not apply to emergency, law enforcement, and Federal or other government entities while conducting official or emergency duties. Motor vehicle restrictions likewise do not apply to emergency, law enforcement, and Federal or other government motor vehicles while conducting official or emergency duties. Exemptions to these supplementary rules may be granted on a case-by-case basis as deemed appropriate by the Authorized Officer. The prohibition of discharging a firearm in rule 4 has no effect on hunting by licensed hunters in legitimate pursuit of waterfowl on lands managed by Idaho Department of Lands during the proper season with appropriate firearms.

Penalties: Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined up to $1,000, imprisoned for up to 12 months, or both, in accordance with 43 U.S.C. 1733(a) and 43 CFR 8360.0–7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Idaho law.

Peter J. Ditton,

Acting Idaho State Director.

[FR Doc. 2010–30717 Filed 12–7–10; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–718]

Certain Electronic Paper Towel Dispensing Devices and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law

judge's ("ALJ") initial determination ("ID") (Order No. 23) granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 21, 2010, based on a complaint filed by Georgia-Pacific Consumer Products LP of Atlanta, Georgia ("Georgia-Pacific"), alleging violations of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic paper towel dispensing devices and components thereof by reason of infringement of certain claims of United States Patent Nos. 6,871,815; 7,017,856; 7,182,289; and 7,387,274. 75 FR 28651–2 (May 21, 2010). The complainant named as respondents Kruger Products LP of Mississauga, Canada ("Kruger"); KTG USA LP of Memphis, Tennessee ("KTG USA"); Stefco Industries, Inc. of Haines City, Florida ("Stefco"); Cellynne Corporation of Haines City, Florida ("Cellyne"); Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc., d/b/a/Open for Business of Chicago, Illinois ("NetPak Chicago"); NetPak Electronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd of Izmir, Turkey ("NetPak Turkey"); Paradigm Marketing Consortium, Inc. of Syosset, New York; United Sourcing Network Corp. of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; and Vida International Inc. of Taipei, Taiwan.

On August 16, 2010, the Commission issued notice of its determination not to review an ID amending the complaint and notice of investigation: (1) To correct the corporate name of NetPak Chicago; (2) to redefine "Kruger" to "Kruger Products and/or KTG USA"; (3) to indicate that Georgia-Pacific no longer alleges that NetPak Turkey is the source of Stefco's and Cellynne's accused product; (4) to add new respondents Jet Power International Limited; Winco Industries Co.; DWL Industries Co.; Ko-Am Corporation Inc. d/b/a Janitor's World; Natury, S.A. De C.V.; Update International Inc.; and AIM.

On October 25, 2010, Georgia-Pacific filed a motion seeking to further amend the complaint and notice of investigation to correct the corporate name of the respondent originally identified as "Update International Inc." to "Franklin Financial Management, Inc. d/b/a Update International" of California, and to make certain other technical corrections. On November 10, 2010, the ALJ issued Order No. 23, granting the motion. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: December 3, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–30857 Filed 12–7–10; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on January 6 and 7, 2011.

DATES: Thursday, January 6, 2011, from 9 a.m. to 5 p.m., and Friday, January 7, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, on Thursday, January 6, 2011, from 9 a.m. to 5 p.m., and Friday, January 7, 2011, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2010 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2011 Basic (EA–1) Examination and the May 2011 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2010 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 6 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and should submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All persons planning to attend the public session should notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2010, to 202–622–8300,

Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Internal Revenue Service, Joint Board for the Enrollment of Actuaries, Attn: Executive Director, SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 2, 2010.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2010–30708 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that on December 2, 2010, a proposed Consent Decree was lodged. *United States et al.* v. *Beazer Homes USA, Inc.,* Civil Action No. 3:10-cv-01133, was lodged with the United States District Court for the Middle District of Tennessee.

The Consent Decree in this Clean Water Act enforcement action against Beazer Homes USA, Inc. ("Beazer") resolves allegations by the Environmental Protection Agency, asserted in a complaint filed together with the Consent Decree, under Section 309 of the Clean Water Act, 33 U.S.C. 1319, for alleged stormwater violations at Beazer's home sites in 21 states nationwide. The proposed Consent Decree also resolves separate but related state law claims brought by co-plaintiff States of Colorado, Florida, Indiana, Maryland, Nevada, Tennessee, and Virginia. In addition to the payment of civil penalties, the settlement requires Beazer to develop improved pollution prevention plans for each construction site, conduct additional site inspections, and promptly correct any problems detected. Beazer must properly train construction managers and contractors, and implement a management and internal reporting system to improve oversight of on-the-ground operations.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matters as *United States et al.* v. *Beazer Homes USA, Inc.,* DOJ Ref. No. 90–5–1–1–08420.

The Consent Decree may be examined at the Region 4 Office of the United States Environmental Protection Agency, located at the Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

During the public comment period, the proposed agreements may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting from the Consent Decree Library a copy of the consent decree for *United States et al.* v. *Beazer Homes USA, Inc.,* Civil Action No. 3:10-cv-01133, please enclose a check in the amount of $44.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–30743 Filed 12–7–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,390]

Haldex Brake Corporation, Commercial Vehicle Systems, Including On-Site Leased Workers of Johnston Integration Technologies, a Subsidiary of Johnston Companies, Iola, KS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2010, applicable to workers of Haldex Brake Corporation, Commercial Vehicle Systems, Iola, Kansas. The Department's notice of determination was published in the **Federal Register** on September 3, 2010 (75 FR 54186).

At the request of the State workforce agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of automotive brake system components.

The company reports that workers leased from Johnston Integration Technologies, a subsidiary of Johnston Companies were employed on-site at the Iola, Kansas location of Haldex Brake Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Johnston Integration Technologies, a subsidiary of Johnston Companies working on-site at the Iola, Kansas location of Haldex Brake Corporation.

The amended notice applicable to TA–W–74,390 is hereby issued as follows:

All workers of Haldex Brake Corporation, Commercial Vehicle Systems, including on-site leased workers of Johnston Integration Technologies, a subsidiary of Johnston Companies, Iola, Kansas, who became totally or partially separated from employment on or after July 15, 2009 through August 19, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 24th day of November, 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30746 Filed 12–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of November 22, 2010 through November 26, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,821	Shaw Diversified, Plant LW, 07, Head Surfaces, Leased Workers From Select Staffing.	Algona, WA	March 26, 2009.
73,828	GKN Axles Jackson Center, GKN Armstrong Wheels, Leased Workers from Staffmark.	Jackson Center, OH	March 31, 2009.
73,880	Weston Wear Inc	San Francisco, CA	April 2, 2009.
74,015	Hutchins and Perreault, Inc.	East Barre, VT	April 27, 2009.

TA–W No.	Subject firm	Location	Impact date
74,533	Belding Hausman, Inc	Lincolnton, NC	August 13, 2009.
74,584	Sylvan America, Inc., Sylvan, Inc.; Leased Workers from Adecco Employment Services.	Kittanning, PA	September 1, 2009.
74,638	Western Refining Yorktown, Inc., Leased Workers from Headway Staffing.	Grafton, VA	September 10, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,175	JPMorgan Chase, Card Services Division	Frederick, MD	June 1, 2009.
74,540	BMC Software, Inc., Leased Workers from Comsys ITS	Houston, TX	July 22, 2009.
74,553	Fiserv, Inc	Owings Mills, MD	August 18, 2009.
74,560	Wyman Gordon Forgings, Precision Cast Parts, Machining Division.	Houston, TX	August 20, 2009.
74,610	Ocwen Loan Servicing, LLC, Workers Whose Wages Were Reported Under Homeq Servicing.	North Highlands, CA	September 7, 2009.
74,696	Motorola, Inc., CDMA Messaging Product Group	Arlington Heights, IL	September 22, 2009.
74,823	Hartford Financial Service Group, Inc., EIT/CCM/Technology Shared Services.	Hartford, CT	November 1, 2009.
74,823A	Hartford Financial Service Group, Inc., EIT/CCM/Technology Shared Services.	Southington, CT	November 1, 2009.
74,823B	Hartford Financial Service Group, Inc., EIT/CCM/SMS (BI)	Hartford, CT	November 1, 2009.
74,823C	Hartford Financial Service Group, Inc., EIT/CCM/SMS (BI)	Windsor, CT	November 1, 2009.
74,823D	Hartford Financial Service Group, Inc., EIT/TSS/L2 Help Desk	Hartford, CT	November 1, 2009.
74,823E	Hartford Financial Service Group, Inc., EIT/CCM/Claims	Hartford, CT	November 1, 2009.
74,823F	Hartford Financial Service Group, Inc., EIT/TSS/CITS	Hartford, CT	November 1, 2009.
74,823G	Hartford Financial Service Group, Inc., EIT/CCM/Reinsurance Accounting.	Hartford, CT	November 1, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,581	Dell Products LP, Dell, Inc., East Coast Fulfillment Center	Nashville, TN	February 16, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,351	Sandy Alexander	Clifton, NJ	
73,615	Smurfit-Stone Container Corporation, Container Division	Jefferson, OH	
74,626	Newell Window Furnishings, Inc., Newell Rubbermaid, Inc.	Athens, GA	
74,681	Tower-OHL	Jacksonville, FL	
74,724	International Business Machines (IBM), Global Technology Services Delivery, Band 7 Oracle, Off-Site Teleworkers.	Endicott, NY	

I hereby certify that the aforementioned determinations were issued during the period of November 22, 2010 through November 26, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: December 1, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–30750 Filed 12–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 20, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 20, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov*.

Signed at Washington, DC, this 30th day of November 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA Petitions Instituted between 11/22/10 and 11/26/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74896	Triangle Suspension Systems, Inc. (Company)	DuBois, PA	11/22/10	11/03/10
74897	Penske Logistics (Company)	El Paso, TX	11/22/10	11/05/10
74898	Fry Communications, Inc. (State/One-Stop)	Mechanicsburg, PA	11/22/10	11/19/10
74899	Tasman Hartford, LLC (State/One-Stop)	Hartford, WI	11/22/10	11/17/10
74900	ISP Stitching and Bindery Product (Union)	Racine, WI	11/22/10	11/17/10
74901	Hawker Beechcraft (Union)	Wichita, KS	11/22/10	11/11/10
74902	Abbott Diabetes Care (State/One-Stop)	Alameda, CA	11/22/10	11/18/10
74903	Time Insurance Company (Workers)	Miami, FL	11/22/10	11/18/10
74904	Jacobs Engineering (State/One-Stop)	Cypress, CA	11/22/10	11/18/10
74905	United Auto Workers (Union)	Ypsilanti, MI	11/22/10	10/23/10
74906	MOL America, Inc. (State/One-Stop)	Long Beach, CA	11/22/10	11/19/10
74907	Tektronix TCS and TSS (State/One-Stop)	Beaverton, OR	11/22/10	11/17/10
74908	Continental Structural Plastics (Union)	North Baltimore, OH	11/23/10	11/18/10
74909	Heritage Valley Health System (Workers)	Moon Township, PA	11/23/10	11/05/10
74910	Denim North America (Company)	Columbus, GA	11/23/10	11/12/10
74911	Emerson Network Power (State/One-Stop)	Bannockburn, IL	11/23/10	11/16/10
74912	Thomson Reuters (Workers)	Rochester, NY	11/23/10	11/22/10
74913	Sara Lee Bakery (Workers)	Bellevue, NE	11/23/10	11/22/10
74914	Holt Sublimation Printing and Products, Inc. (Company)	Burlington, NC	11/23/10	11/22/10
74915	LA–Z–BOY, Inc. of Arkansas (State/One-Stop)	Siloam Springs, AR	11/23/10	11/22/10
74916	Philips Professional Luminaries, NA (State)	Sparta, TN	11/23/10	11/22/10
74917	Hewlett Packard (Company)	Cupertino, CA	11/23/10	11/22/10
74918	Henkel Corporation (Company)	Olean, NY	11/23/10	11/22/10
74919	Severstal International (State/One-Stop)	Sparrows Point, MD	11/23/10	11/22/10
74920	Raypak, Inc. (Company)	Arcadia, FL	11/23/10	11/22/10
74921	Anthem Blue Cross and Blue Shield (Company)	Fond du Lac, WI	11/24/10	11/23/10
74922	Hendricks Furniture Group (Company)	Conover, NC	11/24/10	11/23/10
74923	Martinrea Heavy Stamping (Workers)	Shelbyville, KY	11/24/10	11/20/10
74924	Cessna Aircraft Company (Union)	Wichita, KS	11/24/10	11/11/10
74925	Commerical Furniture Group, Inc. (State/One-Stop)	Chicago, IL	11/24/10	11/23/10
74926	Adanced Urethane Technologies, Inc. (Union)	Dubuque, IA	11/24/10	11/20/10
74927	Pfizer, Inc. (Union)	Pearl River, NY	11/26/10	10/25/10
74928	Gudebrod Industries LLC (Workers)	Pottstown, PA	11/26/10	11/25/10
74929	John C. Lincoln Health Network (Workers)	Phoenix, AZ	11/26/10	11/06/10
74930	Hotels.com (Workers)	Dallas, TX	11/26/10	11/17/10
74931	Matrix Tool & Mold, Inc. (Company)	Trinity, NC	11/26/10	10/30/10

[FR Doc. 2010–30749 Filed 12–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 20, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 20, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 30th of November 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions instituted between 11/15/10 and 11/19/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74870	IBM Corporation (Workers)	Plano, TX	11/15/10	11/05/10
74871	IBM (Workers)	Oklahoma City, OK	11/15/10	11/12/10
74872	Leggett and Platt (State/One-Stop)	Lexington, NC	11/15/10	11/09/10
74873	HAVI Logistics North America (Company)	Lisle, IL	11/15/10	11/12/10
74874	Solo Cup Company (State/One-Stop)	North Andover, MA	11/15/10	11/08/10
74875	Pitney Bowes (State/One-Stop)	Spokane, WA	11/15/10	11/10/10
74876	Contec, LLC (State/One-Stop)	SeaTac, WA	11/15/10	11/09/10
74877	Cresent Inc. (Company)	Niota, TN	11/15/10	10/11/10
74878	GKN Aerospace (Union)	Kent, WA	11/16/10	11/10/10
74879	Xella Aircrete North America, Inc. (Company)	Adel, GA	11/16/10	11/15/10
74880	Lafarge North America (Union)	Seattle, WA	11/16/10	11/10/10
74881	Gerhardt USA (Workers)	Dallastown, PA	11/16/10	11/13/10
74882	Fasco Industries (Company)	Cassville, MO	11/16/10	11/16/10
74883	Pitney Bowes (Workers)	Shelton, CT	11/16/10	11/15/10
74884	Mid–South Electronics, Inc. (Company)	Gadsden, AL	11/16/10	11/12/10
74885	Haldex Brake Products (Company)	Grand Haven, MI	11/17/10	11/16/10
74886	Winchester Electronics (Company)	Franklin, MA	11/17/10	11/16/10
74887	Winchester Electronics (Company)	Rock Hill, SC	11/17/10	11/16/10
74888	Thomson Reuters (Hubbard One) (State/One-Stop)	Chicago, IL	11/17/10	11/16/10
74889	Scott Port-A–Fold, Inc. (Company)	Archbold, OH	11/17/10	11/05/10
74890	Ohio Decorative Products (Workers)	Spencerville, OH	11/17/10	11/11/10
74891	PricewaterhouseCoopers, LLP (Workers)	Boston, MA	11/17/10	11/10/10
74892	Black and Decker (Workers)	McAllen, TX	11/17/10	11/08/10
74893	Precision Camera (Workers)	Enfield, CT	11/17/10	11/02/10
74894	Cross Creek Furniture (Workers)	Hudson, NC	11/18/10	09/07/10
74895	Anthem Blue Cross Blue Shield/Wellpoint (Workers)	Indianapolis, IN	11/19/10	11/15/10

[FR Doc. 2010–30748 Filed 12–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 20, 2010.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 20, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to foiarequest@dol.gov.

Signed at Washington, DC this 30th day of November 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions Instituted Between 11/8/10 and 11/12/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74837	Morning Star Publishing (Workers)	Mount Pleasant, MI	11/08/10	11/02/10
74838	Cali Jean (State/One-Stop)	Los Angeles, CA	11/08/10	11/03/10
74839	St. John Knits, Inc. (State/One-Stop)	Irvine, CA	11/08/10	11/03/10
74840	Star Tek Grand Junction 2 (Workers)	Grand Junction, CO	11/08/10	10/12/10
74841	PSB Industries, Inc. (State/One-Stop)	Erie, PA	11/08/10	11/03/10
74842	Bosch Rexroth Corporation (Company)	Buchanan, MI	11/08/10	11/02/10
74843	Jacuzzi Group Worldwide (Company)	Chino Hills, CA	11/08/10	11/03/10
74844	Cooper Lighting (Company)	Americus, GA	11/08/10	11/05/10
74845	J. P. International Tool (Workers)	Alden, NY	11/08/10	11/04/10
74846	Commercial Vehicle Group (CVG) (State/One-Stop)	Kings Mountain, NC	11/08/10	11/02/10
74847	Dell Healthcare Services (State/One-Stop)	Providence, RI	11/09/10	10/20/10
74848	Thomas & Betts (Workers)	Bowling Green, OH	11/09/10	11/05/10
74849	Weyerhaeuser (Company)	Federal Way, WA	11/09/10	10/24/10
74850	StarTek Inc. (State/One-Stop)	Greeley, CO	11/09/10	11/05/10
74851	EMC Corporation (State/One-Stop)	Southborough, MA	11/09/10	11/05/10
74852	Physicians Management Group (PMG) (Company)	Brentwood, CA	11/10/10	11/08/10
74853	Kurz-Kasch (Company)	South Boston, VA	11/10/10	11/09/10
74854	Behavioral Health Services, Inc. (State/One-Stop)	Gardena, CA	11/10/10	11/08/10
74855	Electrolux Homecare Products, Inc. (Company)	Bloomington, IL	11/10/10	11/08/10
74856	Affiliated Computer Services (State/One-Stop)	Long Beach, CA	11/10/10	11/08/10
74857	Federal Mogul Corporation (Union)	Schofield, WI	11/10/10	10/15/10
74858	Benchmark Electronics (Company)	Nashua, NH	11/10/10	11/08/10
74859	Health Markets (State/One-Stop)	North Richland Hills, TX	11/10/10	11/01/10
74860	Hmp Industries, Inc. (State/One-Stop)	Ansonia, CT	11/10/10	11/09/10
74861	Nay et al, Inc. (Workers)	Los Angeles, CA	11/12/10	10/09/10
74862	R & D Maidment (Company)	Victorville, CA	11/12/10	11/09/10
74863	Neiman Marcus (Workers)	Irving, TX	11/12/10	11/10/10
74864	Ship Cars Now (Workers)	Auburn Hills, MI	11/12/10	11/10/10
74865	Johnson Controls, Inc. (Workers)	Corvallis, OR	11/12/10	11/09/10
74866	Mountain City Lumber Company (Company)	Marion, VA	11/12/10	11/09/10
74867	ABB, Inc. (Company)	Westerville, OH	11/12/10	11/03/10
74868	ATT Advertisting Solutions (State/One-Stop)	Livonia, MI	11/12/10	11/04/10
74869	Chestnut Ridge Beverage Company (Workers)	Latrobe, PA	11/12/10	11/04/10

[FR Doc. 2010–30747 Filed 12–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0047]

Bloodborne Pathogens Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Bloodborne Pathogens Standard (29 CFR 1910.1030). The information collection requirements specified in the Bloodborne Pathogens Standard provides employers and workers with means to provide protection from adverse health effects associated with occupational exposure to bloodborne pathogens.

DATES: Comments must be submitted (postmarked, sent, or received) by February 7, 2011.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0047, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0047). All comments, including any personal information you provide, are

placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Bloodborne Pathogens Standard require employers to: Develop and maintain exposure control plans; develop a housekeeping schedule; provide workers with HBV vaccinations, as well as post-exposure medical evaluations and follow-ups; provide workers with information and training; maintain medical and training records for specified periods; provide OSHA, the National Institute for Occupational Safety and Health, workers and their authorized representatives with access to these records; establish and maintain a sharps injury log for the recording of percutaneous injuries from contaminated sharps; and HIV and HBV research laboratories and production facilities must also adopt or develop, and review at least once a year, a biosafety manual.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Bloodborne Pathogens Standard (29 CFR 1910.1030). The Agency is requesting an increase in the existing burden hours from 14,059,435 hours to 14,518,737 a total increase of 459,302 hours. The increase is the result of an increase in the number of workers and the number of establishments affected. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Bloodborne Pathogens Standard (29 CFR 1910.1030).

OMB Number: 1218–0180.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal, State, Local, or Tribal Governments.

Number of Respondents: 666,933.

Frequency: On occasion.

Total Responses: 18,589,251.

Average Time per Response: Time per response varies from 5 minutes (.08 hour) to maintain records to 1.5 hours for workers to receive training or medical evaluations.

Estimated Total Burden Hours: 14,518,737.

Estimated Cost (Operation and Maintenance): $26,030,079.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0047). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link.

Contact the OSHA Docket Office for information about materials not available through the Web site, and for

assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC on December 2, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–30737 Filed 12–7–10; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

TIME AND DATE: The Legal Services Corporation Board of Directors' Operations & Regulations Committee ("Committee") will meet *telephonically* on December 15, 2010. The meeting will begin at 11 a.m., Eastern Time, and continue until completion of the Committee's agenda.

LOCATION: Legal Services Corporation, F. William McCalpin Conference Center, 3rd Floor, 3333 K Street, NW., Washington, DC 20007.

PUBLIC OBSERVATION: Unless otherwise noticed, all meetings of the LSC Board of Directors are open to public observation. Members of the public that are unable to attend but wish to listen to a public proceeding may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

Call-In Directions for Open Sessions

- Call toll-free number: 1–(866) 451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "MUTE" your telephone immediately.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION

1. Approval of agenda.
2. Consider and act on strategic planning.
   - Presentation by Mattie Cohan, Senior Assistant General Counsel.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: December 6, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–31027 Filed 12–6–10; 4:15 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

TIME AND DATE: The Legal Services Corporation Board of Directors' Search Committee for LSC President ("Search Committee" or "Committee") will meet on December 13, 2010. The meeting will begin at 10 a.m. (Eastern Time) and continue until conclusion of the Committee's agenda.

LOCATION: Sidley and Austin, LLP, 1 South Dearborn Street, Chicago, Illinois 60603.

STATUS OF MEETING: Closed. The meeting of the Search Committee will be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to interview select candidates for the position of LSC President.[No new paragraph here] Such closure is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(e).[1]

The transcript of any portions of the closed session falling within the relevant provision of the Government in Sunshine Act, 5 U.S.C. 552b(c)(6), and LSC's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. The transcript of any portions not falling within either of these provisions will be available for public inspection.

MATTERS TO BE CONSIDERED:

Closed Session

1. Approval of Agenda.
2. Review of applications regarding candidates for the position of LSC President.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: December 6, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–31025 Filed 12–6–10; 4:15 pm]

BILLING CODE 7050–01–P

[1] 45 CFR 1622.5(e) protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on arts participation in the U.S. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before February 1, 2011. The NEA is

particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

Kathy Plowitz-Worden,

Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–30758 Filed 12–7–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339; Docket Nos. 50–280 and 50–281; NRC–2010–0376]

Virginia Electric and Power Company North Anna Power Station, Unit Nos. 1 and 2 Surry Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering changes to the Emergency Plan, pursuant to 10 CFR 50.54, "Conditions of licenses," paragraph (q), for North Anna Power Station, Unit Nos. 1 and 2 (NAPS), for Renewed Facility Operating License Nos. NPF–4 and NPF–7, and Surry Power Station, Unit Nos. 1 and 2 (Surry) for Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of NAPS and Surry located in Louisa County, Virginia, and Surry County, Virginia, respectively. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would upgrade selected Emergency Action Levels (EALs) based on NEI 99–01, Revision 5, "Methodology for Development of Emergency Action Levels," using the guidance of NRC Regulatory Issue Summary 2003–18, Supplement 1 and 2, "Use of Nuclear Energy Institute (NEI) 99–01, Methodology for Development of Emergency Action Levels."

The proposed action is in accordance with the licensee's applications dated January 29, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100500566).

The Need for the Proposed Action

The proposed action is needed because amendments would change an EAL scheme based on NUREG–0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan and Preparedness in Support of Nuclear Power Plants," to one based on NEI 99–01, "Methodology for Development of Emergency Action Levels," Revision 4. This would change the methodology for deriving selected Notification of Unusual Event values in Table R–1, Gaseous Effluent Monitor Classification Thresholds, and deleting EAL RA2.4, which evaluates abnormal radiation readings at infrequently accessed areas and revise the radiation level threshold values for reactor coolant system (RCS) letdown indication.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed EAL changes to NAPS and Surry. The staff has concluded that the changes would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Updated Final Safety Analysis Report. There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed changes.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historic and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the"no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the "Final Environmental Statement Related to the Continuation of Construction and the Operation," for NAPS dated April 1973, and Surry dated May 1972 and June 1972, respectively, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplements 6 and 7 Regarding Surry and NAPS—Final Report (NUREG–1437, Supplements 6 and 7)," dated November 2002.

Agencies and Persons Consulted

In accordance with its stated policy, on November 17, 2010, the staff consulted with the Virginia State official, Leslie P. Foldesi, Director of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated January 29, 2010. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of December 2010.

For the Nuclear Regulatory Commission.

V. Sreenivas,

Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–30855 Filed 12–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; NRC–2010–0379]

Nuclear Fuel Services, Inc.; Environmental Assessment and Finding of No Significant Impact for Proposed Exemption From a Requirement To Measure the Uranium Element and Isotopic Content of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Kevin M. Ramsey, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2C40M, Rockville, MD 20555–0001, Telephone (301) 492–3123, Fax (301) 492–3359, E-mail *kevin.ramsey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission's (NRC) staff is considering the issuance of a license amendment to Materials License SNM–124 to Nuclear Fuel Services, Inc. (NFS or the licensee) that would reflect a requested one-time exemption from a requirement to measure the uranium element and isotopic content of certain small amounts of strategic special nuclear material, as described further below. The NRC regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 74.59(d)(1) state that a licensee must establish and maintain a system of measurements to substantiate such contents. By letter dated December 31, 2009, NFS requested a temporary exemption from this requirement.

The NRC prepared an Environmental Assessment (EA) in support of this exemption request in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC concluded that a Finding of No Significant Impact (FONSI) is appropriate; therefore, an Environmental Impact Statement (EIS) will not be prepared.

II. Environmental Assessment

Background

The NFS facility in Erwin, Tennessee is authorized, under License SNM–124 to manufacture high-enriched nuclear reactor fuel. In addition, NFS is authorized to blend highly enriched uranium with natural uranium and manufacture low-enriched nuclear reactor fuel. The U.S. Department of Energy contracted with NFS to retain no more than 30, 2S type uranium hexafluoride (UF_6) cylinders for future forensic analysis. These cylinders have been opened and processed leaving a small quantity of material (heel) in each cylinder. Because of the trace condition of heel material, it is difficult to perform destructive or nondestructive analyses to measure the uranium element and isotope content of the material remaining in these cylinders. It requires expensive equipment, which NFS does not possess, to sample and analyze UF_6 gas. Therefore, NFS is requesting a one-time exemption to allow the use of assigned values for each cylinder based on the net weight of the heel, and concentration and enrichment factors. These assigned values will be used for inventory, receipt and shipment practices.

Review Scope

The purpose of this EA is to assess the environmental impacts of granting the requested exemption. This EA does not approve the request—a separate safety review determines whether to grant the requested exemption. This EA is limited to the proposed exemption and any cumulative impacts on existing plant operations. The existing conditions and operations for the Erwin facility were evaluated by NRC for environmental impacts in a 1999 EA related to the renewal of the NFS license (Reference 1) and a 2002 EA related to the first amendment for the Blended Low-Enriched Uranium (BLEU) Project (Reference 2). The 2002 EA assessed the impact of the entire BLEU Project using information available at that time. A 2003 EA (Reference 3) and a 2004 EA (Reference 4), related to additional BLEU Project amendments, confirmed the FONSI issued in 2002.

Proposed Action

The proposed action is to grant a one-time exemption from the 10 CFR 74.59(d)(1) requirement to measure the uranium element and isotopic content of certain 2S type UF_6 cylinders. The exemption would authorize NFS to record an estimated value instead of drawing samples from each cylinder and conducting measurements. No change to processing, packaging, or storage operations is requested; and no construction of new facilities is requested. Granting the exemption would require the revision of a safety condition and the addition of a safeguards condition in License SNM–124 if the exemption is granted.

Need for Proposed Action

The proposed action is being requested because it is difficult to sample the small quantity of material remaining in each cylinder and perform destructive or nondestructive analyses to measure the uranium element and isotope content of the material. It requires expensive equipment, which NFS does not possess, to sample and analyze UF_6 gas.

Alternatives

The alternatives available to NRC are:

1. Approve the requested action as described, or

2. No action (*i.e.,* deny the request).

Affected Environment

The affected environment for the proposed action and the no action alternative is the NFS site. The NFS facility is located in Unicoi County, Tennessee, about 32 kilometers (20 miles) southwest of Johnson City, Tennessee. The facility is within the Erwin city limits. The affected environment is identical to the affected environment assessed in the 2002 EA related to the first amendment for the BLEU Project (Reference 2). A full description of the site and its characteristics are given in the 2002 EA. Additional information can be found in the 1999 EA related to the renewal of the NFS license (Reference 1). The site

occupies about 28 hectares (70 acres). The site is bounded to the northwest by the CSX Corporation (CSX) railroad property and the Nolichucky River; and by Martin Creek to the northeast. The plant elevation is about 9 meters (30 feet) above the nearest point on the Nolichucky River.

The area adjacent to the site consists primarily of residential, industrial, and commercial areas; with a limited amount of farming to the northwest. Privately owned residences are located to the east and south of the facility. Tract size is relatively large, leading to a low housing density in the areas adjacent to the facility. The CSX railroad right-of-way is parallel to the western boundary of the site. Industrial development is located adjacent to the railroad on the opposite side of the right-of-way. The site is bounded by Martin Creek to the north with privately owned, vacant property and low-density residences.

Environmental Impacts of Proposed Action and Alternatives

1. Occupational and Public Health

Proposed Action

The occupational and public health impacts from the proposed action are essentially the same as those considered in the previous environmental assessments. If the exemption is granted, no samples of the radioactive and chemically hazardous material will be removed from the cylinders and measured in a laboratory, which will reduce the risk of exposures and releases from measurement operations and reduce the risk of accidents. However, the reductions would be so small that the differences would be negligible.

No Action

Denying the exemption request would not result in a significant difference in the occupational and public health impacts when compared to the proposed action. If this exemption request is denied, the licensee may make arrangements to have the material in each cylinder sampled and measured, which will increase the risk of exposures and releases from measurement operations and increase the risk of accidents. However, the facility will continue to implement NRC-approved procedures for handling radioactive and chemically hazardous materials. Thus, the impacts under the "no action" alternative will remain within acceptable regulatory limits. In addition, the quantity of material involved is relatively small. The increased risk would be so small that the difference would be negligible.

2. Effluent Releases, Environmental Monitoring, Water Resources, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources

Proposed Action

The NRC staff finds that approval of the proposed action will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the NFS site. If the exemption is granted, no samples of the radioactive and chemically hazardous material will be removed from the cylinders and measured in a laboratory, which will reduce the risk of exposures and releases from measurement operations and reduce the risk of accidents. However, the reductions would be so small that the differences would be negligible.

No Action

The NRC staff finds that denial of the proposed action will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the NFS site. If this exemption request is denied, the licensee may make arrangements to have the material in each cylinder sampled and measured, which will increase the risk of exposures and releases from measurement operations and increase the risk of accidents. However, the facility will continue to implement NRC-approved procedures for handling radioactive and chemically hazardous materials. Thus, the impacts under the "no action" alternative will remain within acceptable regulatory limits. In addition, the quantity of material involved is relatively small. The increased risk would be so small that the difference would be negligible.

Conclusion

Based on its review, the NRC concluded that the environmental impacts associated with the proposed action are not significant and, therefore, do not warrant the preparation of an EIS. The NRC determined that the proposed action is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the proposed action, the NRC determined that the proper action is to issue a FONSI.

Agencies and Persons Contacted

On October 19, 2010, the NRC staff contacted the Division of Radiological Health in the Tennessee Department of Environment and Conservation (TDEC) concerning this EA. On November 15, 2010, TDEC responded that it had reviewed the draft EA and had no comments (Reference 6).

The NRC staff determined that the proposed action will not affect listed species or critical habitat. Therefore, no consultation is required under section 7 of the Endangered Species Act. Likewise, the NRC staff determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no consultation is required under section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, the NRC staff considered the environmental consequences of taking the proposed action. On the basis of this EA, the NRC has concluded that there are no significant environmental impacts associated with the proposed action, and that preparation of an EIS is not warranted.

IV. Further Information

The documents referenced below in this Notice may be made available to interested parties, pursuant to a protective order and subject to applicable security requirements upon showing that the party has an interest that may be affected by the proposed action.

References

1. U.S. Nuclear Regulatory Commission, "Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–124," January 1999, ADAMS Accession No. ML050600258.
2. U.S. Nuclear Regulatory Commission, "Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM–124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium," June 2002, ADAMS Accession No. ML050540096.
3. U.S. Nuclear Regulatory Commission, "Environmental Assessment and Finding of No Significant Impact for the BLEU Preparation Facility," September 2003, ADAMS Accession No. ML032390428.
4. U.S. Nuclear Regulatory Commission, "Environmental Assessment and Finding of No Significant Impact for the Oxide Conversion Building and the Effluent Processing Building at the BLEU Complex," June 2004, ADAMS Accession No. ML041470176.
5. Nuclear Fuel Services, "2S UF_6 Cylinder Heel Request," December 31, 2009, ADAMS Accession No. ML100341335.
6. D. Shults, Director, Tennessee Division of Radiological Health, e-mail to K. Ramsey, U.S. Nuclear Regulatory Commission, "State Consultation on EA

for NFS Exemption," November 15, 2010, ADAMS Accession No. ML103200288.

Dated at Rockville, Maryland, this 1st day of December 2010.

For the Nuclear Regulatory Commission.

Merritt Baker,

Acting Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–30860 Filed 12–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0378]

Firstenergy Nuclear Operating Company, Davis-Besse Nuclear Power Station; Environmental Assessment And Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC, or the Commission) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.12, "Specific Exemptions," from 10 CFR 50.61, "Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events" and from 10 CFR part 50, Appendix G, "Fracture Toughness Requirements" for Facility Operating License No. NPF–3, issued to FirstEnergy Nuclear Operating Company (FENOC, the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS), located in Ottawa County, Ohio. In accordance with 10 CFR 51.21, the NRC performed an environmental assessment documenting its findings. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix G requires that fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light-water nuclear power reactors provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime, section 50.61 provides fracture toughness requirements for protection against pressurized thermal shock (PTS) events. By letter dated April 15, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091130228), as supplemented by letter dated December 18, 2009 (ADAMS Accession No. ML093570103), and October 8, 2010 (ADAMS Accession No. ML102861221), FENOC proposed exemptions from the requirements of 10 CFR part 50, Appendix G and 10 CFR 50.61, to revise certain DBNPS reactor pressure vessel (RPV) initial (unirradiated) properties using Framatome Advanced Nuclear Power Topical Report BAW–2308, Revisions 1–A and 2–A, "Initial RT_{NDT} of Linde 80 Weld Materials."

The licensee requested an exemption from Appendix G to 10 CFR part 50 to replace the required use of the existing Charpy V-notch (C_v) and drop weight-based methodology and allow the use of an alternate methodology to incorporate the use of fracture toughness test data for evaluating the integrity of the DBNPS RPV circumferential beltline welds based on the use of the 1997 and 2002 editions of American Society for Testing and Materials (ASTM) Standard Test Method E 1921, "Standard Test Method for Determination of Reference Temperature T_0, for Ferritic Steels in the Transition Range," and American Society for Mechanical Engineering Boiler and Pressure Vessel Code (ASME B&PV Code), Code Case N–629, "Use of Fracture Toughness Test Data to establish Reference Temperature for Pressure Retaining materials of Section III, Division 1, Class 1." The exemption is required since Appendix G to 10 CFR part 50, through reference to Appendix G to Section XI of the ASME Code pursuant to 10 CFR 50.55(a), requires the use of a methodology based on C_v and drop weight data.

The licensee also requested an exemption from 10 CFR 50.61 to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the DBNPS RPV circumferential beltline welds based on the use of the 1997 and 2002 editions of ASTM E 1921 and ASME Code Case N–629. The exemption is required since the methodology for evaluating RPV material fracture toughness in 10 CFR 50.61 requires the use of the C_v and drop weight data for establishing the PTS reference temperature (RT_{PTS}).

The proposed action is in accordance with the licensee's application dated April 15, 2009, as supplemented by letters dated December 18, 2009, August 26 and October 8, 2010.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to use an alternate method, as described in Topical Report BAW–2308, Revisions 1–A and 2–A, "Initial RT_{NDT} of Linde 80 Weld Materials" for determining the initial, unirradiated material reference temperatures of the Linde 80 weld materials present in the beltline region of the DBNPS RPV. This action, by being exempted from 10 CFR 50.61 would allow the licensee to revise its pressurized thermal shock reference temperature values in the future.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed exemption. The NRC staff has concluded that the proposed action to allow an alternate method for determining the initial, unirradiated material reference temperatures of the Linde 80 weld materials present in the beltline region of the DBNPS RPV would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Final Safety Analysis Report for DBNPS.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. The proposed action does not involve a change to plant buildings or land areas on the DBNPS site. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the "no-action" alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement, NUREG–75/097, dated October 1975, for DBNPS.

Agencies and Persons Consulted

In accordance with its stated policy, on October 22, 2010, the staff consulted with the Ohio State official, Ms. Carol O'Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 15, 2009. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of November 2010.

For the Nuclear Regulatory Commission.

Michael Mahoney,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–30862 Filed 12–7–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–3119; File No. S7–38–10]

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to charge revised IARD filing fees for advisers registering with or registered with the Commission.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is revising Investment Adviser Registration Depository annual and initial filing fees that will be charged beginning January 1, 2011.

Hearing or Notification of Hearing: An order approving the IARD filing fees will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 2010. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202–551–6737, or *Iarules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: Section 204(b) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.[1] In 2000, the Commission designated the Financial Industry Regulatory Authority Regulation, Inc. ("FINRA") as the operator of the Investment Adviser Registration Depository ("IARD") system. At the same time, the Commission approved, as reasonable, filing fees.[2] The Commission later required advisers registered or registering with the SEC to file Form ADV through the IARD.[3] Over 11,000 advisers currently use the IARD system to register with the SEC and make state notice filings electronically through the Internet.

Commission staff, representatives of the North American Securities Administrators Association, Inc. ("NASAA"),[4] and representatives of FINRA periodically hold discussions on IARD system finances. In the early years of operations, SEC-associated IARD revenues exceeded projections while SEC-associated IARD expenses were lower than estimated, resulting in a surplus. In 2005, FINRA wrote a letter to SEC staff recommending a waiver of annual fees for a one-year period.[5] The Commission concluded that this was appropriate and waived annual fees.[6] In 2006, 2008, and 2009 FINRA wrote to the staff again, recommending a two-year, a nine-month, and a five-month waiver, respectively, of all fees to continue to reduce the surplus.[7] The Commission agreed and issued orders waiving all IARD fees.[8] At the conclusion of the 2009 waiver, FINRA wrote to the staff again, recommending reduced levels of fees be charged in

[1] 15 U.S.C. 80b–4(b).

[2] Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. FINRA was formerly known as NASD.

[3] Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

[4] The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

[5] NASD letter dated September 9, 2005, available at *http://www.sec.gov/rules/other/nasdlet090905.pdf.*

[6] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005) [70 FR 59789 (Oct. 13, 2005)].

[7] NASD letter dated October 13, 2006 and FINRA letters dated October 10, 2008 and July 8, 2009 available at *http://www.sec.gov/rules/other/2006/nasdletter101306-iardfee.pdf*, *http://www.sec.gov/rules/other/2008/finraletter101008-iardfees.pdf*, and *http://www.sec.gov/rules/other/2009/finraletter070809-iardfees.pdf*, respectively.

[8] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006), Investment Advisers Act Release No. 2806 (Oct. 30, 2008) [73 FR 65900 (Nov. 5. 2008)], and Investment Advisers Act Release No. 2909 (July 31, 2009) [74 FR 39352 (Aug. 6, 2009)].

2010.[9] The Commission concluded this was appropriate and issued an order reducing the level of fees charged for one year.[10] As a result of the four waivers and reduced fee levels, the surplus was reduced from $9 million in 2005 to a level of approximately $3 million.

FINRA has again written to Commission staff, recommending revised annual and initial IARD filing fees commence on January 1, 2011.[11] The new recommended fee levels would increase the fee for advisers with assets under management of $100 million or higher, but would not change the fee levels for advisers with assets under management under $100 million.[12] The recommended annual filing fees due beginning January 1, 2011 are $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $225 for advisers with assets under management of $100 million or higher. The recommended initial IARD filing fees due beginning January 1, 2011 are $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $225 for advisers with assets under management of $100 million or higher. Based on projections of expected revenues and expenses and taking into account an expected reduction in the number of advisers registered or reporting to the SEC as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[13] the Commission believes these revised fee levels would be reasonable, as the Commission projects that they will provide adequate funding to cover IARD system expenditures.[14] This reduction in fees is expected to reduce aggregate filing fees that SEC-registered advisers would incur by approximately $2 million annually compared to the filing fees that would be collected based on the fee levels established in 2000. The revised filing fees will apply to all annual updating amendments filed by SEC-registered advisers beginning January 1, 2011 and to all initial applications for registration filed by advisers applying for SEC registration beginning January 1, 2011. The Commission will reassess the fee levels and issue orders, if necessary, to adjust these levels.

By the Commission.

Dated: December 2, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–30701 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

[9] FINRA letter dated September 29, 2009, available at *http://www.sec.gov/rules/other/2009/finraletter092909-iardfees.pdf.*

[10] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2959 (Dec. 10, 2009) [74 FR 66710 (Dec. 16, 2009)].

[11] FINRA letter dated November 12, 2010 available at *http://www.sec.gov/rules/other/2010/finraletter111210-iardfees.pdf.*

[12] The revised fee level for advisers in the largest category would newly include advisers that report assets under management of exactly $100 million (not just over $100 million). We are making this revision to track the new mid-sized adviser category for advisers reporting assets under management of $25 million up to, but not including, $100 million. *See* section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010).

[13] The threshold, for most advisers, to be eligible for SEC registration will be increased from $25 million to $100 million in assets under management. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010).

[14] The fee levels for advisers with assets under management under $100 million are not changed as the number of advisers in these categories are expected to fall as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63412; File No. SR–Phlx–2010–164]

Self-Regulatory Organizations; NASDAQ OMX PHLX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

December 2, 2010.

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 November 24, 2010, 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 [sic] to amend its fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing certain equity and index option Customer orders to away markets for execution.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for trades settling on or after December 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing certain Customer orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is currently utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for both Customer and Professional orders. The Exchange proposes to establish a Routing Fee of $0.24 per contract in Customer option orders that are routed to the Chicago Board Options Exchange, Incorporated ("CBOE"). This would apply to orders greater than 99 contracts

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

in options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index [5] (the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index [6] traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") as well as exchange-traded funds ("ETFs"), exchange-traded notes ("ETNs") and Holding Company Depositary Receipts ("HOLDRs"). The Exchange is proposing to caption these proposed fees "CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs." The CBOE routing fee of $0.26 per contract for Professional orders, which is assessed today, would apply to CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs as well.

The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of Customer orders routed from the Phlx XL II system. Specifically, the Exchange seeks to recoup transaction and clearing fees assessed by CBOE in the above listed categories for orders greater than 99 contracts.[7]

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for trades settling on or after December 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that these fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer orders to CBOE for orders greater than 99 contracts in the following symbols RUT, RMN, NDX and MNX as well as ETFs, ETNs and HOLDRs, on behalf of its members. The Exchange also believes that the proposed fees will be uniformly applied to all Customers orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and paragraph (f)(2) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–164 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–164. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–164 and should be submitted on or before December 29, 2010.

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[7] *See* Securities Exchange Act Release No. 62902 (September 14, 2010), 75 FR 57313 (September 20, 2010) (SR–CBOE–2010–081) (a rule change to assess a transaction fee of $.18 per contract on public customer orders in options on Standard & Poor's Depositary Receipts, except for orders of 99 contracts or less).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30830 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63405; File No. SR–NSX–2010–15]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Effectuate an Amendment to Bylaws of NSX Holdings, Inc.

December 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2010, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to effectuate an amendment to the bylaws of its parent holding company, NSX Holdings, Inc., to extend the expiration date, from December 31, 2010 to December 31, 2015, of a right of first refusal in the bylaws covering the transfer of Holdings shares.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to effectuate an amendment to the bylaws of its parent holding company, NSX Holdings, Inc. ("Holdings"), to extend the expiration date of a right of first refusal regarding the transfer of Holdings shares from December 31, 2010 until December 31, 2015.

Holdings is the sole stockholder of the Exchange. Holdings is a privately-held company and there is no public market for its shares. Pursuant to section 9.6 of Holdings' bylaws, shares of Holdings may not be sold, transferred, assigned, pledged or otherwise disposed of without complying with transfer restrictions contained in Holdings' charter and bylaws. The bylaws generally provide that stockholders may not transfer less than 1,000 shares in any one transfer, unless the stockholder is transferring all of the Holdings shares it owns. The bylaws also grant Holdings a right of first refusal to acquire shares a stockholder intends to sell or transfer. This right of first refusal does not apply (a) If the transferee is an affiliate of the transferor, (b) if the transferee is already a stockholder of Holdings, (c) if the transfer is by bequest, operation of law or judicial decree upon the death, legal disability, bankruptcy, or divorce/annulment/dissolution of marriage of a stockholder, or (d) after December 31, 2010.[3]

On October 6, 2010, the Holdings Board of Directors approved, subject to any required Securities and Exchange Commission ("Commission") approval, an amendment to Holdings' bylaws to extend the expiration date for the right of first refusal referenced above from December 31, 2010 until December 31, 2015. Accordingly, the instant rule filing proposes to effectuate an amendment to Holdings' bylaws that would extend the right of first refusal until December 31, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it affects only the rights of Holdings shareholders; qualification of, and trading privileges resulting from, ETP Holder status is unrelated to and independent of a person's or entity's status as a Holdings shareholder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will not be operative until 30 days after the date of filing (or such shorter time as the Commission may designate) pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4[7] thereunder, because the proposal is "non-controversial" and: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; *provided* that the self-regulatory organization has given the

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Shares of Holdings have not been registered under the Securities Act of 1933 or any state securities laws. As a result, they may be transferred only pursuant to an effective registration statement, or upon delivery to Holdings of an opinion of counsel that the transfer is exempt from such registration requirements and the delivery of documentation necessary to demonstrate that the transfer is exempt. Stockholders who wish to sell or transfer shares, or who have questions concerning sale or transfer restrictions, are encouraged to consult their legal counsel.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4.

Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[8] Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[9] the Commission may designate a shorter time period if such action is consistent with the protection of investors and the public interest. At any time within sixty (60) days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–NSX–2010–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2010–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2010–15 and should be submitted by December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30829 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

[8] As required under Rule 19b–4(f)(6)(iii), NSX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[9] 17 CFR 19b–4(f)(6)(iii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63416; File No. SR–BX–2010–083]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to The Price Improvement Period To Permit an Initiating Participant To Designate a PIP Surrender Quantity

December 2, 2010.

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 November 24, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 18 (The Price Improvement Period ("PIP")) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to permit an Options Participant initiating a PIP to designate a PIP Surrender Quantity. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will amend Chapter V, Section 18 (The Price Improvement Period ("PIP")) of the BOX Rules to permit an Options Participant initiating a PIP ("Initiating Participant"), at its option, to designate a lower amount for which it will retain certain priority and trade allocation privileges upon the conclusion of the PIP auction than the forty percent (40%) of the PIP Order to which the Initiating Participant is entitled as set forth in Chapter V, Sections 18(f)(i) and (f)(ii) of the BOX Rules. In certain instances, Chapter V, Sections 18(f)(i) and (f)(ii) of the BOX Rules allow an Initiating Participant to retain priority and trade allocation privileges for 40% of the size of a PIP Order upon conclusion of the PIP. This proposal will permit an Initiating Participant, when starting a PIP, to submit the Primary Improvement Order to BOX with a designation to identify the total size of the PIP Order that the Initiating Participant is willing to "surrender" to other PIP Participants ("PIP Surrender Quantity"), resulting in the Initiating Participant potentially being allocated less than the forty percent (40%) to which it may be entitled. For example, when an Initiating Participant submits a PIP Order and a Primary Improvement Order for 100 contracts and a PIP Surrender Quantity of 70 contracts, the Initiating Participant is designating that it is willing to surrender seventy percent (70%) of the PIP Order to other PIP Participants. Therefore, the Initiating Participant is only retaining priority to thirty percent (30%) of the PIP Order,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rather than the forty percent (40%) it could have received. The Primary Improvement Order shall yield priority to certain competing orders in the circumstances set forth in Chapter V, Section 18(f)(iii) of the BOX Rules.

The proposed rule change will further provide that in no case shall the Initiating Participant's use of the Surrender Quantity function result in an allocation to the Initiating Participant that would be greater than the maximum allowable allocation the Initiating Participant would otherwise receive in accordance with the PIP allocation procedures set forth in Chapter V, Section 18(f) of the BOX Rules. The proposal specifies that the PIP Surrender Quantity shall not be effective for an amount that is lesser than or equal to sixty percent (60%) of the size of the PIP Order. In such a case, the forty percent (40%) maximum allowable priority allocation to the Initiating Participant would apply.

Additionally, the proposed rule change will modify the BOX Trading Host's trade allocation at the conclusion of the PIP to account for the PIP Surrender Quantity. The proposal specifies that when the BOX Trading Host determines the priority and trade allocation amounts for the Initiating Participant upon the conclusion of the PIP auction, the Trading Host will automatically adjust the trade allocations to the other PIP Participants according to the priority set forth in Chapter V, Section 18(e) of the BOX Rules, providing a total amount to the other PIP Participants up to the PIP Surrender Quantity. The Primary Improvement Order shall be allocated the remaining size of the PIP Order, if any. If the aggregate size of other PIP Participants' contra orders is not equal to or greater than the PIP Surrender Quantity, then the remaining PIP Surrender Quantity shall be left unfilled and the Primary Improvement Order shall be allocated the remaining size of the PIP Order as set forth in Chapter V, Section 18(f) of the BOX Rules. For example, an Initiating Participant submits a PIP Order and a Primary Improvement Order for 100 contracts and a PIP Surrender Quantity of 70 contracts. During the PIP auction only one Improvement Order for 25 contracts is received. Even though the Initiating Participant was willing to surrender 70 contracts to the other PIP Participants, there is not enough competing size in this instance to allocate 70 contracts to someone else. Therefore, the Primary Improvement Order's requirement to completely fill the PIP Order takes precedence, and the Initiating Participant is allocated the remaining 75 contracts.

BOX will provide Options Participants with three (3) business days notice, via Information Circular, about the implementation date of the PIP Surrender Quantity prior to its implementation in the BOX trading system.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[3] in general, and Section 6(b)(5) of the Act,[4] in particular. Specifically, the Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will benefit investors and Options Participants by allowing an Initiating Participant the flexibility to designate a lower amount for which it will retain certain priority and trade allocation privileges upon the conclusion of the PIP auction than the forty percent (40%) of the PIP Order to which the Initiating Participant is entitled, while providing other PIP Participants increased trade allocations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–083 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–2010–083. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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–

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

2010–083 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30804 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63414; File No. SR–NASDAQ–2010–153]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The NASDAQ Stock Market LLC To Clarify the Exclusion of Partial Trading Days From Certain Calculations Within the Investor Support Program

December 2, 2010.

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 November 24, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The 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 is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to clarify that partial trading days will not be counted toward the calculation of certain Investor Support Program ("ISP") credit eligibility requirements pursuant to subsection (c)(2) of the rule.

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* 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

The Exchange is proposing to amend Rule 7014 to clarify that partial trading days will not be counted toward the calculation of certain ISP credit eligibility requirements pursuant to subsection (c)(2) of the rule, particularly the average daily number of shares of liquidity provided in orders entered by the member through its ISP-designated ports and executed in the Nasdaq Market Center during the month.

The Exchange established an Investor Support Program that 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.

Partial trading days are not excluded from the average daily number of shares of liquidity provided and executed pursuant to certain ISP credit eligibility criteria in the rule and the Exchange now proposes a change to do so.[5]

To further the ISP goal of attracting certain targeted retail and institution liquidity, the ISP limits ISP credit eligibility to targeted liquidity-enhancing orders in large part by: Establishing a monthly ISP Execution Ratio[6] of 10 or above (subsection (c)(1)); and a monthly cap of 10 million for the average daily number of shares of liquidity provided in orders entered by the member through its ISP-designated ports and executed in the NASDAQ Market Center during the month (subsection (c)(2)). As noted, in the ISP Filing the Exchange did not exclude partial trading days from the calculation of order numbers pursuant to subsection (c)(2) of the rule. The Exchange believes that the inclusion of partial trading days[7] may serve to improperly skew the operative calculations. As such, the Exchange proposes to add new section (c)(3) that states that for purposes of determining the average daily number of shares of liquidity provided pursuant to subsection (c)(2) of this Rule, any day that the market is not open for the entire trading day will be excluded from such calculation.[8]

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a detailed description of the Investor Support Program, *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").

[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"). *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).

[5] NASDAQ notes that exclusion of partial trading days would be consistent with how the Exchange treats partial trading days for tabulation of pricing tiers under Rule 7018(j).

[6] The term "ISP Execution Ratio" is defined as: The ratio of (i) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (ii) 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; (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation; and (iii) no order shall be included in the tabulation if it executes but does not add liquidity). Rule 7014 (d)(3).

[7] A partial trading day may occur, as an example, immediately after the Thanksgiving holiday.

[8] There have been no partial trading days in the month of November previous to the date of submission of the filing and it would therefore not be retroactive in effect.

The Exchange believes that the proposed change to the ISP, which will be equally applicable to all ISP participants, should be conducive to further enhancing the program's fairness and equitability.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 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, in general, to protect investors and the public interest. The rule change enhances the Investor Support Program, which helps to raise investors' confidence in the fairness of their transactions and benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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.

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.[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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–153 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–2010–153. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–153 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30803 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63415; File No. SR–DTC–2010–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Extending the End-of-Day Cutoff Time for Processing to The Federal Reserve and To Reflect Other Changes Requested by the Federal Reserve

December 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 18, 2010, The Depository Trust Company ("DTC") 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend the end of day cutoff time for processing to the Federal Reserve and will reflect other changes requested by the Federal Reserve.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's end-of-day settlement processing system controls and coordinates the settlement of Participant accounts and Settling Bank [4] accounts on DTC's system. The settlement process occurs through the Fedwire system and is initiated when DTC posts final figures for Participants and Settling Banks. Recently, the Federal Reserve ("FR") reviewed their current collateral processes and identified opportunities to improve the efficiency and timing of pledging collateral. To implement those changes, the FR has requested that DTC make revisions to its settlement schedule relating to the timing for Participants to pledge collateral to a Federal Reserve Bank ("FRB").[5] Additionally, the FR has requested that DTC consolidate the pledge reasons used for discount window and daylight overdraft payment system risk purposes.

Specifically, the FR has requested that DTC remove the pledge code 05-Daylight (Funds) Overdraft to prevent the future use of this code.[6] Instead, Participants will use the pledge code 01-Discount Window to submit pledges relating to daylight overdraft and relating to the discount window.

Effective December 2, 2010, DTC will extend the end-of-day cutoff time for processing pledges and releases to/from the FR from 3 [7] p.m. to 5 p.m. to facilitate late-day processing for depository institutions.[8] Effective December 10, 2010, DTC will consolidate the pledge codes used for discount window and daylight overdraft payment system risk purposes into one code. The extended period for pledge affords greater flexibility in determining and securing liquidity needs which may, among other matters, enhance DTC settlement and generally help to minimize systemic risk. These accommodations will not adversely affect DTC's settlement, including its processing schedule and other cutoffs. These changes will necessitate revisions to the existing DTC Settlement Service Guide and are attached to DTC's proposed rule change as Exhibit 5.

Additionally, DTC is making unrelated technical changes to the Settlement Service Guide to conform to certain rule changes that have previously been filed with the Commission.[9] These changes include modifications to the Settlement Processing schedule as well as removing certain input methods that no longer exist and are detailed in the attached Exhibit 5.

DTC states that the proposed rule change is consistent with the requirements of Section 17A of the Act [10] and the rules and regulations thereunder applicable to DTC because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions because it aligns its cutoff time for processing pledges and releases to and from an FRB with the timing for the processing of pledges in the market generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(4) [12] because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which it is responsible and (ii) does not significantly affect the respective rights of DTC or persons using the service. 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 e-mail to *rule-comments@sec.gov.* Please include File No. SR–DTC–2010–16 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–DTC–2010–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[4] The term "Settling Bank" means a DTC Participant that is a bank or trust company subject to supervision or regulation pursuant to Federal or State banking laws and is a party to an effective DTC Settling Bank Agreement.

[5] The Pledge service allows a pledgor Participant to pledge securities as collateral for a loan or for other purposes and also to request the release of pledged securities. Pledges and releases to a FRB are made free of value, which means that the securities are pledged on DTC books but the funds side of the related transaction is settled outside of DTC.

[6] DTC will modify the automated input file feed option with an error message when requests are submitted with the purpose pledge code 05-Daylight (Funds) Overdraft. The error message will let the user know to use pledge code 01 instead.

[7] All times refer to Eastern Time.

[8] Depository institutions maintaining a deposit account at an FRB can make free pledges and release requests to the FRB. All DTC bank participants that are members of the FR are automatically eligible to pledge securities to FRBs that are DTC pledgees using the participant/non-participant pledge facility. DTC allows non-participants to pledge collateral to FRBs through DTC bank participants.

[9] In 2004, the Commission approved a filing in which all reclaims of valued Money Market Instrument ("MMI") issuance transactions received by DTC after 2:30 p.m. are treated as "unmatched" and are subject to all original transaction-processing rules. Securities Exchange Act Release No. 50006 (July 19, 2004), 69 FR 43042 (June 12, 2004) (File No. SR–DTC–04–03). In 2009, DTC enhanced its systems in order to provide Issuing Paying Agents ("IPAs") with the ability to monitor their credit exposure to MMI issuers through an IPA Maturity Presentment "Pend" function. Securities Exchange Act Release No. 59695 (Apr. 2, 2009), 74 FR 7714 (Feb. 19, 2009) (File No. SR–DTC–2009–02). In 2010, DTC implemented a new function that allows DTC Participants to set a profile in the Participant Browser System so that they can request that excess funds be wired to their settling bank account at approximately 3:20 p.m. Securities Exchange Act Release No. 61922 (Apr. 15, 2010), 75 FR 21072 (Apr. 22, 2010) (File No. SR–DTC–2010–07). DTC is updating its Service Guide to further reflect these changes. DTC is also updating the Settlement Service Guide to reflect proper contact information and provide definitions of certain terms.

[10] 15 U.S.C. 78q–1.

[11] *Supra* note 2.

[12] *Supra* note 3.

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 DTC's principal office and DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* 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–DTC–2010–16 and should be submitted on or before December 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30721 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63413; File No. SR–NYSEAmex–2010–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending the Exchange Price List With Respect to Nasdaq Securities Traded Pursuant to Unlisted Trading Privileges

December 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 30, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2010 Price List for equities to amend the fees charged for taking liquidity in Nasdaq securities traded pursuant to unlisted trading privileges and to change the minimum size requirements for larger displayed orders in trades above $5.00 to receive the enhanced rebate in lieu of the standard rebate for such securities. The amended pricing will become operative on December 1, 2010. The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com,* at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its 2010 Price List for equities to modify the fees charged to market participants, Supplemental Liquidity Providers ("SLPs") and Designated Market Makers ("DMMs") for taking liquidity in Nasdaq securities traded pursuant to unlisted trading privileges whose share price is $1.00 or more.

Currently, market participants, SLPs and DMMs are charged a fee of $0.0023 per share for orders in Nasdaq securities traded pursuant to unlisted trading privileges that take liquidity. Under the proposal, the fee will be changed to $0.0027 per share for orders that take liquidity.

In a rule filing on October 1, 2010,[3] the Exchange adopted a block rebate of $0.0036 per share for executions of displayed liquidity to all market participants and SLPs that provide liquidity in orders in Nasdaq securities traded pursuant to unlisted trading privileges that originally display a minimum of 5,000 shares with a trading price of at least $5.00 per share, for as long as the order is not cancelled in amount that would reduce the original displayed amount below 5,000 shares. The Exchange proposes to reduce these minimum displayed size requirements from 5,000 shares to 2,000 shares.

In the Block Rebate Filing, the Exchange also adopted a block rebate for DMMs of $0.0036 per share in Nasdaq securities traded pursuant to unlisted trading privileges for executions of the displayed portions of s-Quotes that provide liquidity and display 5,000 shares or more at the time of execution with a trading price of at least $5.00 per share. The Exchange proposes to reduce this minimum displayed size requirement from 5,000 shares to 2,000 shares.

These changes are intended to become operative for all transactions beginning December 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[13] 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. 63072 (October 8, 2010), 75 FR 64368 (October 19, 2010) (File No. SR–NYSEAmex–2010–97) (the "Block Rebate Filing").

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed on its members by NYSE Amex.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–112 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–NYSEAmex–2010–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–112 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30718 Filed 12–7–10; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63411; File No. SR–Phlx–2010–169]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Modify Fees for NASDAQ OMX PSX

December 2, 2010.

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 November 23, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to 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://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX. Specifically, the Exchange is modifying the credit provided to PSX Participants that provide liquidity to support executions on the platform. In keeping with the goal of PSX to provide an electronic exchange environment that encourages display of larger order sizes through its unique price-size order execution algorithm, the Exchange proposes to offer a larger liquidity provider credit to Participants when Displayed Orders with an original order size of 2,000 or more shares are executed. Specifically, the credit will be $0.0024 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but will only be $0.0018 per share executed for Non-Displayed Orders or for Displayed Orders with an original order size of less than 2,000. Through the change, the Exchange hopes to further promote PSX as a venue that enhances price discovery and efficiency by encouraging transparent trading of larger orders.

The higher credit would apply to an order as it is decremented by partial executions, but would not apply in circumstances where an order for 2,000

or more shares is entered and then reduced in size by the entering Participant, such that the order is subsequently in the System for less than 2,000 shares. Moreover, changes to orders that result from system operations other than execution and decrementation will also be deemed to result in new orders. For example, a Pegged Order will be considered a new order each time its price changes.

Thus, if a Participant entered a 2,400 share order that posted to the PSX book, the order was executed for 1,000 shares, and the remainder of the order was then executed for 1,400, both of the executions would receive the $0.0024 credit. However, if a PSX Participant entered a 2,400 share order and subsequently modified the order down to 1,500 shares, the $0.0018 credit would apply. Finally, if a Participant entered a 2,400 share buy order pegged to the national best bid, the order executed for 1,000 shares, and the order then repriced due to a change in the national best bid, the 1,000 share execution would receive the $0.0024 credit but a subsequent execution of the repriced order would receive the $0.0018 credit because it would be treated as a new order with a size below 2,000 shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] 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 impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity), its usage of Non-Displayed orders, and the size of the orders that it enters.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The change will result in a fee reduction to PSX Participants that provide liquidity through PSX using relatively large orders, and a fee increase to Participants using small orders or Non-Displayed Orders. If particular market participants object to the proposed fee changes because they prefer the use of smaller or Non-Displayed Orders, they may readily direct order flow to other venues. The Exchange believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to the Exchange and thereby make use of its order execution services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to the Exchange's competitors. Indeed, as a relatively new market entrant, the Exchange believes that its pricing will promote further competition by enhancing the ability of PSX to compete with alternative trading systems that seek to attract larger order sizes through pricing or by operating as "dark pools."

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.[5] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–169 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–169. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[6] 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 Number SR–Phlx–2010–169 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30703 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63406; File No. SR–Phlx–2010–165]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Billing and Other Clarifying Amendments

December 1, 2010.

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 November 23, 2010, 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 amend its Fee Schedule to: (i) Amend the calculation of transaction fees for billing purposes from a settlement date to trade date; and (ii) make other minor technical conforming amendments to the Fee Schedule.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for invoices received by members and member organizations for January 2011 monthly billing, except for the minor technical amendments, which are effective upon filing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to include language to specify that the Exchange will calculate transaction fees on a calendar month trade date basis. The Exchange is proposing to enhance its billing system to be consistent with that of other NASDAQ OMX self-regulatory organizations.[3]

Currently, the Exchange calculates its transaction fees, except the Options Regulatory Fee, on a settlement date basis.[4] For example, a member or member organization who will receive a billing invoice for the month of November 2010 will be assessed fees for trades which settled on November 1, 2010 through November 30, 2010 ("settlement date billing"). In other words, the member is being assessed fees for trades that occurred on October 29, 2010 (trade date) through November 29, 2010 (trade date).[5] This is an example of the Exchange's current settlement date billing.

The Exchange is proposing to bill its members on a trade date basis beginning with the January monthly billing. The impact to members would be as follows for the December and January monthly billing periods. A member who receives an invoice for the month of December 2010 would be assessed fees from November 30, 2010 (trade date) through December 31, 2010 (trade date) instead of through December 30, 2010 (trade date). A member who receives an invoice for the month of January 2011 would be assessed fees from January 3, 2010 (trade date) through January 31, 2010 (trade date) ("trade date billing") [sic].[6] This January monthly invoice would include fees for trade date January 3, 2010. In the current billing system, the member would have been assessed fees for settlement date January 3, 2010 in the December billing invoice, but because of the conversion to trade date billing, the Exchange would assess fees for January 3, 2010 as trade date billing and include that day in the January monthly billing invoice. The Exchange would then continue to bill members for each month thereafter including in that month's invoice the first trade day of the month as the first billing date and the last trade day of that month as the last billing date for that monthly invoice.[7]

Additionally, the Exchange intends to make a few minor technical conforming amendments to the Fee Schedule to reflect the Exchange's recent conversion to an LLC,[8] recent amendments to Rule 1014[9] and recent amendments to Section II of the Fee Schedule.[10]

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for invoices received by members and member organizations for January 2011 monthly billing, except for the minor technical amendments, which are effective upon filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposed conversion from settlement date billing to calendar month trade date billing is equitable because it would apply uniformly to all members. The Exchange also believes that the proposal is reasonable because other self-regulatory organizations already assess transaction fees on a trade date basis.

The proposed technical conforming amendments to the Fee Schedule are minor in nature and provide clarity to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ Stock Market LLC and the NASDAQ Options Market both utilize trade date billing.

[4] In the United States options settle on a trade date ("T") + 1 basis or one day after the trade took place.

[5] The Exchange invoices its members for fees on a monthly basis.

[6] The Commission notes that the references in this sentence to 2010 should be to 2011.

[7] The Exchange intends to issue an Options Trader Alert specifying the exact days that would be included in both the December 2010 and January 2011 billing cycles as notice to members.

[8] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx–2010–104) (a rule change to amend NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company).

[9] *See* Securities Exchange Act Release No. 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR–Phlx–2010–131) (a rule change to amend Exchange Rule 1014 to among other things amend the definitions of Streaming Quote Traders and Remote Streaming Quote Traders).

[10] *See* Securities Exchange Act Release No. 63252 (November 5, 2010), 75 FR 69486 (November 12, 2010) (SR–Phlx–2010–150) (a rule change to add the KBW Bank Index ("BKX") to the Equity Option Fees).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

the Fee Schedule by conforming the text of the Fee Schedule to the other Rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and paragraph (f)(2) of Rule 19b–4[14] thereunder. 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–165 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–165. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–165 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30702 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63417; File No. SR–NSCC–2010–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Discontinue the Cost Basis Reporting Service

December 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 23, 2010, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by NSCC.[2] NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(4) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed 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 will discontinue NSCC's Cost Basis Reporting Service ("CBRS").

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.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to delete the rule regarding NSCC's CBRS as the CBRS offered by NSCC will be terminated. The effective date of the termination of CBRS as a NSCC service offering will be December 10, 2010.

For purposes of efficiency and enhanced customer service, DTCC Solutions LLC ("DTCC Solutions"), a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, which offers services similar in nature to the CBRS, will offer the CBRS. CBRS as offered by DTCC Solutions will support a broader group of financial institutions and entities that are currently not eligible to become NSCC members, such as transfer agents and securities issuers. NSCC believes that discontinuing CBRS at NSCC and reestablishing the service at DTCC Solutions will not disadvantage NSCC members in any way.

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change is attached as Exhibit 5 to NSCC's filing, which is available at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-17.pdf.*

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by the NSCC.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[5] NSCC believes that the proposed rule change is consistent with these requirements of Section 17A of the Act[6] and the rules and regulations thereunder that are applicable to NSCC because discontinuing the CBRS will allow for more efficient allocation of NSCC's resources.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have 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 rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because it effects a change in an existing service of NSCC that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2010–17 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–2010–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference 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 also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.dtcc.com*. 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–2010–17 and should be submitted on or before December 29, 2010.

[9] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30881 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63419; File No. SR–NASDAQ–2010–149]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

December 2, 2010.

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 November 24, 2010, The NASDAQ Stock Market LLC ("NASDAQ" 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 Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2010.

The text of the proposed rule change is set forth below. Proposed new text is italicized and deleted text is in brackets.

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1)–(3) No Change.

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

be posted on the NasdaqTrader.com Web site.

Exchange	Customer	Firm	MM	Professional
BATS	$0.36	$0.55	$0.55	$0.36
BOX	0.06	0.55	0.55	0.06
CBOE	0.06	0.55	0.55	0.26
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	0.24	0.55	0.55	0.26
ISE	0.06	0.55	0.55	0.24
ISE Select Symbols* of 100 or more contracts	0.26	0.55	0.55	0.31
NYSE Arca Penny Pilot	0.50	0.55	0.55	0.50
NYSE Arca Non Penny Pilot	0.06	0.55	0.55	0.06
NYSE AMEX	0.06	0.55	0.55	0.26
PHLX (for all options other than PHLX Select Symbols)	0.06	0.55	0.55	0.26
PHLX Select Symbols**	0.30	0.55	0.55	0.46
C2	0.21	0.55	0.55	0.46

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. *See* PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqomx.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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on away markets ("routing fees").

NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange.

The Exchange proposes to assess new fees for routing contracts to markets other than the NASDAQ Options Market to Rule 7050. Specifically, the Exchange is proposing to assess a routing fee of $0.24 per contract in Customer option orders that are routed to the Chicago Board Options Exchange, Incorporated ("CBOE"). This would apply to orders greater than 99 contracts in options traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") as well as exchange-traded funds ("ETFs"), exchange-traded notes ("ETNs") and Holding Company Depositary Receipts ("HOLDRs"). The Exchange is proposing to caption these proposed fees "CBOE orders greater than 99 contracts in NDX, MNX, ETFs, ETNs and HOLDRs." The CBOE current routing fee of $0.55 per contract would apply to Firms and Market Makers for CBOE orders greater than 99 contracts in NDX, MNX, ETFs, ETNs and HOLDRs.

The Exchange is also proposing to adopt routing fees for a new type of participant called "Professional".[3] The Exchange proposes to assess the following Professional routing fees, in addition to the current categories of Customer, Firm and Market Maker, to its members: (i) A $0.36 per contract fee for Professional orders routed to BATS Exchange, Inc. ("BATS") in all options; (ii) a $0.06 per contract fee for Professional orders routed to the Boston Options Exchange Group LLC ("BOX") in all options; (iii) a $0.26 per contract fee for Professional orders routed to the Chicago Board of Options Exchange, Inc. ("CBOE") in all options[4]; (iv) a $.24 per contract fee for Professional orders routed to International Securities Exchange, LLC ("ISE") in all options, except for Select Symbols of 100 or more contracts; (v) a $0.31 per contract fee for Professional orders routed to ISE in its Select Symbols of 100 or more contracts[5]; (vi) a $0.50 per contract fee for Professional orders routed to NYSE Arca, Inc. ("NYSE Arca") in Penny Pilot options; (vii) a $0.06 per contract fee for Professional orders routes to NYSE Arca in Non-Penny Pilot options; (viii) a $0.26 per contract fee for Professional orders routed to NYSE Amex LLC ("NYSE Amex") in all options; (ix) a $0.26 per contract fee for Professional orders routed to NASDAQ OMX PHLX LLC ("PHLX") in all option other than the PHLX Select Symbols;[6] (x) a $0.46 per contract fee for Professional orders routed to PHLX in Select Symbols;[7] and (xi) a $0.46 per contract fee for Professional orders routed to C2 Options Exchange, Inc. ("C2") in all options.

The Exchange is proposing these fees in order to recoup clearing and transaction charges incurred by the

[3] *See* Chapter I, Section I (Definitions). The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants. See Securities Exchange Act Release Nos. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099); and 63151 (October 21, 2010), 75 FR 66811 (October 29, 2010) (SR–NASDAQ–2010–132).

[4] A Professional would also be assessed the proposed $0.26 per contract for a CBOE order greater than 99 contracts in NDX, MNX, ETFs, ETNs and HOLDRs.

[5] *See* ISE's Schedule of Fees for the complete list of Select Symbols.

[6] *See* PHLX's Fee Schedule for the complete list of Select Symbols.

[7] *See* PHLX's Fee Schedule for the complete list of Select Symbols.

Exchange when certain Customer options orders are routed to CBOE [8] as well as when certain Professional options orders are routed to the various destination markets. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of Customer, Firm, Market Maker and Professional orders. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) of the Act,[10] 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.

The Exchange believes that the proposed fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer orders greater than 99 contracts in NDX, MNX, ETFs, ETNs and HOLDRs to CBOE and also when routing orders designated as Professional to the various destination markets listed herein, on behalf of its members. The Exchange also believes that the proposed fees are equitable because they will be uniformly applied to all Customers and Professionals.

NASDAQ is one of nine options markets in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and paragraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–149 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–2010–149. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro/shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–149 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30833 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Securities Exchange Act Release No. 62902 (September 14, 2010), 75 FR 57313 (September 20, 2010) (SR–CBOE–2010–081) (a rule change to assess a transaction fee of $.18 per contract on public customer orders in options on Standard & Poor's Depositary Receipts, except for orders of 99 contracts or less).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63404; File No. SR–NSCC–2010–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend Procedure II of the NSCC Rules & Procedures To Modify the Money Tolerance Comparison Provisions for Fixed Income Securities

December 1, 2010.

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 November 19, 2010, the National Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Clearing Corporation ("NSCC") 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 primarily by NSCC.[3] 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 purpose of this proposed rule change is to amend Procedure II ("Trade Comparison and Recording Service") of the NSCC Rules & Procedures to modify the money tolerance comparison provisions for fixed income securities.

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.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Trade Comparison and Recording Service

NSCC provides a Real-Time Trade Matching ("RTTM") service for trade input and comparison of corporate bond, municipal bond, and unit investment trust (collectively "CMU") fixed income securities. Matching requires that the two trade counterparties submit certain required trade details to RTTM that either match exactly or fall within predefined parameters. If the trade details are matched within RTTM, a valid and binding contract between the submitting trade parties results. If the purchaser and seller submit trade data that matches in all required aspects except for trade value, NSCC uses the seller's money (referred to as "seller's value") as the trade value and deems the trade compared as long as the difference between the seller's submitted trade value and the buyer's submitted trade value falls within prescribed dollar values as more fully described below.

Currently, Procedure II of NSCC's Rules & Procedures provides two scenarios in which trades are compared using the seller's value. In the first scenario, NSCC will use the seller's value to match a trade submitted prior to the cut-off time for intraday comparison if the respective trade parties have submitted contract amounts that are within (1) a net $2 difference for trades of $1 million or less and (2) $2 per million for trades greater than $1 million. In the second scenario, NSCC will also use the seller's value during the end-of-day enhanced comparison process to match a trade that remained uncompared after the intraday comparison process if the contract amounts are within (i) a net $10.00 difference for trades of $100,000 or less and (ii) $.10 per $1,000 for trades greater than $100,000.

Proposed Amendments to NSCC Procedure II

Since the establishment of these CMU money tolerance amounts in 1995, member firms have significantly improved the timing and accuracy of fixed income trade reporting. In 2005, the Municipal Securities Rulemaking Board ("MSRB") instituted a requirement that firms report trades in municipal securities to the RTTM engine within 15 minutes. This, in turn, required member firms to improve their reporting accuracy and technology. As a result, RTTM is matching a greater percentage of CMU trades upon initial trade input from the buyer and seller.

NSCC believes that because of these improvements, the current money tolerance is wider than needed. NSCC believes that best practices dictates that the money tolerance be modified to reflect current business conditions. Accordingly, NSCC is proposing to amend the CMU money tolerance for the second scenario in which trades are compared using the seller's value. Transactions that remain uncompared after the intraday comparison process shall be deemed compared during the end-of-day enhanced comparison process if the seller's value has a net $10.00 difference for trades of $250,000 or less and $0.04 per $1,000 for trades greater than $250,000. NSCC members will be advised of the implementation date through the issuance of an NSCC Important Notice.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC because it should enhance the efficiency of NSCC's clearance and settlement processes and should therefore better enable NSCC to facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would 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

Within forty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2010–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[3] The text of the proposed rule change is attached as Exhibit 5 to NSCC's filing and is available at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-16.pdf.*

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2010–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, 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 NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-16.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–2010–16 and should be submitted on or before December 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30880 Filed 12–7–10; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before February 7, 2011.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 7(a) Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7(a) Program Branch, Office of Financial Assistance, 202–205–7530, Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This form is used to assist homeowners (20% or greater owners, corporate officers, or has guarantors) in preparing their total net worth by listing all of their assets and liabilities, including current income.

Title: "Personal Financial Statement."

Description of Respondents: SBA participating Guaranty Agreement.

Form Number: 413.

Annual Responses: 91,937.

Annual Burden: 137,095.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–30835 Filed 12–7–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12368 and #12369]

Puerto Rico Disaster Number PR–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–1946–DR), dated 10/26/2010.

Incident: Severe Storms, Flooding, Mudslides, and Landslides associated with Tropical Storm Otto.

Incident Period: 10/04/2010 through 10/08/2010.

Effective Date: 11/29/2010.

Physical Loan Application Deadline Date: 12/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/26/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 10/26/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Municipalities: Cayey, Ciales, Corozal, San Lorenzo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–30837 Filed 12–7–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2010–0043]

Agency Information Collection Activity under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection:

Pre-Award and Post-Delivery Review Requirements.

The information collected on the certification forms is necessary for FTA's grantees to meet the requirements of 49 U.S.C. Section 5323(m). The **Federal Register** notice with a 60-day comment period soliciting comments was published on September 2, 2010.

DATES: Comments must be submitted before January 7, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Pre-Award and Post-Delivery Review Requirements.

Abstract: Under the Federal Transit Laws, at 49 U.S.C. 5323(m), grantees must certify that Pre-Award and Post-Delivery Reviews will be conducted

[6] 17 CFR 200.30–3(a)(12).

when using FTA funds to purchase rolling stock. Grantees are also required to keep a copy of the certification in their files. FTA implements this requirement in 49 CFR part 663 by describing the certificates that must be submitted by each bidder to assure compliance with the Buy America contract specification and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(m).

Estimated Total Annual Burden: 2,786 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued On: December 2, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–30696 Filed 12–7–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2010–0044]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the following information collection:

Survey of FTA Stakeholders.

DATES: Comments must be submitted before February 7, 2011.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (*Note:* The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rick Krochalis, FTA Region 10 Office, (206) 220–7954, or e-mail: *Rick.Krochalis@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Survey of FTA Stakeholders.

OMB Number: 2132–0564.

Background: Executive Order 12862, "Setting Customer Service Standards," requires FTA to identify its customers and determine what they think about FTA's service. The survey covered in this request will provide FTA with a means to gather data directly from its stakeholders. The information obtained from the survey will be used to assess how FTA's services are perceived by stakeholders, determine opportunities for improvement and establish goals to measure results. The survey will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

Respondents: State and local government, public and private transit operators, Metropolitan Planning Organizations (MPOs), transit constituents, and other stakeholders.

Estimated Annual Burden on Respondents: 1 hour for each of the 1,200 respondents.

Estimated Total Annual Burden: 1,200 hours.

Frequency: Every two years.

Issued: December 2, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–30697 Filed 12–7–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0160; Notice 1]

Volvo Trucks North America and Mack Trucks, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

North American Trucks on behalf of Volvo Trucks North America (VTN) and

Mack Trucks, Inc. (MTI) [1] has determined that certain 2008 through 2010 Volvo VHD model, 2008 and 2009 Volvo VHL model, 2008 and 2009 Volvo VNL model, 2008 Volvo VT model, and 2008 through 2010 Mack CHU, CXU and GU model trucks that were built with certain Meritor WABCO ABS Modulator valves failed to meet the requirements of paragraph S5.3.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems.* VTN and MTI filed appropriate reports pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports;* the original submission is dated April 10, 2010, and a corrected version is dated May 28, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR Part 556), VTN and MTI have petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of the VTN and MTI petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

VTN stated that the affected Volvo VNL, VNM, and VHD model trucks were manufactured from March 1, 2007 through December 11, 2009. A total of 1,916 affected Volvo trucks were manufactured of which 1,763 were sold in the U.S.

MTI stated that the affected Mack CHU, CXU and GU model trucks were manufactured from March 1, 2007, through December 11, 2009. A total 1,287 affected Mack trucks were manufactured of which 1,202 were sold in the U.S.

Only the trucks sold in the United States are the subject of their petition.

Paragraph S5.3.4.1(a) of FMVSS No. 121 requires:

S5.3.4.1(a) With an initial service brake chamber air pressure of 95 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than 0.55 second in the case of trucks and buses; 1.00 second in the case of trailers, other than trailer converter dollies, designed to tow another vehicle equipped with air brakes; 1.10 seconds in the case of trailer converter dollies; and 1.20 seconds in the case of trailers other than trailers designed to tow another vehicle equipped with air brakes. A vehicle designated to tow another vehicle equipped with air brakes shall meet the above release time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above release time requirement with its control line input coupling connected to the test rig shown in Figure 1.

(b) For vehicles designed to tow another vehicle equipped with air brakes, the pressure in the 50-cubic-inch test reservoir referred to in S5.3.4.1(a) shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than 0.75 seconds in the case of trucks and buses, 1.10 seconds in the case of trailer converter dollies, and 1.00 seconds in the case of trailers other than trailer converter dollies.

VTN and MTI state that the noncompliance is that the quick release service brake function may not activate properly during FMVSS No. 121 brake pressure release certification testing due to an internal component variation in certain Meritor WABCO ABS modulator valves installed on the subject vehicles. As a result, certain vehicles may not comply with the FMVSS No. 121 brake pressure release timing requirement as specified in S5.3.4.1(a). However, VTN and MTI indicate that they do not believe that this issue has any effect on the ABS performance of the brake system.

VTN and MTI also state that they have taken steps to correct the noncompliance in future production.

VTN and MTI rely on the test report submitted with the petition to support their contention that the described FMVSS No. 121 noncompliance is inconsequential to motor vehicle safety.

In summary, VTN and MTI believe that their petition, to exempt them from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 7, 2011.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: December 2, 2010.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2010–30839 Filed 12–7–10; 8:45 am]

BILLING CODE 4910–59–P

[1] Volvo Trucks North America and Mack Trucks, Inc., are both United States corporations that import and manufacture motor vehicles.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35449]

Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Corporate Family Transaction Exemption—Sacramento Valley Railroad, LLC and Piedmont & Northern Railway, LLC

Tennessee Southern Railroad Company (TSRR), Patriot Rail, LLC (PRL) and its subsidiaries, Patriot Rail Holdings LLC (PRH) and Patriot Rail Corp. (Patriot) (collectively parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. PRL proposes to restructure its corporate family by converting two of its subsidiaries from corporations into limited liability companies: (1) Sacramento Valley Railroad, Inc. (SAVRC) will become Sacramento Valley Railroad, LLC (SAVRLLC), and (2) Piedmont & Northern Railway, Inc. (PNRC) will become Piedmont & Northern Railway, LLC (PNRLLC).

PRL directly controls noncarrier PRH, which in turn directly controls noncarrier Patriot. Patriot directly controls the following class III railroads: (1) TSRR; (2) Rarus Railway Company; (3) Utah Central Railway Company; (4) SAVRC; (5) Louisiana and North West Railroad Company LLC; (6) Temple & Central Texas Railway, Inc.; and (7) PNRC. TSRR does not control any railroads.[1] However, after SAVRC and PNRC are converted to SAVRLLC and PNRLLC, direct control of SAVRLLC and PNRLLC will be transferred from Patriot to TSRR. PRL, PRH, and Patriot will indirectly control SAVRLLC and PNRLLC through TSRR. The proposed transaction will allow PRL and the corporate family to make use of certain tax benefits as a result of the restructuring, without affecting operations or service.

The exemption will be effective on December 22, 2010.

This is a transaction within a corporate family of the type exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay will be due no later than December 15, 2010 (at least 7 days before the effective date of the exemption).

An original and 10 copies of all pleadings, referring to Docket No. FD 35449 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on parties' representative, Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 2, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–30815 Filed 12–7–10; 8:45 am]

BILLING CODE 4915–01–P

[1] On October 21, 2010, the parties filed a notice of exemption to continue in control of six railroads once they acquired certain rail assets from Weyerhaeuser N R Company and its railroad subsidiaries. *See* Docket No. FD 35425, *Tenn. S. R.R.—Continuance in Control Exemption—Columbia & Cowlitz Ry.* Notice of the exemption was served on November 12, 2010, and published in the **Federal Register** on November 16, 2010. Closing of this transaction is scheduled for December 21, 2010 (75 *FR* 70076–77).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of three newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designations by the Director of OFAC of the individuals identified in this notice, pursuant to Executive Order 13224, are effective on December 2, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202–622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of

U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 2, 2010 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, three individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. AFRIDI, Amanullah (a.k.a. GUL, Muhammad Aman; a.k.a. ULLAH, Aman; a.k.a. URS, Amanullah; a.k.a. "MUFTI ILYAS"), Frontier Region Kohat, Pakistan; DOB 1973; alt. DOB 1968; alt. DOB 1969; alt. DOB 1970; alt. DOB 1971; alt. DOB 1972; alt. DOB 1974; alt. DOB 1975 (individual) [SDGT]

2. AZHAR, Abdul Rauf (a.k.a. ALVI, Abdul Rauf; a.k.a. AZHAR, Abdur Rauf); DOB 1974; POB Bwawal Pur, Pakistan; alt. POB Bahawalpur, Pakistan (individual) [SDGT]

3. UR–REHMAN, Mati (a.k.a. AL–REHMAN, Matti; a.k.a. RAHMAN, Matiur; a.k.a. REHMAN, Mati ur; a.k.a. REHMAN, Matiur; a.k.a. REHMAN, Mati-ur; a.k.a. SAMAD, Abdul; a.k.a. SIAL, Abdul Samad; a.k.a. SIAL, Samad); DOB 1977; nationality Pakistan (individual) [SDGT]

Dated: December 2, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–30866 Filed 12–7–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5884–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5884–B, New Hire Retention Credit.

DATES: Written comments should be received on or before February 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: New Hire Retention Credit.

OMB Number: 1545–XXXX.

Form Number: Form 5884–B.

Abstract: Form 5884–B, New Hire Retention Credit, was developed to carry out the provisions of section 102 of the Hiring Incentives to Restore Employment (HIRE) Act (Public Law (Pub. L.) 111–147). The new form provides a means for employers to calculate and claim the credit. This credit is a new non-Code general business credit and the form is required to be attached to the tax return.

Current Actions: This is a new form developed to comply with the Hiring Incentives to Restore Employment (HIRE) Act (Public Law (Pub. L.) 111–147). This form is being submitted for OMB approval.

Type of Review: New collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 1,125,000.

Estimated Time Per Respondent: 12 hours 17 minutes.

Estimated Total Annual Burden Hours: 13,815,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. 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 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 1, 2010.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2010–30733 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 19, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, January 19, 2011, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30892 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, January 5, 2011, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information, please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30893 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 25, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, January 25, 2011, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: *December 3, 2010.*

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30891 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 11, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, January 11, 2011, at 11 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30885 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, January 10, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, January 10, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010.

Shawn F. Collins

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30888 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 19, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, January 19, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30889 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, January 18, 2011, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30890 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, January 18, 2011, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227

or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 3, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–30886 Filed 12–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID: OTS–2010–0034]

Closed Meeting of the OTS Mutual Savings Association Advisory Committee

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice of Closed Meeting.

SUMMARY: The OTS Mutual Savings Associations Advisory Committee (MSAAC) will convene a meeting on Monday, December 20, beginning at Noon, Eastern Time. The meeting will be closed to the public.

DATES: The closed meeting will be held on Monday, December 20, 2010, at Noon, Eastern Time.

ADDRESSES: The meeting will be held at the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. The public is invited to submit written statements to the MSAAC by any one of the following methods:

- *E-mail address: mutualcommittee@ots.treas.gov;* or
- *Mail:* To Charlotte Bahin, Designated Federal Official, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 in triplicate.

The agency must receive statements no later than December 13, 2010.

FOR FURTHER INFORMATION CONTACT: Charlotte M. Bahin, Designated Federal Official, (202) 906–6452, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By this notice, the Office of Thrift Supervision is announcing that the OTS Mutual Savings Association Advisory Committee will convene a closed meeting on Monday, December 20, 2010, beginning at Noon, Eastern Time. The meeting will not be open to the public. The purpose of the meeting is to advise OTS on what regulatory changes or other steps OTS may be able to take to ensure the continued health and viability of mutual savings associations, and other issues of concern to the existing mutual savings associations.

Dated: December 1, 2010.

By the Office of Thrift Supervision.

Deborah Dakin,

Acting Chief Counsel.

[FR Doc. 2010–30704 Filed 12–7–10; 8:45 am]

BILLING CODE P

Federal Register

Wednesday,
December 8, 2010

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling; Health Claim; Phytosterols and Risk of Coronary Heart Disease; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. FDA–2000–P–0102, FDA–2000–P–0133, and FDA–2006–P–0033; Formerly Docket Nos. 2000P–1275, 2000P–1276, and 2006P–0316, Respectively]

Food Labeling; Health Claim; Phytosterols and Risk of Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation authorizing a health claim on the relationship between plant sterol esters and plant stanol esters and reduced risk of coronary heart disease (CHD) for use on food labels and in food labeling. The agency is taking this action based on evidence previously considered by the agency, and FDA's own review of data on esterified and nonesterified plant sterols and stanols (collectively, phytosterols) [1] published since the agency first authorized the health claim by regulation. FDA is also taking these actions, in part, in response to a health claim petition submitted by Unilever United States, Inc. The proposal would amend the authorized use of the claim by modifying the nature of the substances that may be the subject of the claim for conventional foods to include nonesterified, or free, phytosterols, by expanding the types of foods that may bear the claim to include a broader range of foods, by modifying the daily dietary intake of the substance specified in the claim as necessary for the claimed benefit, by adjusting the minimum amount of the substance required for a food to bear the claim, and by making other minor changes.

DATES: Submit written or electronic comments by February 22, 2011.

ADDRESSES: You may submit comments, identified by Docket Nos. FDA–2000–P–0102, FDA–2000–P–0133, and FDA–2006–P–0033, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket numbers for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket numbers, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blakeley Denkinger, Center for Food Safety and Applied Nutrition (HFS–830), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1450.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Nutrition Labeling and Education Act of 1990 (NLEA) (Pub. L. 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. The NLEA clarified FDA's authority to regulate health claims on food labels and in food labeling by amending the act to add section 403(r) to the act (21 U.S.C. 343(r)). Section 403(r) of the act specifies, in part, that a food is misbranded if it bears a claim that expressly or by implication characterizes the relationship of a nutrient to a disease or health-related condition unless the claim is made in accordance with section 403(r)(3) (for conventional foods) or 403(r)(5)(D) (for dietary supplements).

The NLEA directed FDA to issue regulations authorizing health claims (*i.e.,* labeling claims that characterize the relationship of a nutrient to a disease or health-related condition) for conventional foods only if the agency determines, based upon the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles) that there is significant scientific

[1] The term "phytosterols" is used as a collective term for plant sterols and their hydrogenated stanol forms, whether used in the free form or esterified with fatty acids. As discussed in more detail elsewhere in this proposal, phytosterol is a term commonly used by manufacturers and distributors of these substances.

agreement (SSA), among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (21 U.S.C. 343(r)(3)(B)(i)). Congress delegated to FDA the authority to establish the procedure and standard for health claims for dietary supplements (21 U.S.C. 343(r)(5)(D)).

FDA issued regulations establishing general requirements for health claims in labeling for conventional foods on January 6, 1993 (58 FR 2478). Among the regulations issued under that final rule were: (1) Section 101.14 (21 CFR 101.14), which sets out the rules for the authorization of health claims by regulation based on significant scientific agreement, and prescribes general requirements for the use of health claims; and (2) section 101.70 (21 CFR 101.70), which provides a process for petitioning the agency to authorize health claims about the substance-disease relationship and sets out the types of information that any such petition must include. Each of these regulations became effective on May 8, 1993. On January 4, 1994 (59 FR 395), FDA issued a final rule applying the requirements of §§ 101.14 and 101.70 to health claims for dietary supplements.

On February 1, 2000, Lipton, a subsidiary of Unilever United States Inc. (Unilever), submitted to FDA a health claim petition (Docket No. FDA–2000–P–0102 (formerly Docket No. 2000P–1275)) seeking authorization of a claim characterizing a relationship between consumption of plant sterol esters and the risk of CHD. The petition limited its request to health claims in the labeling of spreads and dressings for salad [2] containing at least 1.6 gram (g) of plant sterol esters per reference amount customarily consumed (RACC) and the risk of CHD. On February 15, 2000, McNeil Consumer Healthcare (McNeil) submitted to FDA a health claim petition (Docket No. FDA–2000–P–0133 (formerly Docket No. 2000P–1276)) requesting that the agency authorize a health claim characterizing the relationship between plant stanol esters and the risk of CHD. Both petitioners requested that FDA exercise its authority under section 403(r)(7) of the act to make any authorizing regulation effective on publication, pending consideration of public comment and publication of a final rule.

On September 8, 2000 (65 FR 54686),[3] the agency issued an interim final rule (IFR) in response to these two health claim petitions to provide for health claims on the relationship between plant sterol/stanol esters and the reduced risk of CHD (codified in § 101.83 (21 CFR 101.83)). FDA concluded that, based on the totality of the publicly available scientific evidence, there was significant scientific agreement among qualified experts that a health claim for plant sterol/stanol esters and a reduced risk of CHD was supported by such evidence (65 FR 54686 at 54700).

Specifically, the agency determined that there is significant scientific agreement that diets that include plant sterol esters and plant stanol esters may reduce the risk of CHD. FDA found that high blood (serum or plasma) total and low density lipoprotein (LDL) cholesterol are major modifiable risk factors in the development of CHD. The agency determined that the scientific evidence established that including plant sterol and plant stanol esters in the diet helps to lower blood total and LDL cholesterol levels.

Current § 101.83 now provides for a health claim on the label or labeling of a food meeting certain criteria provided the claim among other things: (1) States that plant sterol and plant stanol esters should be consumed as part of a diet low in saturated fat and cholesterol, (2) uses the term plant (or vegetable oil) sterol esters or plant (or vegetable oil) stanol esters, (3) specifies that the daily dietary intake necessary to reduce the risk of CHD is 1.3 g or more for plant sterol esters or 3.4 g or more for plant stanol esters, (4) specifies the contribution a serving of the product makes to the daily dietary intake level, and (5) specifies that the daily dietary intake of plant sterol or stanol esters should be consumed in two servings eaten at different times of the day with other foods.

The IFR was effective upon publication on September 8, 2000, with a 75-day comment period that closed on November 22, 2000. On June 6, 2001, the agency issued a notice of an extension of the period for issuance of a final rule (66 FR 30311). In this notice, the agency stated that, due to the complexities of the issues involved and the lack of agency resources, the agency would be unable to issue a final rule within the prescribed 270 days from date of publication of the IFR.

After the comment period had closed, the agency received two requests to extend the comment period. Because several additional substantial issues had been raised in these comments, FDA reopened the comment period on October 5, 2001 (66 FR 50824). The agency specifically requested comment on the following: (1) The eligibility of nonesterified (free) plant sterols and plant stanols to bear a health claim, (2) daily intake levels necessary to reduce the risk of CHD, (3) the eligibility of mixtures of plant sterols and plant stanols to bear a health claim, (4) the significance of serum apolipotrotein B concentration as a surrogate marker for CHD risk, and (5) issues regarding safe use of plant sterol and stanols in foods and the necessity of an advisory label statement.

On February 14, 2003, FDA issued a letter announcing its intentions to consider the exercise of enforcement discretion, pending publication of the final rule, with respect to certain requirements of the health claim (Ref. 1). Under the conditions of the letter, FDA said it would consider enforcement discretion if: (1) The food contains at least 400 milligrams (mg) of phytosterols per RACC; (2) mixtures of phytosterol substances (*i.e.,* mixtures of sterols and stanols) contain at least 80 percent beta-sitosterol, campesterol, stigmasterol, sitostanol, and campestanol (combined weight); (3) the food meets the requirements of § 101.83(c)(2)(iii)(B), (c)(2)(iii)(C), and (c)(2)(iii)(D); [4] (4) products containing phytosterols, including mixtures of sterols and stanols in esterified or nonesterified forms, use a collective term in lieu of the terms required by § 101.83(c)(2)(i)(D) [5] in the health claim to describe the substance (*e.g.,* "plant sterols" or "phytosterols"); (5) the claim

[2] The agency is using the term "dressings for salad" throughout this document in lieu of the term "salad dressing" used by the petitioners because the standard of identity for "salad dressing" in § 169.150 (21 CFR 169.150) refers to a limited class of dressings for salad, *i.e.,* those that contain egg yolk and meet certain other specifications and resemble mayonnaise type products. "Salad dressing" as defined in § 169.150 does not include a number of common types of dressings for salad, such as Italian dressing.

[3] A correction notice published in the **Federal Register** on November 24, 2000 (65 FR 70466).

[4] Section 101.83(c)(2)(iii)(B)—The food must be "low in saturated fat" and "low in cholesterol" as defined in § 101.62 (21 CFR 101.62); § 101.83(c)(2)(iii)(C)—the food must meet the limits for total fat in § 101.14(a)(4) (*e.g.,* for individual foods, 13.0 g fat per RACC, per labeled serving and if the RACC is 30 g or less or 2 tablespoons or less, per 50 g) except that spreads and dressings for salad are not required to meet the limit per 50 g if the label of the food bears a disclosure statement per § 101.13(h) (*e.g.,* "See nutrition information for fat content"); and § 101.83(c)(2)(iii)(D)—the food must meet the minimum nutrient contribution requirement in § 101.14(e)(6) (*e.g.,* except for dietary supplements, the food contains 10 percent or more of the Daily Value of vitamin A, vitamin C, iron, calcium, protein, or fiber per RACC prior to any nutrient addition) unless it is a dressing for salad.

[5] The IFR required that the substance for the claim be specified as "plant sterol esters" or "plant stanol esters" except that if the sole source of the substance was vegetable oil, the terms "vegetable oil sterol esters" or "vegetable oil stanol esters" may be used.

specifies that the daily dietary intake of phytosterols that may reduce the risk of CHD is 800 mg or more per day, expressed as the weight of nonesterified phytosterol; (6) vegetable oils for home use that exceed the total fat disqualifying level bear the health claim along with a disclosure statement that complies with § 101.13(h) (21 CFR 101.13(h));[6] and (7) use of the claim otherwise complies with § 101.83.

II. Petition and Grounds for Amending the Health Claim on Plant Sterols/Stanols and CHD

In response to the IFR, and the October 5, 2001 (66 FR 50824), reopening of the comment period, the agency received approximately 37 comments from a variety of sources. These comments came from professional organizations, industry, consumer groups, health care professionals, academia, and research scientists. The majority of the comments supported authorization of the health claim for phytosterol esters and CHD but requested modification of one or more provisions.

The agency has conducted an extensive re-evaluation of the scientific evidence regarding the relationship between consumption of phytosterols and the risk of CHD. This re-evaluation focused primarily on evidence from intervention studies that address the specific amendments that are being considered in this proposed rule. (These studies are summarized in Tables 1 and 2 at the end of this document and are discussed below.) FDA's process for this re-evaluation took into consideration all available scientific evidence of which FDA was aware and was consistent with FDA evidence-based review approach to health claims (Ref. 2).

The more recent scientific evidence affirms the agency's conclusion regarding the validity of the relationship between consumption of phytosterol esters and a risk of CHD under the SSA standard. FDA has no reason at this time, based on either public comment or on currently available scientific evidence, to reconsider that basic conclusion. The re-evaluation, however, did cause the agency to reconsider the scope of the substances eligible for the health claim and the requirements for use of the health claim in the labeling of food.

Based on evidence from those intervention studies, and in light of the comments received in response to the IFR, the agency has determined that current § 101.83 should be amended to reflect the current state of the science under the SSA standard. Because the agency has not provided a formal opportunity for public comment on the modifications proposed to current § 101.83, and because of the time that has elapsed since publishing the IFR, the agency has decided to issue a proposed rule to amend current § 101.83 rather than finalizing, with modification, the IFR. This approach provides an opportunity for public comment prior to issuance of the final rule.

On May 5, 2006, Unilever submitted a health claim petition under section 403(r)(4) of the act (Docket No. FDA–2006–P–0033 (formerly Docket No. 2006P–0316)). The petition requested that FDA amend § 101.83 to permit use of the health claim for phytosterols in a food that provides the full daily intake in a single serving. On August 18, 2006, FDA notified the petitioner that it had completed its initial review of the petition and that the petition had been filed for further action in accordance with section 403(r)(4) of the act. The agency is issuing this proposed rule, in part, in response to Unilever's petition.

III. Eligibility for a Health Claim/Overview of Data

FDA concluded in the IFR that there was significant scientific agreement that the consumption of phytosterol esters may reduce the risk of CHD. FDA's prior evaluation of the scientific evidence to substantiate a relationship between phytosterols and CHD risk focused on results from intervention studies designed to investigate the effect of phytosterol ester consumption on blood total and LDL cholesterol levels. FDA's evaluation of the scientific evidence to substantiate a relationship between phytosterol ester consumption and CHD risk included the review of 20 phytosterol-ester intervention studies that measured blood (serum or plasma) total or LDL cholesterol levels.

Since issuance of the IFR, there have been a substantial number of studies conducted and published on the relationship between esterified and nonesterified phytosterols and risk of CHD. As part of the re-evaluation of the scientific evidence, FDA requested the Agency for Healthcare, Research and Quality (AHRQ) to identify intervention studies that had been conducted since 2000 on the relationship between phytosterols and CHD risk. FDA identified additional relevant intervention studies based on comments submitted in response to the IFR, the 2001 reopening of the comment period and by conducting its own literature review. In total, FDA identified 66 intervention studies in which the cholesterol-reducing effect of conventional foods containing phytosterols was evaluated. FDA identified seven intervention studies in which the cholesterol-reducing effect of dietary supplements containing phytosterols was evaluated. Consistent with FDA's prior evaluation and its evidence-based review approach to the evaluation of health claims, the agency recognizes elevated blood (serum or plasma) total cholesterol and LDL cholesterol levels to be valid surrogate endpoints for CHD risk (Ref. 3). Although other types of study endpoints, such as measurement of intestinal absorption of cholesterol, are useful for examining issues such as mechanism of action, they do not provide direct evidence of an effect on disease risk.[7] Thus, FDA evaluated only intervention studies that used the valid surrogate endpoints of CHD (*i.e.,* blood total and LDL cholesterol), to evaluate the potential effects of phytosterol intake on CHD risk. Consistent with the agency's prior evaluation of phytosterol esters, FDA also reviewed intervention studies that evaluated the effect of phytosterol intake in individuals who were generally healthy and not yet diagnosed with CHD.

Following FDA's evidence-based review approach to the scientific evaluation of health claims, the agency excluded intervention studies that included patients diagnosed with CHD. Of the 66 intervention studies on conventional foods containing phytosterols identified by FDA, scientific conclusions could not be drawn from 15 intervention studies for the following reasons. Five intervention studies did not include an appropriate control group (Refs. 4, 5, 6, 7, and 8). Without an appropriate control group, it cannot be determined whether changes in the endpoint of interest were due to phytosterol consumption or to unrelated and uncontrolled extraneous factors. Four intervention studies did not conduct statistical analysis between the control and treatment group (Refs. 9, 10, 11, and 12). Statistical analysis of the substance/disease relationship is a critical factor because it provides the comparison between subjects consuming phytosterols and those not consuming phytosterols to determine whether there is a reduction of CHD risk. When statistics are not performed on the specific substance/disease relationship, it cannot be determined

[6] *E.g.,* "See nutrition information for fat content."

[7] Although FDA sought comment on whether use of serum apolipoprotein B is an appropriate surrogate endpoint for CHD (66 FR 50824 at 50825 and 50826), the agency has concluded that it is not because it has not been adequately validated.

whether there is a difference between the two groups. Five intervention studies provided a combination of phytosterols and other food components (*e.g.,* polyunsaturated oils, soy protein, beta-glucan and other viscous fibers) that may be beneficial in reducing total and/or LDL cholesterol levels (Refs. 13, 14, 15, 16, and 17). Therefore, it is not possible to evaluate the independent relationship between phytosterols and CHD risk. One study did not provide baseline and post-study blood total and LDL cholesterol levels, including statistical data (Ref. 18). Without knowing if baseline and/or post-intervention total and/or LDL levels were significantly different, it is difficult to interpret the findings of the intervention. Thus, FDA identified 51 intervention studies from which scientific conclusions could be drawn about the relationship between phystosterols in conventional foods and risk of CHD. (These studies are summarized in table 1 at the end of this document and are discussed below).

The intervention studies included in this review are studies that tested phytosterols, derived from either vegetable oils or from tall oil;[8] as sterols, their stanol derivatives, or sterol/stanol mixtures; and used in the form of fatty acid esterified phytosterols or nonesterified phytosterols. A number of techniques were used to solublize and disperse nonesterified phytosterols in food (*e.g.,* lecithin emulsion, microcrystalline forms, dissolving in heated oil). The majority of intervention studies used phytosterol-enriched conventional foods, most frequently margarine-like spreads. A very limited number of intervention studies provided phytosterols as ingredients in dietary supplements. With few exceptions, the subjects were instructed to consume the enriched foods with meals, and either once a day or up to three times a day. Intake levels in these intervention studies ranged from 0.45 to 9 g per day, though most intervention studies added phytosterols to the diet in the range of about 1 to 3 g per day.[9] With a few exceptions, the participants in these intervention studies were moderately hypercholesterolemic. The results of these intervention studies are consistent with the results of the intervention studies that had been considered in the IFR in that consumption of 1 to 3 g of phytosterols per day in phytosterol-enriched foods resulted in statistically significant reductions (5 to 15 percent) in blood LDL cholesterol levels relative to a placebo control (*see* table 1 at the end of this document).

As discussed elsewhere in this proposal, FDA tentatively concludes that the results of the intervention studies involving the consumption of dietary supplements containing phytosterols are limited and inconsistent in demonstrating that such dietary supplements reduce blood cholesterol levels. The available scientific evidence indicates that dietary supplements containing phytosterol esters reduce cholesterol as effectively as conventional foods containing phytosterols. Although one intervention study showed cholesterol-lowering efficacy for one formulation of dietary supplement containing nonesterified phytosterols, there also is evidence that other types of nonesterified phytosterol formulations were not effective in reducing cholesterol. We tentatively conclude that the available evidence is insufficient to establish what factors are key in predicting which nonesterified phytosterol formulations will be effective and which will not be when consumed as ingredients in dietary supplements.

IV. Review of the Preliminary Requirements

A health claim characterizes the relationship between a substance and a disease or health-related condition (§ 101.14(a)(1)). A substance means a specific food or component of food, regardless of whether the food is in conventional food form or a dietary supplement. (§ 101.14(a)(2)). To be eligible for a health claim, if to be consumed at other than decreased dietary levels, the food or food component must contribute taste, aroma, nutritive value, or some other technical effect to the food and be safe and lawful under the applicable safety provisions of the act at levels necessary to justify the claim (§ 101.14(b)(3)).

As noted in the IFR, CHD is a disease for which the U.S. population is at risk and it therefore qualifies as a disease for which a health claim may be made under § 101.14(b)(1) (65 FR 54686 at 54687). Current § 101.83 authorizes a health claim regarding CHD for two substances: (1) Plant sterol esters prepared by esterifying a mixture of plant sterols from edible oils with food-grade fatty acids; the mixture consisting of at least 80 percent beta-sitosterol, campesterol, and stigmasterol (combined weight) and (2) plant stanol esters prepared by esterifying a mixture of plant stanols derived from edible oils, or from byproducts of the kraft paper pulping process, with food-grade fatty acids; the mixture consisting of at least 80 percent sitostanol and campestanol (combined weight) (§ 101.83(c)(2)(ii)). The regulation does not currently authorize health claims for mixtures of the two substances. Moreover, the regulation requires a health claim regarding one of the two substances to specify which one is the subject of the claim (§ 101.83(c)(2)(i)(C)).

For reasons discussed elsewhere in this preamble, FDA is proposing to amend § 101.83 to expand the substances eligible for the authorized health claim regarding CHD. Under the proposed amendments, phytosterols would be the subject of the regulation. As the agency noted in the IFR, plant sterols occur throughout the plant kingdom and are present in many edible fruits, vegetables, nuts, seeds, cereals, and legumes in both nonesterified and esterified forms (65 FR 54686 at 54687 and 54688). As the hydrogenated form of plant sterols, plant stanols are also present in foods such as wheat, rye, corn, and certain vegetable oils (65 FR 54686 at 54688). Therefore, phytosterols qualify as substances for which a health claim may be made under § 101.14(a)(2).

As was true of phytosterol esters, the scientific evidence suggests that phytosterols achieve their intended effect by functioning to assist the digestive process. Upon the same reasoning provided for phytosterol esters in the IFR, therefore, phytosterols provide nutritive value through assisting in the efficient functioning of a classical nutritional process and of other metabolic processes necessary for the normal maintenance of human existence (*see* 65 FR 54686 at 54688). Accordingly, the agency concludes that the preliminary requirement of § 101.14(b)(3)(i) is satisfied.

Finally, under § 101.14(b)(3)(ii), phytosterols, at levels necessary to justify the claim, must be safe and lawful under the applicable food safety provisions of the act. For conventional foods, this evaluation involves considering whether the substance is generally recognized as safe (GRAS), listed as a food additive, or authorized by a prior sanction issued by FDA. (*See* § 101.70(f).) Dietary ingredients in dietary supplements are not subject to the food additive provisions of the act (*see* section 201(s)(6) of the act (21 U.S.C. 321(s)(6))). Rather, they are subject to the adulteration provisions in section 402 of the act (21 U.S.C. 342) and, if applicable, the new dietary

[8] As explained in more detail in section V.A.3 in this proposed rule, tall oil is the term FDA is using in this proposed rule to describe the byproducts of the kraft process of wood pulp manufacture.

[9] Weight of phytosterols is represented as nonesterified sterols and/or stanols. One g of nonesterified stanols is equivalent to 1.7 g stanol esters. One g of nonesterified sterols is equivalent to 1.6 g sterol esters.

ingredient provisions in section 413 of the act (21 U.S.C. 350b).

Through the agency's GRAS notification program, FDA has received numerous submissions from food manufacturers regarding the GRAS status of phytosterols when used in certain conventional foods at levels necessary to justify the claim under the proposed amendments to § 101.83. These submissions have included data to support the manufacturer's self-determinations that phytosterols under the intended conditions of use identified in the submissions are GRAS.[10] FDA did not object to the conclusions in those submissions. The GRAS submissions include conditions of use for a variety of conventional foods, but not all conventional foods. The agency has not made its own determination that phytosterols are GRAS. However, FDA is not aware of any scientific evidence that phytosterols, whether free or esterified, would be harmful. For those conventional foods that have been the subject of a GRAS notification reviewed by FDA with conditions of use that meet the eligibility criteria for the use of the health claim, and for which FDA had no further questions, FDA concludes that the preliminary requirement under § 101.14(b) that phytosterols be safe and lawful has been met for use in such conventional foods. We note, in section C.1 of this document, the minimum level of phytosterols necessary for a food to contain in order to be eligible to bear a claim is 0.5 g per RACC. Not all conventional foods for which a GRAS notification for phytosterols was submitted, to which the agency had no further questions, are under conditions of use in food that would be consistent with the eligibility requirements for the health claim, *e.g.,* certain foods may contain phytosterols at a level that is less than the minimum of 0.5 g per RACC. Such foods would not be eligible to bear the health claim if the rule is finalized as proposed. The agency notes that authorization of a health claim for a substance should not be interpreted as an affirmation that the substance is GRAS.

FDA has also received new dietary ingredient (NDI) notifications, under section 413(a)(2) of the act, for the use of plant stanol esters (Ref. 19) and for all plant sterols derived from tall oil (Ref. 20) as dietary ingredients.[11] In FDA's judgment, the data submitted with these NDIs, considered in combination with the GRAS notifications it has also received for phytosterols in conventional foods, provide an adequate basis to conclude that a dietary supplement containing phytosterol esters would reasonably be expected to be safe. Therefore, FDA concludes that the preliminary requirement under § 101.14 that the use of phytosterols in dietary supplements be safe and lawful is satisfied. However, the agency notes that the authorization of a health claim for phytosterol esters in dietary supplements does not relieve manufacturers and distributors of such products from ensuring that their products are not adulterated under section 402 or 413 of the act.

V. Proposed Modifications to Current § 101.83

A. Nature of the Substance

1. Esterification

Current § 101.83 limits the substances eligible for the health claim to those specified in the two original health claim petitions as follows: (1) Plant sterols derived from vegetable oils and prepared by esterifying, with food-grade fatty acids, a mixture of plant sterols, consisting of at least 80 percent beta-sitosterol, campesterol, and stigmasterol (combined weight); and (2) plant stanol esters derived from vegetable oils or from byproducts of the kraft paper pulping process derived from vegetable oils or from byproducts of the kraft paper pulping process and prepared by esterifying, with food-grade fatty acids, a mixture of plant stanols, consisting of at least 80 percent sitostanol and campestanol (combined weight) (§ 101.83(c)(2)(ii)). The regulation does not authorize a health claim for nonesterified phytosterols. Several comments received in response to the IFR requested that the agency permit foods containing nonesterified phytosterols to bear the health claim.

In finding that the phytosterol esters specified in the current regulation reduce the risk of CHD under the SSA standard, FDA expressed agreement in the IFR with the petitioners that the fatty acid portion of plant sterol/stanol esters is likely to be readily hydrolyzed by digestive lipases upon ingestion and that the resultant free phytosterol is left to be incorporated into intestinal micelles in a manner that prohibits the absorption of cholesterol. The phytosterol is therefore the active portion of the ester (65 FR 54686 at 54690, 54691, 54694, and 54705). Although the scientific evidence on which FDA relied in issuing the IFR included studies of both esterified and nonesterified phytosterols FDA had not considered, in the IFR, cholesterol-lowering efficacy of nonesterified phytosterols.

In response to the IFR, FDA received a number of comments asserting that the IFR should be modified to allow use of the health claim for nonesterified phytosterols, as well as phytosterol esters. Other comments argued that nonesterified phytosterols should not be eligible for the health claim because the available evidence on the efficacy of nonesterified plant sterols and stanols is too limited and the characterization of the substance is too scant to support their inclusion in the final rule. In FDA's notice to reopen the comment period (66 FR 50824, October 5, 2001), the agency asked for any additional data on the effectiveness of nonesterified phytosterols in reducing the risk of CHD.

Esterification with fatty acids was one of the initial techniques used to increase lipid solubility of phytosterols and facilitate incorporation of phytosterols into foods. However, other techniques have also been demonstrated effective in enhancing the solubility of nonesterified phytosterols in conventional foods. Techniques for solubilization of phytosterols include the following: (1) Dissolving them into heated fats (Refs. 21 and 22), (2) re-crystallization by cooling after dissolution in heated oil (Refs. 23 and 24), (3) mechanically pulverizing crystalline phytosterols to a fine particle size (Refs. 25 and 26), and (4) emulsifying them with lecithin (Ref. 27).

Nonesterified phytosterols dissolved in oils are as effective in lowering cholesterol as are equivalent amounts of phytosterol esters. However, due to the limited lipid solubility of nonesterified phytosterols, the amount of fat needed to dissolve an effective amount of phytosterols is substantially greater for nonesterified phytosterols than for phytosterol esters. The solubility of sitosterol/sitostanol in rape seed oil mayonnaise increased about tenfold when esterified with fatty acids (Ref. 28).

Although current § 101.83 provides only for a claim about phytosterol esters, the evidence that was considered in the IFR included five intervention

[10] *See, e.g.,* GRAS Notification Numbers (GRN) 000039, GRN 000048, GRN 000176, GRN 000177, GRN 000112, GRN 000181, GRN 000053, and GRN 000206).

[11] Section 413(a) of the act requires that manufacturers and distributors of dietary supplement ingredients that had not been used for food or as a dietary supplement ingredient prior to October 15, 1994, or that are in a form that has been chemically modified from the form in which it was used in food, submit to FDA at least 75 days before the ingredient is introduced into interstate commerce, information that is the basis on which the manufacturer or distributor determined that the dietary supplement containing the ingredient will reasonably be expected to be safe.

studies that investigated the effects of nonesterified phytosterols on serum total and/or LDL cholesterol levels (Refs. 21, 28, 29, 30, and 31). In addition, 12 intervention studies published since the IFR have involved nonesterified phytosterols added to conventional foods (Refs. 22, 24, 25, 26, 27, 32, 33, 34, 35, 36, 37, and 38) (*see* table 1 at the end of this document). In these 17 intervention studies, subjects consumed conventional foods providing from 0.7 to 5 g per day of nonesterified plant sterols, plant stanols, or plant sterol/stanol mixtures during intervention periods of 3 weeks to 6 months. Thirteen of the seventeen intervention studies reported finding statistically significant reductions in blood total and/or LDL cholesterol from the consumption of foods containing nonesterified phytosterols.

Two intervention studies directly compared the cholesterol lowering efficacy of similar amounts of nonesterified and esterified phytosterols in conventional foods (Refs. 35 and 38) (*see* table 1 at the end of this document). Nestel *et al.,* 2001 (Ref. 35) reported that consumption of 2.4 g per day of soy phytosterols, as either plant sterol esters or as nonesterified plant stanols, suspended in conventional foods and consumed with meals over a 4-week period, significantly lowered serum LDL cholesterol levels and that there was no statistically significant difference in the cholesterol-lowering effect between the two forms of phytosterols. Abumweiss *et al.,* 2006 (Ref. 38) reported that 1.7 g per day of phytosterols, provided as either nonesterified plant sterols or fatty acid esterified plant sterols dissolved in margarine did not significantly lower total or LDL cholesterol compared to the placebo.

In the majority of these 17 intervention studies, nonesterified phytosterols were suspended in fat-free or low-fat foods (*e.g.,* orange juice, low-fat dairy foods or other fat-free beverage, bread, cereal, and jam); in other studies nonesterified phytosterols were suspended in high-fat foods (*e.g.,* margarine, butter, chocolates and meats) (*see* table 1 at the end of this document). In most of these intervention studies, the study design specified that the food enriched with phytosterols be consumed with meals. In the few nonesterified phytosterol intervention studies that did not specify the phytosterol-enriched foods be consumed with meals (Refs. 24 and 25), the types of food used (meats, bread, jam, and margarine) make it likely that they would have been consumed concurrently with other foods.

Based on the totality of available scientific evidence, FDA agrees with the comments asserting that the blood cholesterol-lowering efficacy of conventional foods containing nonesterified forms of phytosterols is comparable to that of fatty acid esterified phytosterols. Although esterification with fatty acids is one technique that facilitates dispersion of phytosterols in foods with a high fat content, FDA tentatively concludes that there is significant scientific agreement that fatty acid esterification is not necessary for phytosterols to be incorporated into food matrices or for phytosterols to be effective in lowering blood cholesterol when added to conventional foods. FDA also tentatively concludes that, for conventional foods, it is reasonable to expand the substance that is the subject of the claim to include both nonesterified and esterified phytosterols.

Therefore, the agency is proposing to amend current § 101.83(c)(2)(ii) to define the substances eligible for the health claim to include both phytosterols esterified with certain food-grade fatty acids and, for the conventional foods for which the claim is authorized, nonesterified phytosterols as substances for which the health claim may be made. As discussed elsewhere in this document, however, FDA is not proposing that dietary supplements containing only nonesterified phytosterols be eligible for the health claim.

2. Mixtures of Plant Sterols and Plant Stanols

Current § 101.83 distinguishes between plant sterol esters and plant stanol esters. The plant sterol component of the plant sterol ester that is the subject of current § 101.83 must be comprised of at least 80 percent (combined weight) of beta-sitosterol, campesterol, and stigmasterol (§ 101.83(c)(2)(ii)(A)(*1*)). Similarly, the plant stanol component of the plant stanol ester that is the subject of the health claim must be comprised of at least 80 percent (combined weight) sitostanol and campestanol (§ 101.83(c)(2)(ii)(B)(*1*)). The effective cholesterol-lowering daily intake specified in the current regulation for plant sterol esters is 1.3 g per day (equivalent to 0.8 g per day of nonesterified sterol) and that for plant stanol esters is 3.4 g per day (equivalent to 2 g per day of nonesterified stanol) (§ 101.83(c)(2)(i)(G)).

The agency requested comment on the variability of beta-sitosterol, campesterol, and stigmasterol composition in the plant sterol ester products reported to be effective in lowering cholesterol (65 FR 54686 at 54705) and requested similar information with respect to the variability of stanol composition of plant stanol products (65 FR 54686 at 54706). FDA further requested comment on the requirements that sterol composition of plant sterol esters be at least 80 percent (combined weight) beta-sitosterol, campesterol, and stigmasterol (65 FR 54686 at 54705) and that the stanol composition of plant stanol esters be at least 80 percent (combined weight) sitostanol and campestanol. The 2001 reopening of the IFR comment period (66 FR 50824) specifically sought submission of additional data on the effectiveness of plant sterol and stanol mixtures in reducing serum cholesterol levels.

Some comments requested that the scope of the health claim be broadened to include mixtures of plant sterols and stanols as eligible substances. One comment stated that for purposes of the health claim the effective cholesterol-lowering daily intake level for plant sterols, plant stanols, or plant sterol/stanol mixtures must be considered the same because available scientific evidence shows plant sterols and plant stanols to be equivalent in their serum cholesterol-lowering effect. Other comments asserted that the IFR should not be broadened to include plant sterol/stanol mixtures because these substances have not been the subject of a health claim petition. These comments asserted that FDA should only consider health claims for other phytosterol substances based on petitions submitted by proponents of such claims.

The totality of scientific evidence includes reports from five intervention studies of cross-over design that directly compared the cholesterol-lowering effects of similar intake levels of plant sterols and plant stanols within each study and at intake levels ranging from 1.8 and 3 g per day (Refs. 22, 35, 39, 40, and 41) (*see* table 1 at the end of this document). Three of the five intervention studies reported that equivalent intake levels of plant sterols and plant stanols were equally effective in lowering of blood total and/or LDL cholesterol levels (Refs. 22, 39, and 41). The other two intervention studies reported that plant sterols resulted in a greater reduction in LDL cholesterol compared to an equivalent intake level of plant stanols (Refs. 35 and 40).

There are nine intervention studies that investigated the cholesterol-lowering effects of mixtures of plant sterols and plant stanols added to conventional foods (Refs. 21, 22, 24, 25,

32, 34, 37, 42, and 43) (*see* table 1 at the end of this document). Eight of the nine studies, which provided 1.7 to 5 g per day of such mixtures foods consumed with meals, reported finding significant LDL cholesterol reductions of 5 to 15 percent relative to a placebo control. The magnitude of the effect on lowering LDL cholesterol did not vary meaningfully between the intervention studies involving mixtures of plant sterols and plant stanols and interventions studies involving plant sterols or plant stanols alone. Only one of the plant sterol/stanol mixture intervention studies reported finding no statistically significant lowering of LDL cholesterol (Ref. 34). The phytosterol composition of the mixtures used in most of these intervention studies was approximately 75 to 85 percent sterols and 10 to 15 percent stanols; two intervention studies used phytosterol mixtures that contained 50 percent sterol and 50 percent stanol (Refs. 42 and 22).

Based on the intervention studies demonstrating no meaningful difference between the effectiveness of plant sterols and plant stanols in lowering cholesterol and the intervention studies demonstrating that mixtures of plant sterols and plant stanols effectively lower cholesterol, FDA tentatively concludes that there is significant scientific agreement among qualified experts to support the relationship between foods containing mixtures of plant sterols and plant stanols and CHD.

FDA is therefore proposing to combine current § 101.83(c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B)(*1*), and to adopt the term "phytosterol" as inclusive of both plant sterols and plant stanols. Proposed § 101.83(c)(2)(ii) would specify the eligible substance as "phytosterols." The proposal would also add a new paragraph (§ 101.83(a)(3)) in the background section of amended § 101.83 to define the term "phytosterols" and to clarify the regulation's use of that collective term. As discussed in section V.4 of this document, the proposal would further establish the permissible terminology that could be used to describe the substances subject to the health claim (§ 101.83(c)(2)(i)(D)).

3. Sources of Phytosterols

Current § 101.83(c)(2)(ii) specifies that eligible plant sterol esters must be derived from edible oils and that eligible plant stanols must be derived from either edible oils or from byproducts of the kraft paper pulping process. Some comments to the IFR urged FDA to broaden the nature of the substance to include both sterols and stanols derived from either vegetable oils or from wood oils.

The restriction on the source of plant sterol esters to edible oils in current § 101.83(c)(2)(ii)(A)(*1*) reflects the original health claim petition's specifications. The petition for a health claim characterizing a relationship between plant sterol esters and CHD limited itself to plant sterols derived from edible oils (*i.e.,* those edible oils that are vegetable oils). The origin of FDA's use of the "byproducts of the kraft paper pulping process" in current § 101.83(c)(2)(ii)(B)(*1*) was the terminology used by the original health claim petition for plant stanol esters. The petitioner submitted documentation to support its self-determination that plant stanol esters, whether obtained from vegetable oils or byproducts of the kraft paper pulping process, were GRAS (65 FR 54686 at 54706). FDA notes, however, that some of the intervention studies that were considered for purposes of re-evaluating the scientific basis for the authorized health claim identified the source of the phytosterols as "tall oil." Tall oil is a byproduct of the wood pulp industry, usually recovered from pine wood "black liquor" of the kraft paper process, containing rosins, fatty acids, long chain alcohols and phytosterols (Ref. 44). FDA is proposing to use the term "tall oil" in lieu of "byproducts of the kraft paper pulping process."

The phytosterols derived from tall oil are predominantly sterols. These wood-derived plant sterols are hydrogenated to convert a predominantly plant sterol product to plant stanols. The available scientific evidence includes five of six intervention studies that demonstrated cholesterol-lowering effects of conventional foods containing plant sterols derived from tall oil (Refs. 21, 24, 32, 37, and 43) (*see* table 1 at the end of this document). Jones (Ref. 34) did not observe a significant reduction in total or LDL cholesterol levels when 1.8 g of nonesterified sterols from tall oil was consumed in a nonfat or low fat beverage. The composition of the phytosterols used in these intervention studies was approximately 85 to 90 percent sterols and 10 to 15 percent stanols. FDA concurs with the comments that argued that there is no justification for not including plant sterols derived from byproducts of the kraft paper pulping process. FDA is proposing to amend the nature of the substance paragraph in current § 101.83(c)(2)(ii) to specify that the source for any phytosterol eligible for the claim may be either vegetable oils or tall oil.

Amended § 101.83(c)(2)(ii) would specify that eligible plant sterols and stanols are derived from vegetable oils or from tall oil.

4. Designation of Substance as Phytosterols

Current § 101.83(c)(2)(i)(D) requires that the claim statement identify the substance as either "plant sterol esters," or "plant stanol esters," except that if the sole source of the plant sterols/stanols is vegetable oil, the claim may use the term "vegetable oil sterol esters" or "vegetable oil stanol esters." Because FDA is now proposing to expand the substance that is the subject of the health claim to include, in addition to plant sterol/stanol esters, nonesterified phytosterols and mixtures of sterols and stanols, the agency is proposing to replace the terms "plant sterol esters" and "plant stanol esters" with the single term "phytosterols" throughout § 101.83.

In addition, FDA does not believe that requiring the claim to distinguish plant sterol esters from nonesterified plant sterols would provide meaningful information to the average consumer. On the other hand, it is likely that consumer recognition of the potential health benefit of phytosterol-enriched foods would be served by encouraging consistent use of a single term to identify the variations of phytosterol substances proposed to be included in the health claim. FDA believes that permitting the health claim statement to use the term "phytosterol" to identify all forms of the substance rather than distinguishing between sterol and stanol forms of esterified and nonesterified forms would encourage manufacturers to take that approach.

Therefore the agency proposes amending current § 101.83(c)(2)(i)(D) to include the single term "phytosterols." To be consistent with other revisions made to substances eligible for the health claim in this proposal, we are also proposing to permit accurate use of the terms "plant sterols," "plant stanols," or "plant sterols and stanols," and to permit "vegetable oil phyosterols" or "vegetable oil sterols and stanols" if the sole source of the plant sterols or stanols is vegetable oil.

5. Determining the Amount and Nature of the Substance

Current § 101.83(c)(2)(ii)(A)(*2*) and (c)(2)(ii)(B)(*2*) specify that, when FDA measures phytosterols in foods bearing the claim, it will use particular analytical methods, which are the methods specified in the original health claim petitions. The analytical methods specified in the current regulation are direct saponification/gas

chromatographic methods for the determination of phytosterols in various food matrices. FDA is proposing to amend the health claim to revise the analytical methods for phytosterols, because the current methods would be inadequate to measure phytosterols in the range of foods eligible to bear the health claim under the proposed amendments to the regulation.

In table 3 of this document, FDA has summarized the key features of several recent methods used for quantitation of phytosterols. Analytes, sample handling, matrices studied, and types and lengths of gas chromatography columns are listed. The types of validation data obtained for these methods are also listed. Each of these methods provides starting points for possible extensions to other analytes and other food matrices. The validation data provide guidelines regarding the types of validation that would be needed should these methods be extended or modified.

The agency solicited comments on the suitability of the petitioners' analytical methods for ensuring that foods bearing the health claim contain the qualifying levels of phytosterol esters (65 FR 54686 at 54706 and 54707). Comments received from several manufacturers recommended that, until a general method is developed and validated for determining the phytosterol content of foods, the regulation should allow manufacturers to use any reliable analytical method for determining the amount of phytosterols in their products and that the records of their testing, or records of other reliable methods to verify phytosterol content such as production records, should be available to FDA upon request.

FDA emphasizes that the purpose for identifying a specific analytical method in a health claim regulation is not to bind manufacturers to the use of any one analytical method. Rather, the purpose is to inform manufacturers of the analytical method that will be used by FDA to verify that foods bearing the claim comply with the requirements of the claim. Because there is no Association of Official Analytical Chemists (AOAC) Official Method for phytosterols in foods, FDA has considered the comments from manufacturers that the agency could review manufacturers' records (production and/or testing) as a method of determining compliance with the requirements of the claim regulation. A specific quantitative analytical method for the substance that is the subject of the health claim is one means for verifying compliance with the requirements of a health claim, although it is not an absolute requirement for a health claim regulation. In the absence of a validated analytical method for determining the amount of a substance in a food, FDA has previously included a record inspection requirement to determine the amount and nature of a substance in the food to assure that it was in compliance with the requirements of the health claim. In the soy protein/CHD health claim regulation (§ 101.82(c)(2)(ii)(B)), manufacturers of foods bearing the claim must maintain records sufficient to substantiate the level of soy protein when the food contains other sources of protein and make such records available to FDA upon request.

Although FDA recognizes that using food manufacturers' production and/or analytical records is one option for compliance verification, recent developments in analytical methodology have provided an additional possibility for verifying compliance with the claim requirements. For the reasons discussed below, FDA is proposing to replace both the Unilever and McNeil methods specified in the current regulation with AOAC Official Method 994.10, "Cholesterol in Foods" (Ref. 45) as modified by Sorenson and Sullivan (Ref. 46) for assaying phytosterols. FDA recognizes that this method may need to undergo further validation studies if analytes other than those already studied are included in the analyses.

When adopted in the IFR, as the analytical methods FDA would use for determining plant stanol ester content of foods, neither the McNeil nor the Unilever methods had been subjected to validation through a collaborative study or peer-verified validation process, nor had they been published in the scientific literature (65 FR 54686 at 54706 and 54707). FDA is not aware that this situation has changed for the McNeil methods. The Unilever analytical method has subsequently been validated through a collaborative study and published (Ref. 47). However, this method quantifies total 4-desmethyl sterol content only and is not recommended for identification of unknown sterols. As such, this method is not suitable for one of the primary analytical needs for determining compliance with the claim requirements (*i.e.,* identifying the phytosterols present in a food). Further, the method was validated only for measurement of plant sterols in vegetable oil blends and plant sterol concentrates. For these reasons, FDA is proposing to remove the McNeil and Unilever methods cited in § 101.83(c)(2)(ii)(A)(*2*) and (c)(2)(ii)(B)(*2*) from the regulation.

TABLE 3—SUMMARY OF KEY FEATURES OF SEVERAL RECENT METHODS USED FOR QUANTITATION OF PHYTOSTEROLS

Method	Description	Analytes, analytical ranges, other features	Validation data available, matrices studied	Comments
1. McNeil—§ 101.83(c)(2)(ii)(B)(*2*).	Direct saponification, silyl derivatization, GC. Lipids are saponified at high temp with ethanolic KOH. The unsaponifiable fraction is extracted into hexane. Sterols are derivatized to trimethylsilyl (TMS) ethers and quantified by capillary GC with FID Internal standard: 5β-cholestan-3α-ol System suitability standards: cholestanol + stigmastanol. Column: capillary, 30 m × 0.32 mm × 0.25 μm film thickness; cross-linked 5% phenyl-methyl silicone or methyl silicone gum (HP–5).	Analytes: sitosterol, sitostanol, campesterol, campestanol. Ranges: 3–8 g/100 g dressing; 6–18 g/100 g tub spread; 2.5–7.5 g/100 g snack bars; 464–696 mg/softgel capsules	In-house validation data on linearity, accuracy, precision, and reproducibility. Matrices: dressings, tub spreads, snack bars, softgel capsules	Method is applicable to the determination of added phytosterols. Alkaline saponification hydrolyses sterol-ester bonds; analytes are nonesterified sterols.
2A. Unilever—§ 101.83(c)(2)(ii)(A)(*2*).	Direct saponification, no derivatization, GC.			

TABLE 3—SUMMARY OF KEY FEATURES OF SEVERAL RECENT METHODS USED FOR QUANTITATION OF PHYTOSTEROLS—Continued

Method	Description	Analytes, analytical ranges, other features	Validation data available, matrices studied	Comments
	Lipids are saponified at high temp with ethanolic KOH.. Unsaponifiable fraction is extracted into heptane. Quantitation by GC with FID Internal standard: β-cholestanol (CAS No. 80–97–7) Column: capillary, 10 m × 0.32 mm × 0.12 μm film thickness; CP–Sil-5CB	Analytes: total 4-desmethyl sterols. Range: 7–60 g/100 g product	Validation results for recovery, and repeatability. Matrices: margarines, dressings, fats, fat blends, and phytosterol ester concentrates	Method has been validated through a collaborative study; however, this method quantifies total 4-desmethyl sterol content only and is not recommended for identification of unknown sterols. Method is not suitable for one of the primary analytical needs for determining compliance with the claim requirements (*i.e.,* identifying the phytosterols present in a food). Method validated only for measurement of plant sterols in vegetable oil blends and plant sterol concentrates.
2B. Duchateau *et al.,* 2002 (Ref. 47).	Direct saponification, no derivatization, GC. Sample is saponified with ethanolic KOH at 70° C for 50 min. Unsaponifiable fraction is extracted into heptane. Quantitation by GC with FID Internal standard: β-cholestanol (5α-cholestane-3β-ol) Reference standards: cholesterol, campesterol, stigmasterol, β-sitosterol Column: capillary, 10 m × 0.32 mm × 0.12 μm film thickness; CP–Sil-5CB	Analytes: cholesterol, brassicasterol, campesterol, stigmasterol, β-sitosterol, Δ5-avenasterol. Ranges: 15–20 g/100 g vegetable oils; 8 g/100 g vegetable oil spreads; 60 g/100 g phytosterol ester concentrates	International collaborative study performed with 8 samples from 4 different products and batches. Validation data for recovery, accuracy, and repeatability. Instrument details (GC brand, type; columns, injector type, temperature program) for all participants provided.	Method is that of Unilever (2A). Phytosterols analyzed as nonesterified sterols.
3. AOAC Official Method 994.10 "Cholesterol in Foods." Direct saponification-gas chromatographic method (Ref. 45).	Direct saponification, silyl derivatization, GC. Lipids are saponified at high temperature (not specified) with ethanolic KOH. Unsaponifiable fraction containing cholesterol and other sterols is extracted with toluene. Sterols are derivatized to TMS ethers and quantified by GG with FID Internal standard: 5α-cholestane. Column: capillary, 25 m × 0.32 mm × 0.17 μm film thickness; cross-linked 5% phenyl-methyl silicone or methyl silicone gum (HP–5, Ultra 2 of HP–1).	Analyte: cholesterol Test sample should contain ≤ 1 g fat or ≤ 5 g water. Suggested sample weights provided for pure oils, salad dressings, substances with high moisture content.. LOQ: 1.0 mg/100 g Calibration curve 2.5–200 μg/ml	Collaborative study matrices: Butter cookies, vegetable bacon baby food, chicken vegetable baby food, skinless wieners, NIST egg powder (SRM 1845) commercial powdered eggs, Cheese Whiz.	The method is applicable to the determination of ≥ 1 mg cholesterol/100 g of foods, food products. Collaborative study reference: *Journal of AOAC International,* 78(6):1522–1525, 1995. (Ref. 48).

TABLE 3—SUMMARY OF KEY FEATURES OF SEVERAL RECENT METHODS USED FOR QUANTITATION OF PHYTOSTEROLS—Continued

Method	Description	Analytes, analytical ranges, other features	Validation data available, matrices studied	Comments
4. Sorenson and Sullivan, 2006 (Ref. 46).	Direct saponification, silyl derivatization, GC. Modification of AOAC Official Method 994.10 (*see* item 3. of this table) to include determination of phytosterols Lipids are saponified at high temperature (not specified) with ethanolic KOH. Unsaponifiable fraction containing cholesterol and other sterols is extracted with toluene. Sterols are derivatized to TMS ethers and quantified by GG with FID Internal standard: 5α-cholestane Column: capillary, 25 m × 0.32 mm × 0.17 μm film thickness; cross-linked 5% phenyl-methyl silicone or methyl silicone gum (HP–5, Ultra 2 of HP–1)	Analytes: campesterol, stigmasterol, β-sitosterol. LOQ: 1.0 mg/100 g Calibration curve: 2.5–200 μg/ml	Single laboratory validation: precision, stability, accuracy, and ruggedness. Matrices: powdered saw palmetto berry, saw palmetto dried fruit CO_2 extracts, saw palmetto 45% powdered extract, dietary supplement samples	Full collaborative study said to be in progress.
5. Quaker Method #210 (Ref. 49).	Direct extraction, silyl derivatization, GC. Lipids are extracted from homogenized food sample into toluene. Sterols are derivatized to TMS ethers and quantified by capillary GC with FID Internal standard: 5α-cholestane (CAS No. 481–21–0). Reference standards: mixture of nonesterified sitosterol, sitostanol, campesterol, campestanol Column: capillary, 30 m × 0.25 mm × 0.25 μm film thickness; (DB–5)	Analytes: sitosterol, sitostanol, campesterol, campestanol.. Range: 0.7–2.25 g/100 g bars; 0.13–0.38 g/100 g beverages; 3–9 g/100 g cereals	In-house validation data for specificity, accuracy linearity, precision, and stability.. Matrices: food bars, beverages, ready-to-eat cereals	Intended for use in only relatively low-fat foods enriched with nonesterified plant sterols/stanols. Applicable for determination of added nonesterified phytosterols.
6. Toivo, J. *et al.* 2001 (Ref. 50).	Acid hydrolysis, saponification, silyl derivatization, GC. First step uses HCL hydrolysis to liberate glycosylated phytosterols bound in food matrices. Lipids are extracted into hexane:ether, dried and the lipid extract is saponified at high temp with ethanolic KOH. Unsaponifiable fraction is extracted into cyclohexane. Sterols are derivatized to TMS ethers and quantified by capillary GC with FID. Internal standard: dihydrocholesterol (cholestanol). Reference standard: dihydrocholesterol (cholestanol), cholesterol, cholesteryl palmitate, and mixture of soybean steryl glucosides containing sitosterol, campesterol, and stigmasterol as their glucosides. Column: capillary, 60 m × 0.25 mm × 0.1 μm film thickness; cross-linked 5% diphenyl-95% dimethyl polysiloxane.	Analytes: cholesterol, sitosterol, sitostanol, campersterol, campestanol, stigmasterol, Δ5-avenasterol. Range: 0.5–800 mg/100 g for individual phytosterols.	Single laboratory validation includes method optimization, accuracy, and repeatability.. Matrices: flour, canola oil, corn meal, dried onion, sunflower seed, diet composite.	Intended for use in determining levels of endogenous phytosterols in foods. Acid hydrolysis step included to release conjugated forms of phytosterols. Important for grains, flours; not so for oils. Use of acid hydrolysis prior to or following lipid extraction discussed. Method has been used for analysis of hundreds of foods to create database of phytosterol in foods.

ABREVIATIONS: GC—gas chromatography; TMS—trimethylsilyl; FID—flame ionization detector; KOH—potassium hydroxide; CAS—Chemical Abstract Service; LOQ—limit of quantitation.

At the present time, the method that appears to be the most appropriate for the current regulation is that of Sorenson and Sullivan (2006) (Ref. 46). This method, which has undergone AOAC's single laboratory validation procedures, is a modification of AOAC Official Method 994.10 for the determination of cholesterol in foods. AOAC Official Method 994.10 was validated in a variety of food matrices (Ref. 48) and, with the modifications and validation data provided by Sorenson and Sullivan (Ref. 46), can likely be extended further to include campestanol and sitostanol and additional food matrices.

At this time, FDA is not aware of any publicly available analytical methods that have already been validated through collaborative studies that apply to a wider range of food matrices and that adequately resolve the specific phytosterols that are the subject of this health claim (*i.e.,* β-sitosterol, campesterol, stigmasterol, sitostanol, and campestanol) from other phytosterols potentially present in foods. FDA is therefore requesting submission of validation data for any analytical methods that may apply to a wider range of food matrices or more fully validated for separation and quantitation of the specific phytosterols of this health claim.

FDA is tentatively concluding that the modification of AOAC Official Method 994.10 provided by Sorenson and Sullivan (Ref. 46) for the evaluation of campesterol, stigmasterol, and beta-sitosterol is an appropriate method for use to assess compliance for this health claim for those foods for which such method has been validated. This method will need to be validated to include campestanol and sitostanol and to include additional matrices for other foods that may be eligible for this claim. Method validation is a process that is used to establish that, if the method is performed properly, it produces results which are of acceptable quality. The validation process involves determining statistical parameters of a method to decide if the method is fit for a specified purpose. Methods documented by published interlaboratory validation data are generally selected over those that are not. Attributes of methods include the following: Range, limit of detection, limit of quantitation, accuracy, precision (repeatability and reproducibility), specificity (selectivity), sensitivity, robustness (ruggedness), practicality, and applicability. We request comment on whether validated methods are available for analytes and matrices that are not included in the Sorenson and Sullivan method. If so, FDA may adopt such methods in a final rule. If no other validated methods are available, FDA would likely require, in a final rule, a requirement for manufacturers to maintain records to demonstrate that the method used to identify the presence of the phytosterols in its product, that bears the phytosterol health claim, and the level of each phytosterol source in such product, is capable of accurately quantifying phytosterols in the product. FDA also would likely require that manufacturers maintain records of test results. Further, FDA would likely require that the manufacturer make such records available to FDA upon request.

FDA is proposing to replace the analytical methods now specified in current § 101.83 (Unilever's method in § 101.83(c)(2)(ii)(A)(*2*) and McNeil's methods in § 101.83(c)(2)(ii)(B)(*2*)) with Sorenson and Sullivan's modifications of AOAC Official Method 994.10 (Ref. 46), for those foods for which the Sorenson and Sullivan method has been validated.

B. Nature of the Claim

1. Effective Cholesterol-Lowering Daily Dietary Intake

Current § 101.83(c)(2)(i)(G) requires that the health claim specify the daily dietary intake of plant sterol or stanol esters that is necessary to reduce the risk of CHD and the contribution one serving of the product makes to the specified daily dietary intake level. Current § 101.83(c)(2)(iii)(A) further specifies that the amount of plant sterol or stanol esters that a food product eligible to bear the health claim is required to contain per RACC. Such amount is one half of the daily dietary intake level associated with reduced CHD risk (*i.e.,* the total daily intake divided between two meals). FDA concluded in the IFR that the daily dietary intake levels of plant sterol and stanol esters that are associated with reducing the risk of CHD, based on the consistently demonstrated effective lowering of blood total and/or LDL cholesterol, were at least 1.3 g per day of plant sterol esters (equivalent to 0.8 g per day expressed as plant sterol) and at least 3.4 g per day of plant stanol esters (equivalent to 2 g per day expressed as plant stanols) (65 FR 54686 at 54704).

In its original health claim petition, Unilever (then acting under its subsidiary Lipton) proposed 1.6 g per day of plant sterol esters (equivalent to 1 g per day expressed as nonesterified plant sterols) as the daily dietary intake level of plant sterols necessary to justify a claim about reduced risk of CHD. The agency agreed that an intake level of 1 g per day of nonesterified plant sterols had been demonstrated to consistently reduce blood total and LDL cholesterol, but the agency also considered three intervention studies (Refs. 29, 30, and 51) in which a daily intake level of approximately 0.8 g per day plant sterols was reported to significantly lower blood cholesterol. The agency therefore concluded that the intake level of plant sterols consistently shown to lower blood total and LDL cholesterol was 0.8 g per day or more of nonesterified plant sterols (equivalent to 1.3 g per day or more expressed as plant sterol esters) (65 FR 54686 at 54704).

McNeil proposed a total daily intake of at least 3.4 g per day of plant stanol esters (equivalent to 2 g per day expressed as nonesterified plant stanols), which represents an amount that had been consistently shown to be effective in reducing blood cholesterol (65 FR 54686 at 54704). The agency found no consistent scientific evidence for blood cholesterol-lowering associated with plant stanol ester intake levels less than 3.4 g per day. Although one study (Refs. 28 and 52) reported significant lowering of blood cholesterol at 1.36 g plant stanol esters per day (equivalent to 0.8 g per day expressed as nonesterified stanols), another study (Ref. 53) reported no significant reduction of blood cholesterol levels at approximately the same plant stanol ester intake level.

FDA requested comment on the determination of the daily intake of plant sterol esters and plant stanol esters associated with the risk of CHD (65 FR 24686 at 24704). A majority of comments to the IFR suggested that the efficacy of plant sterols and stanols was similar and that the daily intake levels should be the same for both substances. Many of these comments suggested that the equivalent amount should be in line with the minimum effective level for plant sterol esters. Some comments argued for adopting approximately 2 g per day (expressed as nonesterified phytosterols) as a more highly effective level, but most comments favored the lower level. Some comments provided scientific data and analysis to support this contention; others did not.

The phytosterol intervention studies that FDA considered in this reevaluation (*see* table 1 at the end of this document) included dietary phytosterol intervention levels ranging between 0.45 g per day (Ref. 54) and 9 g per day (Ref. 55). Most commonly, phytosterol intake levels ranged from 1 to 3 g per day. Intervention studies demonstrated statistically significant reductions in total and/or LDL

cholesterol levels for plant sterol intake levels ranging from 1 to 3 g per day. Similar to plant sterols, intervention studies demonstrated statistically significant reductions in total and/or LDL cholesterol levels for plant stanol intake levels ranging from 1.6 to 3 g per day. There are also five intervention studies of cross-over design that directly compared the cholesterol-lowering effects of similar intake levels of plant sterols and plant stanols within each study and at intake levels ranging from 1.8 and 3 g per day across the five intervention studies (Refs. 22, 35, 39, 40, and 41). All five of these intervention studies demonstrated that both plant sterols and plant stanols significantly reduce blood total and/or LDL cholesterol levels. Three of the five intervention studies reported that equivalent intake levels of plant sterols and stanols were equally effective in lowering of blood LDL cholesterol levels (Refs. 22, 39, and 41). The other two intervention studies reported that plant sterols resulted in a greater reduction in LDL cholesterol compared to an equivalent intake level of plant stanols (Refs. 35 and 40).

Based on the scientific evidence regarding the relationship of consuming phytosterols with a reduced risk of CHD, FDA tentatively concludes that 2 g of phytosterols per day is the daily dietary intake necessary to achieve the claimed effect. Two g per day of plant sterols is the midpoint of the daily intake range of 1 to 3 g used in the majority of intervention studies designed to evaluate their effectiveness in lowering cholesterol. Two g of phytosterols per day is also at the lower end of the daily intake range in the intervention studies designed for evaluating the effectiveness of plant stanols and mixtures of plant stanols and sterols. In addition, 2 g per day is commonly cited as an optimal level for cholesterol-lowering effects (Refs. 3, 56, 57, and 58) and FDA's own evaluation of the publicly available evidence supports that conclusion. FDA has thus tentatively determined that, for purposes of authorizing a health claim relating phytosterol consumption and CHD risk, the daily dietary intake necessary to achieve the claimed effect for phytosterols is 2 g per day. The agency invites comments on this tentative determination.

Current § 101.83(c)(2)(i)(G) identifies the daily dietary intake levels of plant sterols/stanols in terms of "___ grams or more per day * * *." Likewise, the model health claims provided in the IFR preface the daily dietary intake levels with the phrase "at least," *e.g.,* "Food containing at least 1.7 g per serving * * * for a total daily intake of at least 3.4 g * * *" (§ 101.83(e)). The agency is also proposing to eliminate the "or more" and "at least" qualifications from the specification of the daily dietary phytosterol intake level. The agency is proposing to amend § 101.83(c)(2)(i)(G) to require that a claim that is the subject of this regulation specify that the daily dietary intake of phytosterols that is necessary to justify the CHD risk reduction claim is 2 g per day.

2. Servings per Day

Current § 101.83(c)(2)(i)(H) requires the health claim to specify that the daily dietary intake of plant sterol or stanol esters should be consumed in two servings eaten at different times of the day with other foods. FDA explained that the conditions for the consumption of phytosterols to be specified in the claim were consistent with the way phytosterols were used in those intervention studies showing significant blood cholesterol-lowering effects of phytosterols. In these intervention studies, the study subjects were instructed to consume the daily intake of phytosterols divided over two or three servings at different times of the day or were instructed to replace a portion of their typical dietary fat with equal portions of phytosterol-enriched test margarines over the course of the day, usually during meals (65 FR 54686 at 54705). FDA also noted that given the limited variety of phytosterol-enriched foods to be included in the claim, it would be difficult for many consumers to eat more than two servings of phytosterol-enriched foods per day. FDA further noted that recommending more than two servings per day of phytosterol-enriched foods would not be appropriate, considering the fat content of the phytosterol-enriched conventional foods (primarily fat-based foods) to be eligible to bear the claim (65 FR 54686 at 54708).

FDA requested comments on whether it was reasonable, in light of the fat content of products eligible to bear a claim and the limited number of available products, to divide the daily dietary intake of plant sterol esters and plant stanol esters by two and specify that the product should be consumed in two servings eaten at different times of the day (65 FR 54686 at 54707 and 54708, respectively). Some comments supported the agency's requirement that the label specify that the daily dietary intake of phytosterols should be consumed in two servings at different times during the day. Several comments stated that the claim statement should state "at least two * * *" or "two or more * * *" servings a day rather than two servings per day and asserted that consumers would benefit more from consuming phytosterols on more occasions during the day. Most comments disagreed with the agency's two servings per day requirement. Some of these comments noted that, because the technology exists to disperse phytosterols into non-fat foods, there is no reason to deviate from the usual assumption that the total daily intake of a food component is divided among four eating occasions. Several comments requested that the claim make the servings per day statement optional rather than a mandatory component of the claim. One comment said that optional claim language about the number of servings of phytosterol-enriched foods per day could vary, depending on the phytosterol content of a food.

The 2006 Unilever petition (Docket No. FDA–2006–P–0033 (formerly Docket No. 2006P–0316)) asserted that there is now significant scientific agreement that phytosterols will significantly reduce cholesterol levels when consumed once per day. The petition requested that § 101.83 be amended to permit a food containing 2g of phytosterols to state that consuming phytosterols once per day has been associated with a reduced risk of CHD. FDA is proposing to amend § 101.83 to permit the health claim Unilever requested.

The design of most phytosterol intervention studies specified that the daily intake of phytosterols be divided between two or three servings eaten at different times with meals. However, scientific evidence that has become available since issuance of the IFR demonstrates that dividing the daily intake over two or more servings is not necessary for the cholesterol-lowering effect of phytosterols. Seven of the more recently completed phytosterol intervention studies had their study subjects consume all phytosterol-enriched test foods in one serving per day (Refs. 8, 35, 38, 42, 43, 59, and 60) (*see* table 1 at the end of this document).

Six of the seven "once-per-day" studies that FDA considered reported significant reductions of total and/or LDL cholesterol in phytosterol groups compared to the control group (Ref. 38). AbuMweis *et al.,* 2006 reported no cholesterol-lowering effect, at 1.0 to 1.8g per day, when the phytosterols were incorporated into margarine and consumed as part of the breakfast meal for 4 weeks. Each of the six studies that reported once-per-day consumption of phytosterols to be effective in reducing cholesterol had incorporated the phytosterols into test foods (margarine,

bread, low fat milk, cereal, yogurt, or ground beef) that were consumed with a meal. These once-per-day studies reported that daily intakes ranging from 1.6 to 3 g per day resulted in reductions in cholesterol of between 5.6 and 12.4 percent compared to controls. The cholesterol-lowering effect from "once-per-day" consumption was similar to the cholesterol reductions observed for comparable daily intake levels divided over multiple servings eaten at different times of the day.

Based on this evidence, FDA tentatively concludes that the requirement for the health claim to specify that the daily dietary intake of phytosterols should be consumed in two servings eaten at different times during the day is no longer consistent with the available scientific evidence for the cholesterol-lowering effect of phytosterol consumption. FDA also notes that the other reasons cited in the IFR for requiring the claim statement to specify that phytosterols should be eaten in two different servings (*i.e.,* the health claim was to be available to a limited number of foods and the conventional foods were mostly high fat content), would no longer be valid arguments due to other changes in the claim criteria that are being proposed at this time.

Therefore the agency is proposing to amend § 101.83(c)(2)(i)(H) by removing the requirement that the health claim include a recommendation that phytosterols be consumed in two servings eaten at different times of the day.

3. Consuming Phytosterols With Meals

Current § 101.83(c)(2)(i)(H) requires that the health claim specify that phytosterols should be consumed in two servings eaten at different times of the day with other foods. As discussed in section V.B.2 of this document, FDA has concluded that requiring the claim to state that the total daily dietary intake of phytosterols should be divided over two servings eaten at different times is no longer supported by available scientific evidence. The agency is also proposing to amend § 101.83 to require the claim to recommend that phytosterols be consumed with "meals."

The design used in a majority of phytosterol intervention studies specified that the phytosterol-enriched test foods were to be consumed with meals. The experimental design of most all other intervention studies that did not specify the phytosterol-enriched test foods were to be consumed "with meals" involved fat-based phytosterol-enriched test foods (margarine, butter, mayonnaise) and specified that the phytosterol test food be used to replace an equivalent amount of the subjects' typical daily fat consumption. As such, it is likely that in these studies the phytosterol-enriched foods would have been consumed with other foods. One intervention study investigated the impact of consuming phytosterols with meals (Ref. 43). The study subjects in this study were instructed to consume a daily single serving of phytosterol-enriched yogurt either in the morning at least 0.5 hour before breakfast, or with lunch. Significant lowering of total and LDL cholesterol was reported for both phytosterol-enriched yogurt consumed while fasting and when consumed with a meal; however, the cholesterol-lowering effect was significantly greater when consumed with a meal than when not consumed with a meal (Ref. 43).

Intestinal absorption of cholesterol requires cholesterol be incorporated into mixed micelles of the intestinal digesta. Intestinal micelles form when dietary fatty acids, pancreatic juice, and bile salts come together at the same time in the small intestine. The process of eating food stimulates secretion of pancreatic juice and of bile salts into the intestine. The presumptive primary site of phytosterol interaction with cholesterol is within the micelles, where phytosterols are thought to block the transfer of cholesterol from micelles to intestinal mucosal cells. This mechanism supports the theory that the effectiveness of dietary phytosterols in reducing blood cholesterol levels depends upon the phytosterols being consumed concurrently with food and dietary fat to ensure maximal incorporation of phytosterols into intestinal micelles. Current § 101.83 authorizes a health claim only for phytosterols esterified with fats and incorporated into types of fat-based foods (margarines and salad dressings) that typically are consumed with other foods and therefore the theoretical conditions that facilitate interference with cholesterol absorption (*i.e.,* phytosterols consumed with food and with dietary fat) would be met.

Changes to current § 101.83 in this proposed rule include: (1) Expanding the substance of the claim to include nonesterified phytosterols in conventional foods, (2) removing restrictions on types of conventional foods eligible for the claim such that fat-free foods and beverages will not be precluded from making the claim, and (3) removing the requirement that the claim statement specify that phytosterols should be consumed in two servings eaten at different times during the day. The cholesterol-lowering efficacy of phytosterols, when not consumed with dietary fat and a substantial amount of food, has not been demonstrated. Without a recommendation that phytosterols be consumed with meals or snacks, it is probable that the types of foods (including dietary supplements) likely to be enriched with phytosterols for the purpose of bearing the health claim would be consumed without sufficient dietary fat or amounts of food to be consistent with the circumstances under which phytosterols are likely to be effective in lowering cholesterol.

FDA is proposing to amend § 101.83(c)(2)(i)(H) to require that the health claim specify that phytosterol-enriched foods should be consumed "with meals or snacks." The "with meals or snacks" specification will replace the current requirement that the claim specify the daily dietary phytosterol intake should "be consumed in two servings eaten at different times of the day with other foods."

C. Nature of the Food Eligible To Bear the Claim

1. Qualifying Amount of Phytosterols per Serving

Current § 101.83(c)(2)(iii) requires that, in order to bear the health claim, a product must contain at least 0.65 g of plant sterol esters (equivalent to 0.4 g nonesterified plant sterols) or 1.7 g of plant stanol esters (equivalent to 1 g nonesterified plant stanols) that comply with paragraphs § 101.83(c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B)(*1*) respectively, per RACC. These values are one-half of the plant sterol/stanol ester daily intake specified in the IFR as that necessary to achieve the CHD risk-reduction benefit. As discussed in section V.B.2 of this document, FDA is proposing to amend § 101.83 to remove the current requirement that the health claim specify that phytosterols should be consumed in two servings at different times of the day. Also, the proposed changes to § 101.83 would result in a greater variety of phytosterol-enriched foods eligible for the claim than now included in current § 101.83, including conventional foods with a lower fat content. Therefore, FDA is reconsidering the initial decision to base the minimum amount of phytosterol in a food eligible to use the health claim on two servings per day.

The agency generally assumes that a typical food consumption pattern includes three meals and one snack per day (*see* 58 FR 2302 at 2379, January 6, 1993). Currently available evidence demonstrates that it is feasible and effective to enrich low fat and fat free foods with phytosterols. Due to the

wider variety of conventional foods that may potentially be fortified with phytosterols (as evidenced by the variety of phytosterol-enriched test foods used in intervention study reports published since 2000), it may be feasible for consumers to select four servings per day without having to depend exclusively on conventional foods with a high fat content. As a result, FDA believes it would be reasonable to base the minimum qualifying amount of phytosterol in a food on four servings per day. As discussed in section V.B.1 of this document, FDA has tentatively concluded that, for the purpose of the health claim, the phytosterol daily dietary intake necessary to achieve the claimed effect is 2 g per day. Dividing this daily intake over four servings per day, the minimum eligible phytosterol content of a food would be 0.5 g per RACC, expressed as the weight of nonesterified phytosterols.

Therefore, the agency is proposing to amend § 101.83(c)(2)(iii)(A) to permit health claims on foods that contain at least 0.5 g per RACC of phytosterols, expressed as the weight of nonesterified phytosterols, and that comply with paragraph (c)(2)(ii) of this section. Further, the agency is proposing to add new § 101.83(c)(2)(iii)(C) to limit the claim to conventional foods containing phytosterols for which the agency has received a GRAS notification, to which it had no further questions, and the conditions of use are consistent with the eligibility requirements for the health claim. We note that not all conventional foods for which a GRAS notification for phytosterols was submitted, to which the agency had no further questions, are under conditions of use in food that would be consistent with the eligibility requirements for the health claim, *e.g.,* certain foods may contain phytosterols at a level that is less than the minimum of 0.5 g per RACC. Such foods would not be eligible to bear the health claim if the rule is finalized as proposed.

2. Nature of the Food

Current § 101.83(c)(2)(iii)(A)(*1*) limits the plant sterol ester-enriched food products eligible to bear the health claim to spreads and dressings for salad. Current § 101.83(c)(2)(iii)(A)(*2*) limits the plant stanol ester-enriched food products eligible to bear the health claim to spreads, dressings for salad, snack bars, and dietary supplements in softgel form. The term "spreads" was used in the IFR to include both margarine and vegetable oil spreads resembling margarine but having a fat content less than that required by the food standard for margarine (§ 166.110 (21 CFR 166.110)). The term "dressings for salad" was used in the IFR to include both salad dressing and similar vegetable oil-based food products with vegetable oil content less than that required by the food standard for salad dressing (§ 169.150 (21 CFR 169.150)), which is typically a product that resembles mayonnaise.

FDA explained in the IFR that the use of the plant sterol ester claim was being restricted to the labeling of spreads and dressings for salads because of the following: (1) The petitioner limited its requested health claim to those two types of foods, (2) the petitioner had satisfied the requirement of § 101.14(b)(3)(ii) only with respect to the use of plant sterol esters as an ingredient in spreads and dressings for salads, and (3) the petitioner had provided a quantitative analytical method for measurement of plant sterol esters only in spreads and dressings for salads (65 FR 54686 at 54707). FDA noted that it would consider broadening the types of plant sterol ester-containing foods eligible to bear the claim if data were submitted to establish the use of plant sterol esters in other food products at levels necessary to justify the claim is safe and lawful and if a validated analytical method that permits accurate determination of the amount of plant sterol esters in other types of foods was available (65 FR 54686 at 54707). The agency advanced analogous reasoning for limiting the foods eligible to bear the authorized health claim for plant stanol esters to spreads, dressings for salad, snack bars and dietary supplements in softgel form (65 FR 54686 at 54708).

Many comments received in response to the IFR addressed the restrictions on the types of foods eligible for the claim. Most of the comments objecting to the IFR's specification of eligible food categories recommended that the final rule be expanded to include additional types of foods or asserted that the final rule need not restrict the types of food eligible for the claim. These comments argued: (1) That evidence now available from clinical trials established the cholesterol-lowering effectiveness of phytosterols when incorporated into many types of foods, including low fat and fat free foods, and (2) that thus there was no evidence to suggest that the food matrix chosen to carry the phytosterol will have an effect on cholesterol-lowering efficacy. Some comments asserted that it is unnecessary to limit the claim to fat-based food matrices because the technology is available to disperse nonesterified plant sterols and stanols in a wide variety of non-fat food matrices and because the key factor is that the plant sterols be consumed with fat, not that the plant sterols be dispersed in fat. Other comments noted that a growing number of GRAS notifications, to which the agency has not objected, expand the categories of food in which phytosterols may be used safely and lawfully beyond the foods listed in current § 101.83. Some comments urged authorizing the health claim for other categories of foods, subject to availability of validated quantitative analytical methodology for phytosterols in other food matrices. Other comments argued that it is not necessary to restrict use of the claim to types of foods for which the petitioners had provided product-specific phytosterol analytical methods. Rather, these comments contended, that it is feasible to measure phytosterols in other food matrices using established general sterol methods and the food industry should be permitted to use any reliable methods, including maintaining production records, to document compliance with the phytosterol content requirements of the claim. Some comments asserted that making more types of foods eligible for use of the claim would encourage consumer use of phytosterol-enriched foods through a broader array of food options accommodating a greater variety of consumer tastes. One comment opposed broadening of the categories of foods eligible to bear the claim, arguing that proliferation of the types of foods bearing the claim would likely result in phytosterol intake exceeding acceptable daily intake levels and that the long-term safety of higher intake levels has not been evaluated.

Finally, some comments received in response to the IFR requested that FDA expand the regulation to permit health claims for plant sterol/stanol ester-containing dietary supplements in a variety of forms including tablets, capsules, softgel capsules, and chewable wafers. Others were concerned that products in "pill" form and intended for use to help lower blood cholesterol looked too much like over the counter drugs.

a. *Conventional foods.* All the intervention studies involving phytosterol-enriched conventional foods cited in the IFR were studies in which the phytosterols were added to the diet as phytosterol-enriched margarines, butter, mayonnaise, or shortening. Subsequently, evidence from intervention studies employing a wider variety of phytosterol-enriched conventional foods has become available (*see* table 1 at the end of this document). Phytosterol-enriched conventional foods used in intervention studies now include the following: Margarine and reduced-fat spreads

resembling margarine, shortening, dressings for salad, mayonnaise, grain products (bread, croissants, muffins, and breakfast cereal), dairy products (yogurt, reduced-fat cheese, butter, and dairy-based beverage), beverages (orange juice, fat-free lemon-flavored drink, and unspecified fat-free drink), meat (ground beef and cold cuts), and chocolate. The more recent intervention studies showed that daily dietary phytosterol (nonesterified and esterified) intake of approximately 1 to 3 g per day from a variety of types of food enriched with phytosterols, including fat-free foods, resulted in significant cholesterol-lowering comparable to that resulting from consuming phytosterol-enriched spreads and margarines (*see* table 1 at the end of this document). The data from available intervention studies show the average percent reduction of blood LDL cholesterol resulting from a daily phytosterol of intake between 1 and 3 g per day is independent of the types of foods enriched with phytosterols. FDA therefore concurs with the comment that, with respect to conventional foods, there is no scientific evidence to suggest the food matrix into which the phytosterols are added is an important factor affecting the cholesterol-lowering efficacy of phytosterols.

Therefore, the agency is proposing to amend § 101.83(c)(2)(iii)(A) by eliminating the enumeration of specific conventional foods that may bear a health claim and thereby broadening the conventional foods eligible to bear the claim to those meeting the other requirements of paragraph (c)(2)(iii).

b. *Dietary supplements.* While there is an abundance of evidence from intervention studies to demonstrate the cholesterol-lowering efficacy of phytosterol-enriched conventional foods, relatively few trials have been conducted with dietary supplements containing phytosterols. There is scientific evidence from four intervention studies to demonstrate the cholesterol-lowering efficacy of dietary supplements containing phytosterol esters (Refs. 61, 62, 63, and 64). In the intervention study conducted by Rader and Nguyen (Ref. 61) (*see* table 2 at the end of this document), participants were moderately hypercholesterolemic, but otherwise healthy adults. They consumed three phytosterol ester or placebo softgel capsules daily for 3 weeks. The phytosterol ester-containing softgel capsules provided 1 g of phytosterols per day. A significantly greater reduction in blood total and LDL cholesterol was reported in the phytosterol ester group than in the placebo group.

The cholesterol-lowering efficacy of dietary supplements containing phytosterols esters has also been confirmed in three additional intervention studies (Ref. 62, 63, and 64). Woodgate *et al.* (Ref. 64) provided six softgel supplements that provided phytosterol esters equating to 1.6 g of nonesterified phytosterols for 4 weeks. There was a significantly greater reduction in total cholesterol levels in the group that received the phytosterol-ester supplement compared to the placebo group. Participants in the trial by Acuff *et al.* (Ref. 62) were hypercholesterolemic, but otherwise healthy adults. They consumed two phytosterol ester or placebo capsules daily for 4 weeks. The sterol ester-containing capsules provided 0.8 g per day phytosterols. A significant blood LDL cholesterol reduction in the sterol ester group relative to the placebo group was reported. Earnest *et al.* (Ref. 63) provided four sterol ester-containing capsules or a placebo for 12 weeks. The sterol ester-containing capsule provided 2.6 g per day of phytosterols. There was a significantly greater reduction in blood total and LDL cholesterol in the group that received the sterol ester-containing capsules compared to the placebo group. Statistical differences in the change in blood LDL cholesterol between the sterol ester and placebo group was not determined. In conclusion, esterified phytosterols were effective in reducing total and/or LDL cholesterol levels in the blood in all three studies.

There have been three intervention studies published on the efficacy of nonesterified phytosterols in reducing blood cholesterol levels (Refs. 65, 66, and 67) (*see* table 2 at the end of this document). Nonesterified phytosterols consumed as ingredients in a gelatin capsule supplement were reported to have no effect on blood cholesterol (Ref. 65). The intervention study supplemented moderately hypercholesterolemic men, consuming a Step I diet, with 3 g of nonesterified phytosterols per day. The phytosterols were suspended in safflower oil (20 percent sitostanol by weight in safflower oil) contained within gelatin capsules and consumed with meals. No changes in either blood total or LDL cholesterol were observed between Step I diet alone and a Step I + sitostanol supplements. The concentration of 20 percent sitostanol in the gelatin capsule is much greater than the solubility of sitostanol of 1 percent (Ref. 68). Thus, it has been speculated that much of the sitostanol was undissolved (Ref. 57), and therefore not adequately dispersed in the intestinal contents.

Although a nonesterified phytosterol/soy lecithin emulsion formulation has been shown to be effective in lowering cholesterol under certain circumstances (Refs. 66 and 67), the results have been inconsistent and highlight how difficult it is to predict the effectiveness of nonesterified phytosterols in lowering cholesterol when consumed as ingredients in dietary supplements. McPherson *et al.* (Ref. 66) reported that consumption of 1.26 g stanols per day as the spray-dried phytostanol/lecithin emulsion tablet formulation resulted in a significant lowering of LDL cholesterol in humans; whereas, consumption of 1 g per day as the spray-dried phytostanol/lecithin emulsion capsule formulation had no significant effect on blood cholesterol. This study identified several physical differences between the capsule and tablet preparations, but does not provide data sufficient to identify the physical characteristics responsible for the differences between capsule and tablet preparations in their abilities to affect cholesterol absorption. However, the effectiveness of nonesterified phytosterol/soy lecithin vesicle tablets (1.8 g per day) on blood cholesterol reduction was confirmed in a subsequent intervention study done with subjects taking statin drugs for hypercholesterolemia (Ref. 67). The available scientific evidence for the cholesterol-lowering effects of phytosterols in dietary supplements shows that formulation of the supplement product is an important factor in the effectiveness of the product in lowering cholesterol and that esterifying the phytosterol is one way to ensure effectiveness. One explanation for the inconsistent results obtained from dietary supplements containing nonesterified phytosterols may be the importance of phytosterol dispersal and solubility in the gastrointestinal tract. The effectiveness of phytosterols to interfere with cholesterol absorption depends on their ability to be soluble, adequately dispersed within the intestinal contents, and incorporated into the mixed micelles (Refs. 57 and 61).

Because nonesterified phytosterols have poor solubility, manufacturers must use a technique such as esterification to facilitate absorption and dispersal of the phytosterols in the conventional food itself. For example, as noted in section V.A.1 of this document, the solubility of phytosterols in rape seed oil mayonnaise increased about ten-fold when esterified with fatty acids (Ref. 28). No such techniques are necessarily required, as a practical

matter, for adding phytosterols to dietary supplements, which commonly come in tablets or capsules. Esterification, however, still serves to make the phytosterols more soluble and thus suitable for dispersal in the gastrointestinal tract and incorporation into the mixed micelles.

The available scientific evidence shows that esterified phytosterols are effective in lowering cholesterol and thus reducing the risk of CHD. At this time, however, FDA finds that the totality of available scientific evidence for the cholesterol-lowering effects of nonesterified phytosterols in dietary supplements is inconsistent and tentatively concludes that the scientific evidence for a relationship between dietary supplements containing nonesterified phytosterols and CHD does not meet the significant scientific agreement standard. FDA is therefore proposing to amend § 101.83(c)(2)(iii)(B) to make the use of the health claim available to phytosterol ester-containing dietary supplements that meet all the specific requirements of the claim stated in § 101.83 and the general health claim requirements of § 101.14. However, FDA is not proposing to include nonesterified phytosterol-containing dietary supplements as foods eligible for the claim.

FDA invites submission of additional data that demonstrate the cholesterol-lowering efficacy of nonesterified phytosterols consumed as ingredients in dietary supplements. At this time, there are no USP standards for disintegration and dissolution for dietary supplements containing phytosterols. Therefore, FDA is also requesting data to provide a justification for inclusion or exclusion of specific dietary supplement formulations using USP standards. FDA will reevaluate its tentative conclusion regarding the eligibility of dietary supplements containing both esterified and nonesterified phytosterols in light of any additional data received.

3. Other Requirements

a. *Disqualifying total fat level.* Under the general requirements for health claims, foods are ineligible for health claims if they contain more than 13 g of total fat: (1) Per RACC; (2) per labeled serving size; and (3) when the RACC is small (30 g or less or 2 tablespoons or less), per 50 g of food (§ 101.14(a)(4) and 101.14(e)(3)). FDA may waive this disqualifying level for an individual nutrient in a health claim based on a finding that the claim will assist consumers in maintaining healthy dietary practices despite the content of that nutrient in the food (§ 101.14(e)(3)). FDA had concluded in the IFR that permitting the use of the phytosterol health claim on labels of spreads and dressings for salad would assist consumers to develop a dietary approach that would result in significantly lower cholesterol levels and an accompanying reduction in the risk of heart disease. Consequently current § 101.83(c)(1) and (c)(2)(iii)(C) permit the disqualifying level for total fat level on a "per 50 g" basis for foods with a small RACC (*i.e.,* more than 13 g of fat per 50 g) to be waived for spreads and dressings for salad, which ordinarily have a high fat content, provided the label bears a disclosure statement that complies with § 101.13(h) (*i.e.,* "*See* nutrition information for fat content") (65 FR 54686 at 54706). Current § 101.83 does not exempt spreads and dressings for salads from the total fat disqualifying level per RACC, and per label serving size.

The agency requested comments to the IFR on its decision to exempt phytosterol-enriched spreads and dressings for salad from the disqualifying level for total fat per 50 g (65 FR 54686 at 54710). The agency also suggested that, despite its reluctance to grant broad exceptions to the disqualifying levels, it was willing to consider additional exemptions on a limited case-by-case basis and said that manufacturers of products other than spreads and dressings for salad may submit comments with supporting information or petition the agency for an exemption from the total fat disqualification levels in § 101.14(e)(3).

FDA received a variety of comments in response to this aspect of the IFR. Some comments agreed with FDA's exemption for spreads and dressings for salad from the disqualifying level for total fat per 50 g, while other comments asserted that this exemption was not justified and argued that foods with a high fat content should not be eligible for a health claim. Some comments suggested that the exemption should be extended to other foods, such as vegetable oils, which have a similar nutrient composition to the foods currently exempted by § 101.83(c)(2)(iii)(C), or extended to include all foods with a small serving size. Some comments asserted that there should be an expedited approach to permit additional exemptions to the fat-disqualifying level.

The agency believes that the limited exemption from the disqualifying level of total fat on a per 50 g basis for foods with a small reference amount continues to be appropriate for dressings for salads and for spreads that resemble margarine. One of the factors in FDA's decision to provide a limited exemption to the total fat disqualifying level under § 101.14(a)(4) was that, without this exemption for spreads and dressings for salad, the number of foods eligible for this health claim would be limited to such an extent that the public health value of the claim would be undermined (65 FR 54686 at 54710). FDA is now proposing to remove the current restrictions on food categories eligible to bear the phytosterol/CHD health claim. Consequently the variety of phytosterol-enriched foods not high in total fat and eligible to bear the health claim available to consumers would significantly increase. Therefore, the agency does not find it necessary to expand the limited total fat "per 50 g" disqualifying level exemption to other foods with small servings out of concern that the number of foods eligible for the claim is limited. The type of food identified as "spreads" in current § 101.83 was intended by the agency to be specifically vegetable oil spreads resembling margarine formulated with a reduced total fat content relative to the minimum 80 percent fat content required under the standard of identity for margarine (§ 166.110). FDA realizes that without additional specification, the term "spread" could be interpreted to include other types of foods as well, such as mayonnaise and peanut butter-type spreads. Because FDA has tentatively concluded that it is not necessary to extend the limited exemption from disqualifying total fat level per 50 g beyond the limited food categories initially included, the agency is proposing to clarify in amended § 101.83(c)(2)(iii)(D) that the spreads that are exempt from § 101.14(a)(4) are vegetable oil spreads that resemble margarine.

Some comments recommended an exemption from the total fat disqualifying level be made to provide for the use of the health claim by liquid vegetable oils. These comments argued that liquid vegetable oils have fat composition as do the vegetable oil spreads and dressings for salads that can use the health claim. FDA recognizes that providing for disclosure of the total fat level rather than disqualification reflects an evolution in expert opinion on total fat intake and risk of CHD. The "Dietary Guidelines for Americans, 2005" (Ref. 69) recommends that Americans limit fat intake to between 20 to 35 percent of calories, with most fats coming from sources of polyunsaturated and monounsaturated fatty acids such as fish, nuts and vegetable oils, and limit intake of fats and oils high in saturated and/or trans fatty acids. Substituting liquid vegetable oils,

containing predominantly unsaturated fatty acids, for solid fats high in saturated fat and cholesterol is one dietary modification that can contribute to reducing dietary saturated fat and cholesterol.

Several current qualified health claims (*see* FDA's 2003 Consumer Health Information for Better Nutrition Initiative (Ref. 70)) are about a relationship of the unsaturated fatty acids of certain vegetable oils (olive oil, canola oil, and corn oil) used to replace similar amounts of saturated fat without increasing calories consumed, and CHD risk (Refs. 71, 72, and 73). When deliberating the merits of these vegetable oil unsaturated fatty acid qualified health claims, FDA concluded that there was credible but limited scientific evidence that label statements informing consumers that they might lower their risk of CHD by consuming foods high in unsaturated fatty acids, such as vegetable oils, in place of similar foods high in saturated fatty acids, without increasing calorie consumption, is information that can help consumers develop a dietary approach to lower CHD risk. FDA also concluded that such information is consistent with current dietary guidelines, which emphasize that consuming diets low in saturated fat and cholesterol is more important in reducing CHD risk than is consuming diets low in total fat. FDA therefore decided that the disqualifying total fat level for health claims would not be a criterion in permitting the qualified health claims for unsaturated fats of vegetable oils. Consistent with the position taken in permitting the unsaturated fatty acids in vegetable oils and CHD qualified health claims, FDA finds that rather than disqualifying phytosterol-enriched liquid vegetable oils on the basis of total fat content, disclosure of the total fat content along with the phytosterol health claim, will help consumers develop a dietary approach to lowering blood cholesterol levels.

Liquid vegetable oils are composed entirely of fat, and the amount of fat in a RACC (1 tablespoon, about 13.6 g) exceeds the disqualifying total fat level of 13 g. The limited exemption from the disqualifying total fat level on a per 50 g basis provided for spreads and dressings for salads, if extended to liquid vegetable oils, would still not make liquid vegetable oils eligible for a health claim. Therefore, FDA is proposing to exempt liquid vegetable oils from the total fat disqualifying level on a per RACC, per label serving size, and per 50 g basis.

The agency is proposing to amend § 101.83(c)(2)(iii)(D) to specify that the limited exemption from the disqualifying total fat level "per 50 g basis" for "spreads" applies specifically to vegetable oil spreads resembling margarine and not to other spreadable food products such as peanut butter and mayonnaise. In addition to the current exemption per 50 g for dressings for salad, the agency is also proposing to exempt liquid vegetable oils from the requirement per RACC, per labeled serving, and per 50 g.

b. *Low saturated fat and low cholesterol criteria.* Current § 101.83(c)(2)(iii)(B) requires foods that bear the health claim to meet the nutrient content requirements in § 101.62 for a "low saturated fat" and "low cholesterol" food.

One comment to the IFR objected to the "low saturated fat" requirement for the phytosterol CHD health claim on the basis that it would severely limit the availability of sterol/stanol containing foods. The comment recommended that the requirement for "low" amounts of saturated fat are not appropriate for foods that contain equal amounts of saturated fat, monounsaturated fat, and polyunsaturated fat.

There is strong and consistent scientific evidence that diets high in saturated fat and cholesterol are associated with elevated total and LDL cholesterol, and that elevated blood cholesterol levels are a major modifiable risk factor for CHD. The "Dietary Guidelines for Americans, 2005" recommends lowering dietary saturated fat and cholesterol as a primary lifestyle change for reducing heart disease risk (Ref. 69).

The variety of phytosterol-enriched foods tested in intervention studies since publication of the IFR indicates a range of food products, many of which are low fat or fat-free, that manufacturers contemplate marketing. There also are a number of foods in the food categories now eligible for the health claim under current § 101.83 that can qualify as "low saturated fat" and "low cholesterol." As a result, FDA does not agree that requiring foods bearing the claim be "low saturated fat" and "low cholesterol" would significantly limit the number of food products eligible to use the claim. Consequently, the agency is not proposing to amend the requirement that foods eligible for the claim be "low in saturated fat" and "low in cholesterol."

c. Trans fat considerations. FDA is concerned about the presence of *trans* fats in foods bearing the phytosterols and risk of coronary heart disease claim. There is a positive linear trend between *trans* fatty acid intake and LDL cholesterol concentration, and therefore there is a positive relationship between *trans* fatty acid intake and the risk of CHD (Ref. 74). In the Institute of Medicine (IOM) report, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids,* in the discussion on dietary fats, total fat and fatty acids, the IOM states that *trans* fatty acids are not essential and provide no known benefit to human health (Ref. 74). The IOM sets tolerable upper intake levels (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse health effects to almost all individuals in the general population. In their 2005 report, the IOM does not set a UL for *trans* fatty acid because any incremental increase in *trans* fatty acid intake increases the risk of CHD (Ref. 74).

Trans fats are naturally occurring in some foods made from ruminant animals (*e.g.,* cattle and sheep) such as dairy products and meats (Ref. 69). *Trans* fatty acids are created when unsaturated fatty acids are chemically changed through the process of hydrogenation [12] to create a more solid food product (Ref. 69). Sources of *trans* fatty acids include partially hydrogenated and hydrogenated vegetable oils used in making shortening, margarine, baked goods such as biscuits and pie crusts, snack foods, fried foods, and margarine (Ref. 69). Since *trans* fats are naturally occurring in some foods that contribute essential nutrients such as protein, calcium and vitamin D, consuming zero percent of energy as *trans* fats would require substantial adjustments to the diet that may have undesirable effects (Ref. 74). To date, there have been no reports issued by authoritative sources that provide a level of *trans* fat in the diet above which there is a known increased risk of CHD and below which there is no risk of CHD. Recommendations are for Americans to limit *trans* fat as much as possible while consuming a nutritionally adequate diet (Refs. 3 and 74).

The agency is taking several approaches to address *trans* fats. On July 11, 2003 (68 FR 41507), FDA published an advance notice of proposed rulemaking (ANPRM), in part, to solicit information and data that

[12] Hydrogenation is the addition of a carbon-carbon double bond to a chain of unsaturated fatty acids. This produces a single carbon-carbon bond with two hydrogens attached to each carbon. This process converts liquid oils into more solid fats, which are used in making products such as margarine and shortening. *Trans* fats are a by-product of hydrogenation of vegetable oils (Ref. 75).

could potentially be used to establish new nutrient content claims about *trans* fatty acids; to establish qualifying criteria for *trans* fat in current nutrient content claims for saturated fatty acids and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids; and, in addition, to establish disclosure and disqualifying criteria to help consumers make heart-healthy food choices. On March 1, 2004 (69 FR 9559), FDA reopened the comment period to allow interested persons to consider the report issued by the Institute of Medicine of the National Academy of Science in December 2003 entitled "Dietary Reference Intakes: Guiding Principles for Nutrition Labeling and Fortification." FDA extended the comment period on April 19, 2004 (69 FR 20838) to receive comment on a Food Advisory Committee Nutrition Subcommittee meeting discussing the scientific evidence for determining a maximal daily intake value of *trans* fat and how *trans* fat compares to saturated fat with respect to reducing coronary heart disease. Specifically, the agency requested comment on whether the available scientific evidence supported listing the percent Daily Value (DV) for saturated fat and *trans* fat together or separately on the Nutrition Facts label and what the maximal daily intake of *trans* fat may be. In addition, the agency published an ANPRM on November 2, 2007 (72 FR 62149) to request, in part, comment on what new reference values the agency should use to calculate the DV for a number of nutrients and what factors the agency should consider in establishing such values. FDA asked specific questions in the November 2, 2007 ANPRM about *trans* fat labeling. Comments are being reviewed by the agency from these ANPRMs for consideration in defining nutrient content claims for *trans* fat and in deciding what levels of trans fat may be appropriate in foods bearing health claims about a reduced risk of coronary heart disease.

FDA received a citizen petition from the Center for Science in the Public Interest (CSPI) in 2004 and one from Dr. Fred Kummerow in 2009 asking the agency to revoke the GRAS status of partially hydrogenated oils. The agency is in the process of reevaluating the GRAS status of partially hydrogenated oils in response to the two citizen petitions. Finally, the agency is evaluating current analytical methods for the detection of *trans* fat in foods and is working on improving the sensitivity of these methods so that *trans* fat may be reliably detected at lower levels in foods.

The agency is concerned that products containing phytosterols and bearing the health claim may also contain significant amounts of *trans* fat that could undermine the beneficial effects from consumption of the phytosterols in the product. The agency is not aware of any studies that were designed to determine the amount of *trans* fat that could offset the beneficial effects of phytosterols. Based on the available data, 0.8g/day of *trans* fat was the highest intake level from margarine at which there was a significant reduction in total and LDL cholesterol levels when the consumption of phytosterols was approximately 2 g/day (Ref. 41). The agency requests comment on whether these data, alone or in combination with other data or information, would support a limitation on the level of *trans* fat in foods, as an eligibility criterion, for foods that could bear the phytosterol and risk of coronary heart disease claim. Foods that contain more than this level of *trans* fat would be disqualified from bearing a claim. In addition, the agency requests comment on whether there are data that may support another level of *trans* fat that the agency should consider as an eligibility criterion for foods bearing such a claim. The agency also requests comment on available information that provides clarification on the effect of *trans* fat in products that also contain phytosterols.

d. *Minimum nutrient contribution requirement.* Current § 101.83(c)(2)(iii)(D) requires that a conventional food bearing a health claim for phytosterol esters meet the minimum nutrient contribution requirement specified in § 101.14(e)(6), unless it is a dressing for salad. Section 101.14(e)(6) requires that, except for dietary supplements or where provided in other health claim regulations, foods eligible to bear a health claim contain 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount prior to any nutrient addition. The minimum nutrient contribution requirement is necessary to ensure that the value of a health claim will not be trivialized or compromised by its use on a food of little or no nutritional value. In the IFR, the agency concluded that, while important, the minimum nutrient requirement for dressings for salad is outweighed by the public health importance of communicating the cholesterol-lowering benefits from consumption of plant sterol/stanol esters (65 FR 54686 at 54711). FDA found that the value of the health claim would not be trivialized or compromised by its use on dressings for salad because dressings for salad are typically consumed with foods rich in fiber and other nutrients. However, the agency decided that there was not a sufficient rationale to justify an exemption from this requirement for the remaining phytosterol-enriched foods that would have otherwise been eligible to bear the health claim. *Id.*

The agency requested comments in the IFR on its decision to exempt only dressings for salad from the minimum nutrient requirement. FDA further stated that manufacturers of foods that do not meet the minimum nutrient requirement may submit comments with supporting information by a petition to the agency requesting an exemption from this requirement. *Id.*

Comments were mixed as to whether the minimum nutrient contribution requirement should be applied to other foods eligible for the health claim. Some agreed with FDA's exemption from the minimum nutrient contribution requirement for dressings for salad, while other comments suggested that no foods should be exempt. Other comments suggested additional specific foods such as fruit drinks, smoothies, liquid vegetable oils, vegetable oil spreads or snack bars or groups of foods such as small servings to which the minimum nutrient requirement exemption might be extended either through fortification or waiving of the requirement.

The purpose of the minimum nutrient contribution requirement is to ensure that health claims are used to promote only those foods that are consistent with dietary guidelines and to ensure that health claims are not to be trivialized or compromised by their use on foods of little or no nutritional value (*e.g.,* jelly beans) (58 FR 2478 at 2481 and 2521). FDA exempted dressings for salad from the minimum nutrient requirement in current § 101.83 in recognition that dressings for salad are typically consumed with other foods (specifically salads and vegetables) that are rich in a number of important nutrients and fiber. FDA is not persuaded by the rationales put forward for other foods, as a general matter. It does, however, concur that extending the exemption from this requirement for certain vegetable oil spreads and liquid vegetable oils is justified because they provide unsaturated fatty acids that can be used in place of saturated fatty acids in the diet.

A key recommendation of the "Dietary Guidelines for Americans, 2005" (Ref. 69) is that most fats in the diet should

come from sources of polyunsaturated and monounsaturated fatty acids such as fish, nuts, and vegetable oils. Using liquid vegetable oils in the diet as substitutes for solid and hardened fats is an approach to developing a heart-healthy diet that is consistent with the "Dietary Guidelines for Americans, 2005." Liquid vegetable oils, like dressings for salad, will likely be consumed in small portions with foods rich in fiber and other nutrients. Vegetable oils contain none of the six core nutrient components of the minimum nutrient content requirement for health claims and therefore are ineligible for health claims unless an exemption is provided in a specific health claim regulation. The agency has concluded that the public health benefit of providing for use of the health claim on labels of certain liquid vegetable oil outweighs the concerns that health claims are trivialized by their use with foods of little nutritional value, and therefore is proposing that liquid vegetable oils be exempt from the minimum nutrient requirement in amended § 101.83. As noted in section V.C.2.a of this document, FDA is proposing to also exempt liquid vegetable oils from the disqualifying level for total fat; however liquid vegetable oils will be subject to the requirement that foods bearing the phytosterol/CHD health claim be "low saturated fat" foods.

Margarine, a standardized food under § 166.110 including those that are nutritionally modified and labeled under 21 CFR 130.10 must contain not less than 10 percent of the recommended dietary allowance (RDA) for vitamin A per reference amount customarily consumed. Margarine substitutes may need to be fortified with Vitamin A to be nutritionally equivalent to margarine to avoid being categorized as "imitation" margarine (§§ 101.3(e)(2) and 104.20(e) (21 CFR 101.3(e)(2) and 104.20(e))). As FDA stated in the rulemaking for § 101.14, permitting foods to be fortified with nutrients for the sole purpose of making a health claim that complies with the minimum nutrient requirement would be misleading and inconsistent with FDA's fortification policy in § 104.20 (58 FR 2478 at 2521). FDA also stressed, however, that "the exclusion of fortification pertains only to fortification to specifically meet the requirements of this provision and not to the fortification of the food itself" (*id.*). Vegetable oil spreads that resemble and substitute for margarine may be required to be fortified with Vitamin A to avoid being categorized as an "imitation" (as explained in this paragraph) and those not required to be so fortified may be optionally fortified under § 104.20. Such spreads usually serve as substitutes for products higher in saturated fats and cholesterol. Thus, the agency believes that permitting vegetable oil spreads resembling margarine to meet the minimum nutrient contribution requirement through the addition of Vitamin A is consistent with FDA's fortification policy and appropriate as an exemption to the requirement in § 101.14(e)(6) that the food contain 10 percent or more of a nutrient prior to any nutrient addition.

The agency is not convinced that additional modifications to current § 101.83(c)(1) and (c)(2)(iii)(D) to provide exemptions from the minimum nutrition contribution requirement for additional foods are warranted. Because the agency is proposing to drop the limitation on eligible food categories and extend the claim to include nonesterified phytosterols and mixture of plant sterols and stanols, there would be a greater variety of lower fat, heart healthy phytosterol-enriched foods that would be able to bear the health claim without extending the minimum nutrient contribution requirement. Further, the agency believes that dropping the requirement in § 101.14(e)(6) altogether could lead to indiscriminate use of health claims on foods with little or no nutritional value such as snack and confectionary items. Therefore, the agency is not proposing to provide further exemptions to the minimum nutrient contribution requirement.

While FDA will consider any further requests for exemptions that it receives via the petition process as expeditiously as possible, it still expects that any such request will be accompanied with adequate justification for the exemption. The agency does not plan to set up an expedited notification process for such a review.

In short, the agency is proposing to amend § 101.83(c)(2)(iii)(E) to permit liquid vegetable oils to be exempt from the minimum nutrient requirement. FDA is also proposing to amend this provision to permit the minimum nutrient contribution requirement for vegetable oil spreads resembling margarine to be met by the addition of vitamin A consistent with FDA's fortification policy.

D. Model Claims

Current § 101.83(c)(2)(i) prescribes specific requirements for health claims that link plant sterol/stanol esters to reduced risk of CHD. Current § 101.83(e) provides examples of model health claims that may be used to comply with the requirements in § 101.83(c)(2)(i). As discussed in previous sections of this document, we are proposing modifications to § 101.83 that would entail revision of specific requirements for health claims and the examples of model health claims. Consequently, the agency is proposing to revise § 101.83(c)(2)(i) and (e) accordingly.

E. Cautionary Statements

Current § 101.83 does not require cautionary or advisory statements regarding the potential effect of consuming phytosterols on the absorption of other nutrients or on certain subpopulation groups, and FDA did not address the use of such statements in the IFR. However, the agency subsequently became aware that regulatory bodies in other countries had concluded that requiring such statements on the labels of products containing phytosterols or limiting the use of phytosterols in food was necessary to guard against such effects. When the IFR comment period was reopened, FDA requested comments on "whether changes to [§ 101.83], advisory labeling, or other actions are needed" to address concerns regarding the effect of consuming plant/sterol esters on the absorption of beta-carotene and on certain subpopulation groups (66 FR 50824 at 50826).

Some comments focused on the safety of consuming plant/sterol esters for certain subpopulation groups, such as those taking drugs to lower cholesterol or those suffering from phytosterolemia, an autosomal recessive disorder characterized by increased intestinal absorption of dietary cholesterols and phytosterols. Those comments disagreed whether the labels of foods bearing the health claim should provide an advisory statement. Other comments asserted that consuming phytosterols inhibits intestinal absorption of fat soluble vitamins and carotenoids and that requiring an advisory statement on foods bearing the health claim is necessary to prevent adverse health consequences, especially in vulnerable subpopulation groups, such as children or pregnant or lactating women.

Section 201(n) of the act states that, in determining whether labeling is misleading, the agency shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts material in light of such representations made or suggested in the labeling with respect to consequences which may result from use of the article to which the labeling relates under the conditions of use as are customary or usual (*see* 21

CFR 1.21). Thus, the omission of certain material facts from the label or labeling on a food causes the product to be misbranded within the meaning of sections 403(a)(1) and 201(n) of the act. Under that authority, FDA has considered the use of cautionary statements to address each of the public health issues identified by other regulatory bodies and the similar concerns raised in comments.

With respect to the comments about the effects of consuming phytosterols on individuals suffering from rare conditions that make them hypersensitive to phytosterols, FDA tentatively concludes that no cautionary statement regarding those effects in the labeling of foods bearing the health claim or any other action is necessary. For the consumers at whom such a cautionary statement would be directed, *i.e.,* those aware that they have a phytosterol-sensitive condition, the health claim itself and the required ingredient declaration (*see* 21 CFR 101.4(a)) should provide sufficient warning that the product contains phytosterols. Such consumers could consult with their medical practitioner regarding the possible consequences of consuming phytosterols.

As for a cautionary statement regarding potential adverse interactions with cholesterol-lowering drugs, FDA tentatively concludes that § 101.83 should not require such a statement in the labeling of food bearing the health claim. FDA is unaware of any scientific evidence demonstrating that consuming phytosterols while on cholesterol-lowering drugs results in any adverse health consequences. The agency thus sees no justification for requiring a statement specific to consumers taking cholesterol-lowering drugs. We invite the submission of any data or other evidence demonstrating adverse health consequences under such circumstances.

With respect to the comments about the potential effect of phytosterols on the absorption of certain nutrients in the population as a whole or in certain subpopulation groups, FDA tentatively concludes that the available scientific evidence does not support a need for a cautionary statement regarding that potential effect. As noted in this section of the document, the potential effect of phytosterol-enriched foods on lowering plasma fat soluble vitamins and carotenoids has been a concern to regulatory bodies in some other countries. The European Commission (EC) Scientific Committee on Food (SCF) recommended that the beta-carotene lowering effect of phytosterol-enriched foods be communicated to the consumer, together with appropriate dietary advice regarding the regular consumption of fruits and vegetables (Refs. 76 and 77). As a result, EC regulations for the labeling of foods with added phytosterols require a label statement stating that: (1) Phytosterol-enriched foods may not be nutritionally appropriate for pregnant or breastfeeding women and children under the age of 5 years; and (2) phytosterol-enriched foods should be used as part of a balanced and varied diet, including regular consumption of fruit and vegetables to help maintain carotenoid levels (Refs. 78 and 79). Similarly, Food Standards Australia New Zealand (FSANZ) requires that phytosterol-enriched foods have a label statement advising that the product should be consumed in moderation as part of a diet low in saturated fat and high in fruits and vegetables, and that the product is not recommended for infants, children, or pregnant or lactating women unless under medical supervision (Ref. 80).

FDA reviewed 19 intervention studies that evaluated the effect of phytosterol intake on the intestinal absorption of fat soluble vitamin and carotenoid, by measuring plasma levels (Refs. 24, 26, 35, 37, 39, 41, 51, 55, 59, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90). Collectively, these studies provided phystosterols ranging from 0.8 to 9 g per day. After adjusting for plasma total or LDL cholesterol levels, only one study showed that vitamin E levels were significantly reduced with phytosterol intake (3 g per day) (Ref. 88). Vitamin E levels were not altered at higher phytosterol intake levels (3.2 to 9 g per day) (Refs. 51, 55, 88, and 89). There was no effect of phytosterol intake on adjusted levels of other fat soluble vitamins (*i.e.,* vitamin A, vitamin D, vitamin K).

While phytosterol intake was shown in some studies to reduce adjusted levels of beta-carotene (the major pro-vitamin A carotenoid) to a statistically significant degree at phytosterol intake levels ranging from 3 to 9 g per day (Refs. 51, 55, 87, 88, 89, and 90) there was no effect on serum retinol levels (a biomarker of vitamin A status). Some studies also showed a reduction in carotenoids such as lutein and lycopene, but these food components likewise do not have an established health benefit at a particular level. Thus, FDA has no basis for concluding that any reduction in the intestinal absorption of these nutrients caused by consuming phytosterols amounts to an adverse health consequence.

FDA has determined that available scientific evidence does not demonstrate that consuming phytosterols has an effect on intestinal absorption of fat soluble vitamins. Furthermore, although there is some evidence that consuming phytosterols reduces plasma levels of carotenoids such as beta-carotene, lutein, and lycopene, those carotenoids have no established health benefits at particular levels. Therefore, the agency is not proposing that § 101.83 require a cautionary statement regarding a potential effect on fat soluble vitamins or carotenoids.

In conclusion, the agency finds that the failure of a food bearing the health claim to include any of the foregoing cautionary statements would not render the food's labeling misleading under section 403(a)(1) of the act. We are therefore not proposing that § 101.83 require any of the foregoing cautionary statements. Furthermore, the available science does not persuade FDA that the use of phytosterols at the levels necessary to justify the claim render the food unsafe or unlawful under the relevant safety provisions of the act, even in the absence of such cautionary statements. But FDA again notes that authorization of a health claim for a substance should not be interpreted as an affirmation that the substance is safe and lawful for all uses.

F. Status Under Section 301(ll) of Foods Containing Nonesterified and Esterified Phytosterols

Section 301(ll) of the act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or a biological product for which substantial clinical investigations have been instituted and their existence made public, unless one of the exemptions in section 301(ll)(1)–(4) applies. In this proposal to amend the regulation authorizing a health claim on the relationship between plant sterol esters and plant stanol esters and reduced risk of CHD for use on food labels and in food labeling, FDA did not consider whether section 301(ll) of the act or any of its exemptions would apply to foods containing nonesterified or esterified phytosterols. Accordingly, this proposed rule should not be construed to be a statement that foods that contain nonesterified or esterified phytosterols, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the act. Furthermore, this language is included in all health claim proposed

and final rules and should not be construed to be a statement of the likelihood that section 301(ll) of the act applies.

VI. Enforcement Discretion

Pending issuance of a final rule, FDA intends to consider the exercise of its enforcement discretion on a case-by-case basis when a health claim regarding phytosterols is made in a manner that is consistent with the proposed rule. Beginning 75 days from the date the proposed rule publishes, FDA does not intend to exercise its enforcement discretion based on the letter issued in 2003 (Ref. 1). The act's enforcement provisions commit complete discretion to the Secretary of Health and Human Services (and by delegation to FDA) to decide how and when they should be exercised (*see Heckler* v. *Chaney,* 470 U.S. 821 at 835 (1985); *see also Shering Corp.* v. *Heckler,* 779 F.2d 683 at 685–86 (DC Cir. 1985) (stating that the provisions of the act "authorize, but do not compel the FDA to undertake enforcement activity")). Until the agency issues a final rule amending the requirements of § 101.83, the agency believes that its exercise of enforcement with respect to claims that do not comply with current § 101.83 but do comply with the proposed rule is appropriate. Food bearing the health claim would be required to comply with any revised requirements established in the final rule when the final rule becomes effective.

VII. Environmental Impact

FDA has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Economic Impacts

Preliminary Regulatory Impact Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the costs to all businesses would be low and will not likely have a significant economic impact on a substantial number of small businesses, the agency believes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount and has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

A. Need for the Rule

The scientific evidence relating to phytosterols and the risk of CHD has developed to warrant proposing to amend the existing health claim for plant sterol/stanol esters and CHD. If finalized, this rule would allow manufacturers of products that meet certain conditions to provide the most scientifically reliable, up-to-date information on the relationship between diets that include phytosterols and the risk of CHD. In addition, this rule would allow an increased number of foods to be eligible to make this health claim, by including foods other than the limited number in the current regulation, and increasing the variety of composition of the phytosterol ingredients included under the regulation, *i.e.,* inclusion of plant sterol and plant stanol mixtures, inclusion of forms of phytosterols in conventional foods other than those esterified with fatty acids, and inclusion of additional forms of dietary supplements. The greater availability of foods containing the required minimum amounts of phytosterols and with up-to-date information on their labels would provide additional health benefits for consumers that are consistent with the current state of scientific evidence. FDA announced, in February 2003, its decision to consider exercise of enforcement discretion, within certain parameters, in regards to the use of the phytosterol/CHD health claim in order to provide greater flexibility in the application of the claim than that allowed under the IFR. The proposed rule would reduce any uncertainty that may arise on the part of manufacturers from the real and perceived lack of permanency inherent in the policy of enforcement discretion.

B. An Overview of the Changes in Behavior From the Regulatory Options

FDA's benefit-cost analysis assumes the existing regulatory requirements of § 101.83, rather than upon the 2003 enforcement discretion criteria, as the baseline upon which to measure the impact of this proposed rule. The regulatory options considered are as follows:

- Option 1—Take no new regulatory action,
- Option 2—Implement the proposed rule,
- Option 3—Restrict coverage of the proposed option to only conventional foods and not allow dietary supplements to make a phytosterols/CHD health claim, and
- Option 4—Restrict the proposed option to require manufacturers of any product claiming reduced risk of CHD from phytosterols consumption, for which the analytical method for determining the quantity of phytosterols is different than either the McNeil or Unilever methods, to provide FDA with access to documentation substantiating the amount of phytosterols contained in the food product.

There would be no changes from current behavior by consumers and manufacturers for option 1. No products would need to be re-labeled or reformulated, and consumer information on the relationship between diets containing phytosterols and the risk of CHD currently found on food labels would remain unchanged.

For option 2, the proposed rule, manufacturers of vegetable spreads, salad dressings, snack bars, and dietary supplements in softgel form that currently use the plant sterol/stanol esters health claim would be required to re-label their products to conform to the claim language required under the proposed rule. Manufacturers of plant sterol ester-enriched products would also be required to reformulate these products if they contain no more than the minimum 0.65 g sterol ester/RACC (equivalent to 0.4 g nonesterified plant sterol) required under the IFR for plant

sterol esters, and if they want to continue to make the claim. The IFR requires a minimum of 1.7 g/RACC of plant stanol esters (equivalent to 1 g of nonesterified plant stanol), so manufacturers of plant stanol ester-enriched products, including dietary supplements in softgel form that currently make a phytosterols/CHD health claim, would not be required to reformulate to continue to make the claim. Consumers would benefit from more up-to-date information on food labels, the increase in the intake of phytosterols, and the wider range of foods and dietary supplements that would likely contain phytosterols, which may contribute to an increase in the intake of phytosterols and a reduction in the risk from CHD.

For ensuring compliance with the labeling requirements for vegetable spreads, salad dressings, snack bars, and dietary supplements in softgel form, the protocol for sampling and testing the products directly for phytosterols content would be changed to the Sorenson and Sullivan method from the McNeil or Unilever methods. The Sorenson and Sullivan method would also be used to ensure compliance with the labeling requirements for the variety of products newly allowed to claim a relationship between diets containing phytosterols and the reduction in risk from CHD.

Option 3 would restrict coverage of the proposed requirements to only conventional foods, so that manufacturers of some plant stanol ester-containing dietary supplements in softgel form that currently claim reduced risk of CHD from plant sterol/stanol esters consumption would no longer be allowed to make that claim. These manufacturers are assumed to re-label their products to either make no claim or to make a structure/function claim. Benefits from the consumption of dietary supplements in softgel form may be reduced.

For option 4, the behavioral changes by manufacturers and consumers are assumed to be the same as those from the proposed option. To ensure compliance with the labeling requirements for vegetable spreads, salad dressings, snack bars, and dietary supplements, sampling and testing the products directly for phytosterols content using either the McNeil or Unilever methods would be used. Ensuring compliance with the labeling requirements for the variety of food products and dietary supplements that would be newly allowed to claim benefits from the relationship between phytosterols consumption and the risk of CHD, for which the analytical method for making this determination is different than either the McNeil or Unilever methods would require FDA access to, and analyses of, documents that substantiate the amount of phytosterols contained in these products.

C. Costs of Option 2 (the Proposed Rule)

The costs of the proposed rule are from the re-labeling required of products that currently make the plant sterol/stanol esters-CHD health claim to conform to the claim language required under the proposed rule. Manufacturers of plant sterol ester-enriched products may also incur reformulation costs associated with the increase in the phytosterols content required to make the health claim under the proposed rule.

Vegetable spreads, salad dressings, snack bars, and dietary supplements that currently make a plant sterol/stanol esters and CHD health claim would have to be re-labeled because of this rule. All current manufacturers of these products would bear the costs of unused label inventory as well as the costs of designing and printing new labels to comply with the updated health claim requirements. Some manufacturers of plant sterol ester-enriched vegetable spreads and salad dressings will decide to reformulate their products in order to meet the higher minimum amounts of phytosterols per serving required for plant sterol esters to make a phytosterols-CHD health claim under the proposed rule. Moreover, some manufacturers of plant stanol ester-enriched snack bars may decide not to make a phytosterols-CHD health claim due to the required new language that specifies that the daily dietary intake of phytosterols should be consumed with meals; snack bars may be less likely than vegetable spreads or salad dressings to be consumed with meals.

FDA does not have any information on how many labels would have to be redesigned, or the number of products that would be reformulated because of the proposed rule. Many existing products would not need to reformulate because the qualifying amount of plant stanol content in the IFR—1.7 g plant stanol esters per RACC, or the equivalent of 1 g of nonesterified stanols—is higher than the qualifying amount of phytosterols (plant sterols/stanols) per RACC in this proposed rule (0.5 g per RACC). Some products that currently enrich with plant sterol esters in order to make the plant sterol/stanol esters and CHD health claim may need slight reformulation since the qualifying amount in the IFR—0.65 g plant sterol esters per RACC, or the equivalent of 0.4 g of nonesterified sterols—is slightly lower than the qualifying amount of phytosterols per RACC required in this proposed rule. However, there is evidence suggesting that some food products now enriching with plant sterol esters are formulated with more than 0.5 g phytosterol per RACC. For example, the phytosterol content of the sterol ester-enriched product Benecol spread (Ref. 111) exceeds the 0.5 g per RACC and would not need to reformulate.

The agency uses the FDA Labeling Cost Model to estimate the costs of redesigning the labels and the costs of lost label inventory for estimated small fractions of the vegetable spreads, salad dressings, snack bars and dietary supplements sectors (Ref. 112). In order to use the FDA Labeling Costs Model to estimate the re-labeling costs, FDA estimates the percentage of each of the sectors that would incur costs from the proposed rule. These percentages are then applied to the sector-wide results obtained by the Labeling Cost Model.

For estimating the percentage of the dietary supplements sector that currently make a plant sterol/stanol esters and CHD health claim, FDA uses information from the 1999 report by Research Triangle Institute for FDA entitled "Dietary Supplements Sales Information" (Ref. 113). Research for that report found that of the approximately 20 categories of claims made by dietary supplements, approximately 20 percent make a claim regarding circulatory system benefits. FDA assumes that 67 percent of the claims regarding circulatory system benefits are either structure/function claims or nutrient content claims, and 50 percent of the remaining 33 percent address the risk of CHD, then about 3.3 percent of all dietary supplements address the risk of CHD (*i.e.,* 20 percent $\times$ 33 percent $\times$ 50 percent).

FDA uses representative scanner data on sales and forms that dietary supplements take over the period 2001–2005, to estimate that 2 percent of all dietary supplement sales are in softgel form. Consistent with the estimated percent for dietary supplements overall, FDA assumes that 3.3 percent of all dietary supplements in softgel form may have a health claim that addresses the risk of CHD, and that no more than 10 percent of those with health claims that address the risk of CHD may make a phytosterols health claim. Consequently, FDA estimates that between 0 and 0.007 percent of dietary supplements sold may currently make a plant sterol/stanol esters and CHD health claim and would be re-labeled (2 percent of all dietary supplements $\times$ 3.3

percent that make a claim that addresses CHD × 0 to 10 percent that may make a phytosterols-CHD health claim).

To estimate the percent market shares of conventional food products to apply to the Labeling Cost Model, the agency uses results from FDA's 2001 Food Label and Package Survey (FLAPS), from which LeGault, *et al.* report that 4.4 percent of all food products sold make at least one of the FDA-approved health claims (Ref. 114). In order to estimate the market share of foods that may make a plant sterol/stanol esters and CHD health claim, FDA takes the estimated percentage of total sales of products that make any claim (4.4 percent) and multiply it by the percentage of health claims that were found to address the risk of CHD (41.7 percent). FDA assumes that 10 percent of all packaged food sales with claims that address the risk of CHD may make a phytosterols-CHD health claim. Consequently, FDA estimates that approximately 0.2 percent of all food sales in the vegetable spreads and salad dressings sectors may make a plant sterol/stanol esters and CHD health claim (*i.e.,* 4.4 percent × 41.7 percent × 10 percent, rounded to the nearest tenth of a percent).

To account for the smaller likelihood that manufacturers of snack bars that currently make a plant sterol/stanol esters and CHD health claim will continue to do so under the proposed rule, FDA divides the estimate for vegetable spreads by 2 to obtain the market share for the snack bar sector that would incur re-labeling costs.

While the names of most of the sectors used by both the Labeling Cost Model and Reformulation Cost Model correspond closely with those that are currently identified in the IFR, there is no snack bar sector identified in the models. Consequently, FDA uses the labeling costs for the "Salty Snacks—Other" category to approximate those for the snack bar category. FDA assumes that firms will have 1 year to come into compliance. The estimated low, medium, and high costs of re-labeling generated by the labeling cost model for these sectors made assuming a 12-month compliance period are provided in table 4 of this document. Because 12 months represents a compliance period likely to be shorter than the actual period, actual costs may be lower.

TABLE 4—RE-LABELING COSTS ASSUMING A 12-MONTH COMPLIANCE PERIOD

Product group	Low	Medium	High
Salty Snacks—Other	$27,000	$38,000	$52,000
Margarines	3,000	4,000	8,000
Fats and Oils	25,000	35,000	57,000
Salad Dressings and Toppings	30,000	42,000	67,000
Dietary Supplements—Liquid	900	1,000	2,000
Total	86,000	121,000	186,000

FDA uses the Reformulation Cost Model to estimate the costs of reformulating products for estimated fractions of the vegetable spreads, salad dressings, snack bar, and dietary supplement sectors in which it is likely that firms currently make a plant sterol/stanol esters and CHD health claim (Ref. 115). FDA assumes that most conventional food products that currently make a plant sterol/stanol esters and CHD health claim currently meet the minimum per-serving requirements in the proposed rule. FDA assumes that some conventional food products that enrich with plant sterol esters will have to be reformulated in order to meet the minimum per-serving requirements. FDA assumes that 25 percent of conventional food products that currently make a plant sterol/stanol esters and CHD health claim will reformulate to keep the claim. FDA assumes that no dietary supplements in softgel form that currently make a plant sterol/stanol esters and CHD health claim would have to reformulate in order to meet the minimum per-serving requirements in the proposed rule.

FDA assumes that any reformulation costs incurred by manufacturers of these products will involve minor changes to recipes and ingredients. The estimated costs of reformulating generated by the reformulation cost model for sectors that correspond closely with those identified in the IFR used to compute labeling costs are made assuming a 12-month compliance period and are provided in Table 5 of this document. Discarded inventories are the primary cost of reformulation when the model is computed under these assumptions. FDA requests comments on the magnitude of the reformulation cost generated by the model, as well as the assumption that discarded inventories would be the primary source of reformulation costs.

To characterize uncertainty about the total reformulation costs, FDA assumes that the estimated total reformulation costs is distributed normally with a mean equal to the addition of all of the costs estimated for the individual sectors ($5,200), and a standard deviation equal to that for the data across sectors ($650). FDA requests comments on these estimates. The confidence interval that contains the true amount of total reformulation costs with 95 percent probability under the stated assumptions is reported in the bottom row of Table 5.

TABLE 5—REFORMULATION COSTS ASSUMING A 12-MONTH COMPLIANCE PERIOD

Product group	Reformulation costs
Salty Snacks—Other	$500.
Vegetable oils	$1,500.
Margarines	$1,500.
Salad Dressings—Refrigerated.	$150.
Salad Dressings—Bottled, Unrefrigerated.	$1,500.
Total	Between $700 and $9,000.

D. Benefits of Option 2 (the Proposed Rule)

1. The Importance of the Health Risk Addressed by the Claim

CHD is the leading cause of death and permanent disability in the United States (Ref. 116). The National Center for Health Statistics in the Centers for Disease Control and Prevention (CDC) reports that in 2002 there were approximately 23 million non-institutionalized adults diagnosed with CHD, resulting in approximately 700,000 deaths. According to the same source, CHD patients made approximately 20.8 million office-based

physician visits and approximately 1.1 million hospital outpatient visits in that year. In addition, there were approximately 4.4 million hospital discharges of CHD patients, with average lengths of stay of approximately 4.4 days. As an indication of the extent to which this disease is disabling, CDC reports that approximately 66 percent of heart patients fail to fully recover (Refs. 116 and 117).

2. The Benefits Model

The benefit of the proposed rule relative to the IFR is the reduced risk of CHD that may result from consumers substituting a greater number of foods containing phytosterols for currently consumed alternatives that do not reduce the risk of CHD. The proposed rule would increase the number of food products eligible to use the phytosterols-CHD health claim from only foods enriched with esterified sterols and stanols, to include conventional foods enriched with nonesterified and esterified phytosterols, as well as mixtures of sterols and stanols, and additional forms of dietary supplements. Consequently, a wide variety of low and non-fat foods that are currently not authorized to make the plant sterol/stanol esters-CHD health claim may do so under the proposed rule.

FDA anticipates that foods for which GRAS notifications for phytosterols use have been submitted may be qualified to make a phytosterols-CHD health claim under this proposed rule. Phytosterol GRAS notifications to which FDA has no objections include, but are not limited to, the use of phytosterols as ingredients in: Margarine and vegetable oil spreads, salad dressings, mayonnaise, edible vegetable oils, snack bars, dairy and dairy-like substitutes (including those for yogurt, ice cream, cream cheese, and milk and milk based beverages), baked foods, ready-to-eat breakfast cereals, pasta and noodles, sauces, salty snacks, processed soups, puddings, confections, white breads and white bread products, vegetable meat analogues, fruit and vegetable juices, and coffee. The increase in the number of conventional foods in which phytosterol-enrichment has been self-determined to be GRAS and that may be qualified to make a health claim under the proposed rule, suggests an increase in consumption of conventional foods with phytosterols-CHD health claims.

The higher effective daily intake of phytosterols required to be communicated on the health claim may also increase the dietary intake of phytosterols. The effective daily intake of phytosterols that must be stated in the health claim has been increased to 2 g per day of phytosterols (expressed as weight of nonesterified phytosterols) for both plant sterols and plant stanols in the proposed rule. The IFR specified effective daily intake levels of 1.3 g per day of plant sterol esters (equivalent to 0.8 g of nonesterified plant sterols) and 3.4 g per day of plant stanol esters (equivalent to 2 g of nonesterified plant stanols).

FDA assumes that the proposed change in the minimum amount of phytosterols required for eligible foods to 0.5 g of phytosterols per RACC would have no impact on the number of plant stanol-enriched foods that make the claim because the 0.5 g of phytosterols per RACC required minimum in this proposed rule is less than the qualifying amount of plant stanol esters required under the IFR (1 g/RACC as nonesterified stanol). FDA also assumes that the proposed change in the minimum amount of phytosterols required for eligible foods would have no impact on the number of plant sterol-enriched foods that make the claim because the 0.5 g of phytosterols per RACC required minimum in this proposed rule is only slightly higher than the qualifying amount required under the IFR for plant sterol esters (0.4 g/RACC as nonesterified sterol). Finally, the proposed new claim language specifying that phytosterols should be consumed with meals, rather than specifying that phytosterols should be consumed in two servings eaten at different times of day with other foods, may result in fewer snack foods making the health claim.

3. The Increase in Dietary Intake of Phytosterols

FDA estimates the increase in the market share of newly labeled products that may make a phytosterols-CHD health claim as a first step to model the increase in dietary intake of phytosterols. The agency refines this estimate of the increase in dietary intake to account for the possibility that increased consumption of foods newly permitted to make a health claim under this proposed rule contain the same levels of phytosterols as foods currently consumed but not allowed to make a claim. FDA further refines its estimate of the increase in dietary intake of phytosterols from this proposed rule to account for the consumption of meals away from home that are not subject to packaged food labeling regulations; the portion of dietary intake of phytosterols from meals away from home is assumed to not be affected by the proposed rule.

The increase in dietary intake of phytosterols will be less than the increase in the market share of packaged food products that may make a health claim if meals are consumed away from home and consequently not subject to packaged food labeling regulations, or if consumption of foods newly permitted to make a health claim under this proposed rule contain the same levels of phytosterols as foods currently consumed that are not allowed to make a claim. FDA uses data from the U.S. Department of Agriculture (USDA) to estimate the fraction of total food consumption (both in-home as well as away-from-home consumption) that is subject to packaged food labeling requirements. Food consumed at home accounts for about 57 percent of all food expenditures (Ref. 118). FDA assumes that half of the remaining sales of newly labeled foods that may make a phytosterols-CHD health claim will reflect purchases of existing products that contain threshold levels of phytosterols but are not currently allowed to make a phytosterols-CHD health claim. If FDA applies these estimates to the 0.2 percent for the market share of packaged food products that may make the health claim permitted by this proposed rule, FDA estimates that the percent increase in dietary intake of phytosterols as a result of this proposed rule may be 0.06 percent (*i.e.,* (0.2 percent × 57 percent)/2) of current levels.

Finally, the increase in dietary intake of phytosterols does not necessarily lead to health benefits for all consumers. Healthful characteristics, including the phytosterols content, are just some of several considerations consumers use when making food purchases. Consumers who choose newly formulated foods that make the phytosterols-CHD health benefits over foods that do not contain phytosterols may include both those at risk of CHD as well as those who are not at risk. If a substantial number of those who are at risk of CHD will increase their intake of phytosterols because of the phytosterols-CHD health claims permitted by this proposed rule, then FDA can expect some positive effects on public health.

E. Costs and Benefits of Option 3

Option 3 would restrict coverage of the proposed requirements to only conventional foods, so that manufacturers of some plant stanol ester-containing dietary supplements in softgel form that currently claim reduced risk of CHD from plant sterol/stanol esters consumption would no longer be allowed to make that claim. These manufacturers would need to re-label their products to either make no

claim or to make a structure/function claim. Benefits from the consumption of dietary supplements in softgel form may be reduced.

There would be re-labeling costs for some dietary supplements in softgel form that currently make the plant stanol esters-CHD health claim based on the current regulation, but are no longer permitted to make that claim in the proposed rule. The re-labeling costs incurred for the dietary supplements under option 3 will be larger than those incurred by dietary supplement manufacturers under the proposed option; all dietary supplements that currently make a plant sterol/stanol esters and CHD health claim would have to be re-labeled to either make no claim or to make a structure/function claim—either of which implies larger changes to the label. FDA assumes the costs of a full label redesign will be incurred by manufacturers of dietary supplements that currently make a plant sterol/stanol esters and CHD health claim. Because dietary supplements would no longer be permitted to make the plant sterol/stanol esters and CHD health claim, there may also be reformulation costs incurred by manufacturers of some dietary supplements that choose to reduce current levels of phytosterols contained as an ingredient in the final product. However, these costs are considered to be a voluntary reallocation of resources rather than compliance costs.

F. Costs and Benefits of Option 4

FDA assumes that manufacturers of any product making the phytosterols-CHD health claim, for which the analytical method for determining the quantity of phytosterols is different than either the Unilever or McNeil methods, may incur costs from the requirement to provide access to documentation that substantiates the amount of phytosterols in a food product. FDA considers the costs incurred for requiring FDA to have access to these documents for an estimated small number of firms to be a reallocation of resources rather than compliance costs, since claiming the health benefits from phytosterols is strictly voluntary; any product for which a testing method different than either the Unilever or McNeil methods is required would be different than a vegetable spread, salad dressing, or snack bar and would have voluntarily chosen to make a phytosterols-CHD health claim following passage of this proposed rule. The costs of ensuring compliance with phytosterols-content requirements in products for which the analytical method for making this determination is different than either the McNeil or Unilever methods would be higher than for the proposed rule if the FDA inspection resources required to access and analyze documents that substantiate the amount of phytosterols contained in products were greater than those required to sample and test the products directly with the Sorenson and Sullivan method.

IX. Small Entity Analysis (or Initial Regulatory Flexibility Analysis)

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

Small businesses that are currently making a plant sterol/stanol esters and CHD health claim may incur re-labeling costs to satisfy the change in the language required on the health claim, and reformulation costs to satisfy the increased minimum per-serving quantity of phytosterols required for a product to make a health claim. FDA uses the 2002 Economic Census to estimate the number of small businesses in the vegetable spreads, salad dressings, snack bars, and dietary supplements sectors that may incur costs from this proposed rule as well as the costs that they would incur. Based on the Economic Census there are approximately 3,065 firms in the sectors described by North American Industry Classification System (NAICS) codes 311225 (Fats and oils refining and blending), 311941 (Mayonnaise, dressing, and other prepared sauce manufacturing, 311942 (Spice and extract manufacturing), 311919 (Other snack food manufacturing), 311999 (All other miscellaneous food manufacturing), and 325412 (Pharmaceutical preparation manufacturing). Approximately 95 percent of these firms have fewer than 500 employees and are considered small (Ref. 119). Moreover, FDA estimates from this data that firms with fewer than 500 employees account for approximately 75 percent of the sales revenues from these sectors.

In order to estimate the number of food manufacturers that may make a plant sterol/stanol esters and CHD health claim, FDA assumes that half of the small firms from the sectors described in the previous paragraph manufacture a product that is eligible to make a health claim. Consistent with FDA's 2001 FLAPS (Ref. 114), FDA multiplies those making a health claim by the percentage of health claims that were found to address the risk of CHD (41.7 percent). FDA assumes that 10 percent of all packaged food sales with claims that address the risk of CHD may make a phytosterols-CHD health claim.

Consequently, FDA estimates that 128 firms with fewer than 500 employees would manufacture one product that makes the plant sterol/stanol esters and CHD health claim and would incur compliance costs from this proposed rule (*i.e.,* 95 percent of 3,065 food and dietary supplements manufacturers, multiplied by 50 percent for only those that manufacture products making a health claim, multiplied by 41.7 percent for manufacturing products that make a health claim addressing the risk of CHD, and multiplying by 10 percent for making the plant sterol/stanol esters and CHD health claim. Because each individual food product currently making the plant sterol/stanol esters and CHD health claim would need to be re-labeled, fewer labels would need to be redesigned or discarded for a small manufacturer than for a large manufacturer. FDA uses data from the 2002 Economic Census indicating that 75 percent of total sales revenue—and by extension re-labeling costs—for the entire sector can be attributed to small manufacturers. FDA multiplies the re-labeling cost estimates for the entire sector of between $86,000 and $186,000 obtained in the cost-benefit analysis by 75 percent, and then divides by the number of small firms to obtain the cost per small firm. Consequently, FDA estimates that the average one-time re-labeling cost per small business would be between approximately $700 and $1,500.

FDA assumes that only some manufacturers that currently enrich conventional food products with plant sterol esters will incur reformulation costs. FDA assumes that 25 percent of small manufacturers of conventional food products that make a plant sterol/stanol esters and CHD health claim would need to reformulate a product as a result of this proposed rule. Consistent with the earlier discussion in this document, FDA estimates that 95 percent of the reformulation costs, or approximately $5,000, would be incurred by approximately 30 small manufacturers with fewer than 500 employees. FDA obtains an estimate of the reformulation costs per small manufacturer of approximately $160. FDA requests comments on the estimate of reformulation costs per manufacturer. Small businesses that currently are not making a plant sterol/stanol esters and CHD health claim will incur labeling and reformulation costs only if they

choose to take advantage of the marketing opportunity presented by this proposed rule.

X. Paperwork Reduction Act of 1995

FDA concludes that the labeling provisions of this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between consumption of phytosterols and CHD risk is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (*see* 5 CFR 1320.3(c)(2)).

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State law conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts "any requirement respecting any claims of the type described in [21 U.S.C. 343(r)(1)] made in the label or labeling of food that is not identical to the requirement of [21 U.S.C. 343(r)] * * *." 21 U.S.C. 343–1(a)(5). However, the statutory provision does not preempt any State requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food (Pub. L. 101–535, section 6, 104 Stat. 2353 (1990)). If this proposed rule is made final, the final rule would create requirements for various health claims for phytosterols in the label or labeling of food under 21 U.S.C. 343(r).

XII. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen between 9 a.m. and 4 p.m., Monday through Friday, except on Federal Government holidays. (FDA has verified the Web site addresses, but is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.83 is revised to read as follows:

§ 101.83 Health claims: phytosterols and risk of coronary heart disease (CHD).

(a) *Relationship between diets that include phytosterols and the risk of CHD.* (1) Cardiovascular disease means diseases of the heart and circulatory system. Coronary heart disease (CHD) is one of the most common and serious forms of cardiovascular disease and

refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL) cholesterol levels are associated with increased risk of developing CHD. Lowering of blood total and/or LDL cholesterol has been shown conclusively to lower risk for CHD, and thus is the primary target of cholesterol-lowering therapy. The relationship between total and LDL cholesterol levels and CHD risk is continuous over a broad range of LDL cholesterol levels from low to high. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 millimole per liter (mmol/L)) or above. Borderline high risk blood cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/L). An optimal blood LDL cholesterol level is less than 100 mg/dL (2.6 mg/L); borderline high LDL levels range from 130 to 160 mg/dL (3.4 to 4.1 mmol/L); and a high LDL cholesterol level is above 160 mg/dL.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in plant foods that contain dietary fiber and other components.

(3) Phytosterols (plant sterols) are structurally similar to cholesterol. Although there are many different phytosterols found in plants, the phytosterols most abundant in the diet are beta (β)-sitosterol, campesterol, and stigmasterol. Phytosterols usually have a double bond at the 5 position of the core ring structure. Phytosterols that have been saturated to remove the double bond in the ring structure are sometimes referred to as "stanols." This regulation uses the term phytosterol as inclusive of both sterol and stanol forms.

(4) Scientific evidence demonstrates that diets that include phytosterols may reduce the risk of CHD.

(b) *Significance of the relationship between diets that include phytosterols and the risk of CHD.* (1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL cholesterol are major modifiable risk factors in the development of CHD.

(2) The scientific evidence establishes that including phytosterols in the diet helps to lower blood total and LDL cholesterol levels.

(c) *Requirements*—(1) *General.* All requirements set forth in § 101.14 shall be met, except § 101.14(a)(4), as specified in paragraph (c)(2)(iii)(C) of this section, for disqualifying levels of total fat in vegetable oil spreads resembling margarine, dressings for salad, and liquid vegetable oils and § 101.14(e)(6), as specified in paragraph (c)(2)(iii)(D) of this section, for minimum nutrient contribution requirements with respect to vegetable oil spreads resembling margarine, dressings for salad, and liquid vegetable oils.

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim associating diets that include phytosterols with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section provided that:

(A) The claim states that phytosterols should be consumed as part of a diet low in saturated fat and cholesterol;

(B) The claim states that diets that include phytosterols "may" or "might" reduce the risk of heart disease;

(C) In specifying the disease, the claim uses the following terms: "heart disease" or "coronary heart disease";

(D) In specifying the substance, the claim accurately uses the term "phytosterols," "plant sterols," "plant stanols," or "plant sterols and stanols," except that if the sole source of the plant sterols or stanols is vegetable oil, the claim may so specify, *e.g.,* "vegetable oil phytosterols" or "vegetable oil sterols and stanols";

(E) The claim does not attribute any degree of risk reduction for CHD to diets that include phytosterols;

(F) The claim does not imply that consumption of diets that include phytosterols is the only recognized means of achieving a reduced risk of CHD;

(G) The claim specifies the daily dietary intake of phytosterols that is necessary to reduce the risk of CHD and the contribution one serving of the product makes to the specified daily dietary intake level. The daily dietary intake level of phytosterols that has been associated with reduced risk of CHD is 2 grams (g) per day, based on the nonesterified weight of phytosterols; and

(H) The claim specifies that the daily dietary intake of phytosterols should be consumed with meals or snacks.

(ii) *Nature of the substance.* (A) The substance may be derived from either vegetable oils or from tall oils and shall contain at least 80 percent beta-sitosterol, campesterol, stigmasterol, sitostanol, and/or campestanol (combined weight). For conventional foods, the substance may be esterified with food-grade fatty acids; for dietary supplements, the substance must be esterified with food-grade fatty acids.

(B) The Food and Drug Administration (FDA) will measure phytosterols by the Association of Official Analytical Chemists (AOAC) Official Method 994.10, "Cholesterol in Foods," as modified for assaying phytosterols by Sorenson and Sullivan (*Journal of AOAC International,* Vol. 89, No. 1, 2006). These methods are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(iii) *Nature of the food eligible to bear the claim.* (A) The food product shall contain at least 0.5 g of phytosterols, based on the nonesterified weight of phytosterols that comply with paragraph (c)(2)(ii) of this section per reference amount customarily consumed;

(B) If the food product is a dietary supplement, the phytosterols shall be esterified with food-grade fatty acids;

(C) If the food product is a conventional food, the use of the phytosterols in such food has been submitted to FDA in a generally recognized as safe (GRAS) notification, to which the agency had no further questions, and the conditions of use are consistent with the eligibility requirements for the health claim;

(D) The food shall meet the nutrient content requirements in § 101.62 for a "low saturated fat" and "low cholesterol" food;

(E) The food shall meet the limit for total fat in § 101.14(a)(4), except that, if the label of the food bears a disclosure statement that complies with § 101.13(h), vegetable oil spreads resembling margarine and dressings for salad are not required to meet the limit for total fat per 50 g and liquid vegetable oils are not required to meet the limit for total fat per reference amount customarily consumed, per label serving size, and per 50 g; and

(F) The food shall meet the minimum nutrient contribution requirement in § 101.14(e)(6) unless it is a liquid vegetable oil or dressing for salad. The minimum nutrient contribution requirement for vegetable oil spreads

resembling margarine may be met by added vitamin A.

(d) *Optional information.* (1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD, elevated blood total and LDL cholesterol, excess body weight, high blood pressure, cigarette smoking, diabetes, and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease.

(2) The claim may state that the relationship between intake of diets that include phytosterols and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total and LDL cholesterol."

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that include phytosterols and the risk of CHD and the significance of the relationship.

(4) The claim may include information from the following paragraph on the relationship between saturated fat and cholesterol in the diet and the risk of CHD: The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total and LDL cholesterol and, thus, with increased risk of CHD. Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and keep total fat intake between 20 to 35 percent of calories. Recommended daily cholesterol intakes are 300 mg or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL cholesterol levels.

(5) The claim may state that diets that include phytosterols and are low in saturated fat and cholesterol are consistent with "Dietary Guidelines for Americans." U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO).

(6) The claim may state that individuals with elevated blood total and LDL cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total and LDL cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment.

(7) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes for Health, or "Dietary Guidelines for Americans," U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO).

(e) *Model health claims.* The following model health claims may be used in food labeling to describe the relationship between diets that include phytosterols and reduced risk of heart disease:

(1) Foods containing at least 0.5 g per serving of phytosterols [plant sterols, plant stanols, or plant sterols and stanols] eaten with meals or snacks for a daily total intake of 2 g as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of the food] supplies____g of phytosterols [plant sterols, plant stanols, or plant sterols and stanols].

(2) Diets low in saturated fat and cholesterol that include 2 g per day of phytosterols [plant sterols, plant stanols, or plant sterols and stanols] eaten with meals or snacks may reduce the risk of heart disease. A serving of [name of food] supplies____g of [phytosterols plant sterols, plant stanols, or plant sterols and stanols].

Dated: November 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

Tables 1 and 2 to Preamble

Note: These tables will not appear in the Code of Federal Regulations.

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION

Study	Design	Population	Intervention	Diet	Results
AbuMweis *et al.,* 2006 (Ref. 38)	Randomized single-blind, placebo-controlled, crossover trial; five 29–d test periods, separated by 2–4 wk washout periods	Healthy adults 38 enrolled, 30 completed Mean age ± sd 59 ± 10 y n = 30/phase Inclusion criteria: LDL–C >100 mg/dL, BMI 22–34, age 40–85 y, no chronic disease or lipid-lowering R_X USA	One serving/d test margarine, eaten with breakfast. PS dose: 22 mg/kg body wgt (about 1.7 g PS/d) [1] C = margarine w/o added PS I_1 = ~1.7 g PS/d as nonesterified plant sterols in PS-enriched margarine I_2 = ~1.7 g PS/d as plant sterol esters (sunflower oil fatty acids) in PS-enriched margarine I_3 = ~1.7 g PS/d as plant sterol esters (fish oil n–3 LC PUFA) in PS-enriched margarine I_4 = ~1.7 g PS/d as nonesterified plant sterols fish oil	Controlled diet; all food and beverage prepared/provided by study; American diet w/ 30% energy from fat	*Total-C* (mg/dL) Baseline: 228 After 4-wk test period: C 222 I_1 219 I_2 220 I_3 224 I_4 223 *LDL–C* (mg/dL) Baseline: 147 After 4-wk test period: C 141 I_1 139 I_2 139 I_3 145 I_4 143 No significant changes of *Total-C or LDL–C* compared to control

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Doornbos *et al.,* 2006 (Ref. 43)	Randomized double-blind, placebo-controlled, parallel trial with 5 groups; 4-wk run-in followed by 4-wk test period	Mildly hypercholesterolemic adults 191 randomized, 184 Included in analysis Mean age ± sd 57 ± 2 y n = 33(C) n = 38 (I_1) n = 38 (I_2) n = 39 (I_3) n = 36 (I_4) Inclusion criteria: BMI 18–32 kg/m^2; total-C 193–309 mg/dL TG < 355 mg/dL The Netherlands	Single serving bottled yogurt drink (100 g) consumed with a meal, or while fasting C = drink w/o added PS I_1 = 3.2 g PS/d in low-fat yogurt (0.1 g dairy fat, 2.2 g fat in the stanol/sterol ester) w/meal I_2 = 3.2 g PS/d in low-fat yogurt (0.1 g dairy fat, 2.2 g fat in the stanol/sterol ester) w/o meal I_3 = 2.8 g tall oil PS/d in regular-fat yogurt (1.5 g dairy fat, 2.1 g fat in the stanol/sterol ester) w/meal I_4 = 2.8 g PS/d in regular-fat yogurt (1.5 g dairy fat, 2.1 g fat in the stanol/sterol ester) w/o meal	Habitual diet	*Total-C* (mg/dL) Baseline: 234 *Total-C* % change compared to control: I_1 ↓ 7.0%* I_2 ↓ 4.1%* I_3 ↓ 6.5%* I_4 ↓ 4.7%* *p < 0.05 *LDL–C* (mg/dL) Baseline: 155 *LDL–C* % change compared to control: I_1 ↓ 9.5%* I_2 ↓ 5.1%* I_3 ↓ 9.3%* I_4 ↓ 6.9%* *p < 0.05
Jauhiainen *et al.,* 2006 (Ref. 89).	Randomized double-blind, placebo-controlled parallel trial, 1-wk run-in, 5-wk test period	Mildly hypercholesterolemic adults 67 enrolled, 67 completed n = 34 (C) n = 33 (I) Age range 25–65 y Inclusion criteria: Total-C 193–251 mg/dL, TG < 266 mg/dL Finland	50 g/d hard cheese divided into 2 portions consumed with two major meals C = cheese w/o added phytosterols I = 2.0 g PS/d as plant stanol ester in PS-enriched hard cheese	Habitual diets	*Total-C* (mg/dL) Baseline: C 224 I 218 *Total-C* % change compared to placebo: I ↓ 5.7% (p < 0.05) *LDL–C* (mg/dL) Baseline: C 139 I 138 *LDL–C* % change compared to control: I ↓ 10.1% (p < 0.05)
Korpela *et al*., 2006 (Ref. 37).	Randomized double-blind, placebo-controlled, parallel trial; 3-wk run-in, 6-wk test period	Mildly hypercholesterolemic adults. 170 enrolled, 164 completed n = 82/group Mean age ± sd 57 ± 8 y (C) 58 ± 9 y (I) Inclusion criteria: Total-C 193–329 mg/dL, TG < 354 mg/dL Finland	150 g low-fat yogurt, 50 g low-fat hard cheese, and 50 g low-fat fresh cheese C = yogurt and cheese w/out added PS I= 1.65–2.0 g PS/d as nonesterified sterol/stanol in enriched yogurt and cheeses	Habitual diets plus low-fat yogurt and low-fat hard/fresh cheese	*Total-C* (mg/dL) Baseline: C 247 I 247 % change compared to control: I ↓ 6.5% (p < 0.05) *LDL–C* (mg/dL) Baseline: C 155 I 159 % change compared to control: I ↓ 11.0% (p < 0.05)
Jakulj *et al.,* 2005 (Ref. 90).	Randomized double-blind, crossover design for PS component, and open-label R_X tmt; 2x2 factorial trial. 2-wk run-in followed by four consecutive 4-wk test periods	Healthy moderately hypercholesterolemic adults 40 enrolled, 39 Included in analyses Mean age ± sd 55.5 ± 7.9 y n = 39 Inclusion criteria: plasma LDL–C 135–193 mg/dL; TG < 355 mg/dL The Netherlands	25 g/d test margarine on sandwiches or mixed with food in a hot meal C = spread w/o added PS I_1 = 2.0 g PS/d as plant sterol on PS-enriched spread. Information not provided as to whether nonesterified or esterified I_2 = Ezetimibe I_3 = Ezetimibe + PS-enriched spread	Habitual diets	*Total-C* (mg/dL) Baseline: 261 At end of 4 wk test period: C 249 I_1 235 I_2 208 I_3 204 *Total-C* % change compared to control: I_1 ↓ 5.2%* I_2 ↓ 15.7%* I_3 ↓ 17.2%* *p < 0.05 *LDL–C* (mg/dL) Baseline: 174 At end of 4-wk: C 157 I_1 148 I_2 121 I_3 116 % change compared to control: I_1 ↓ 5.1%* I_2 ↓ 20.9%* I_3 ↓ 23.8%* *p < 0.05

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Clifton *et al.* 2004 (Ref. 88).	Randomized single-blind, placebo-controlled, incomplete crossover trial; four consecutive 3-wk test periods, no washout periods	Mildly hypercholesterolemic adults 63 enrolled, 58 completed n = 58 (C) n = 36 (I_1) n = 40 (I_2) n = 58 (I_3) n = 40 (I_4) Mean age 54 y Inclusion criteria: BMI < 31, no R_X that affect lipids, total-C 193–290 mg/dL Australia	One serving/d each 4 of test foods (bread, milk, cereal, and yoghurt) consumed with meals C = test foods w/o added PS I_1 = 1.6 g/d PS as soy sterol esters in 2 slices of PS-enriched bread I_2 = 1.6 g/d PS as soy sterol esters in 500 ml of 2% PS-enriched milk I_3 = 1.6 g/d PS as soy sterol esters in 45 g of PS-enriched cereal I_4 = 1.6 g/d PS as soy sterol esters 200g of PS-enriched yogurt	Habitual diets supplemented by one serving daily of yoghurt, low-fat milk, bread, and muesli-type cereal. No changes in reported intakes of energy, fat, CHO, or protein across treatment periods or between centers	*Total-C* (mg/dL) Baseline: 241 % change compared to placebo: I_1 ↓ 5.6%* I_2 ↓ 8.5%* I_3 ↓ 3.2%* I_4 ↓ 6.3%* *p < 0.05 *LDL–C* (mg/dL) Baseline: 156 % change compared to control: I_1 ↓ 10.4%* I_2 ↓ 13.2%* I_3 ↓ 6.0%* I_4 ↓ 10.4%* *p < 0.05
Devaraj *et al.,* 2004 (Ref. 33).	Randomized double-blind, parallel trial with 2 groups; 2-wk run-in period followed by 8-wk test period	Healthy mildly hypercholesterolemic adults 75 enrolled; 72 completed Mean age ± sd 44 ± 13 y (C) 41 ± 13 y (I) n = 36/group Inclusion criteria: LDL–C >100 mg/dL; no R_x that affect lipids, no smoking, no H_X of CVD USA	2 servings/d of test orange juice, with meals. C = orange juice w/o added PS I=2 g PS/d as nonesterified sterol in PS-enriched orange juice	Habitual diets. No other orange juice, citrus fruit, or PS-enriched margarine allowed. 3-day diet records at beginning and end of study	*Total-C* (mg/dL) Baseline: C 209 I 207 *Total-C* % change compared to control: I ↓ 5.3% (p < 0.05) *LDL–C* (mg/dL) Baseline: C 140 I 137 *LDL–C* % change compared to control: I ↓ 7.3% (p < 0.05)
Thomsen *et al.,* 2004 (Ref. 26).	Randomized double-blind, crossover trial, with three consecutive 4-wk periods; no run-in or wash-our periods	Mildly hypercholesterolemic adults 81 subjects Randomized 69 completed Mean age ± sd 60 ± 5 y n = 69 Inclusion criteria: no R_X that affect lipids, total-C 217–325 mg/dL, TG < 310 mg/dL Denmark	2 servings/d of 1.2%-fat test milk w/meals C = milk w/o added PS I_1 = 1.2 g PS/day as nonesterified plant sterols in PS-enriched milk I_2 = 1.6 g PS/day as nonesterified plant sterols in PS-enriched milk	Habitual Danish diet with limits on certain fatty foods; *e.g.,* 20 g/d cheese, 2 portions of crustaceans and mollusks per wk	*Total-C* (mg/dL) Baseline: 271 *Total-C* % change relative to control: I_1 ↓ 4.73%* I_2 ↓ 7.05%* * p < 0.0001 *LDL–C* (mg/dL) Baseline: 169 LDL–C % change relative to control: I_1 ↓ 7.1%* I_2 ↓ 9.6%* * p < 0.0001
Cleghorn *et al.,* 2003 (Ref. 91).	Randomized double-blind, placebo-controlled, crossover trial; 3-wk run-in period, 3-wk test period	Mildly hypercholesterolemic adults; 58 subjects enrolled, 53 completed Mean age ± sd 46.7 ± 10.5 y n = 53 Inclusion criteria: total-C 193–290 mg/dL, TG < 266 mg/dL; no cholesterol-lowing R_X New Zealand	Test butter (20 g/d) or test margarine (25 g/d) B = Butter w/o added PS M = margarine w/o added PS I = 2 g PS/d PS as plant sterol esters in PS-enriched margarine	Self-selected low-fat diets. Test substance (butter or margarine) added to low-fat diet	*Total-C* (mg/dL) At end of 3 wk test period: B 235 M 227 I 215 *Total-C* % change relative to control: I ↓ 5.45% (p < 0.05) *LDL–C* (mg/dL) At end of 3 wk test period: B 154 M 145 I 135 *LDL–C* % change compared to control: I ↓ 7.2% (p < 0.01)

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Homma *et al.,* 2003 (Ref. 82).	Randomized double-blind, placebo-controlled, parallel trial, 4-wk test period, and 4-wk post-trial follow-up period	Healthy adult Japanese 105 enrolled, 104 completed Mean age ± sd 46 ± 14 y (P) 47 ± 13 y (I_1) 49 ± 12 y (I_2) n = 33–34/group Inclusion criteria: age >20 y, total-C 209–278 mg/dL, TG < 345 mg/dL Japan	2 or 3 servings/d of low-fat test spread, eaten w/meals. C = spread w/o added PS, 3 servings/d I_1 = 2 g PS/d as plant stanol esters in PS-enriched spread, 2 servings/d I_2 = 3 g PS/d as stanol esters in PS-enriched spread, 3 servings/d	Habitual Japanese diet. Diets were assessed with 2 day diet analysis at start and end of trial	*Total-C* (mg/dL) Baseline: C 238 I_1 235 I_2 232 *Total-C* % change compared to control: I_1 ↓ 5.7%* I_2 ↓ 4.9%* *p < 0.001 *LDL–C* (mg/dL) Baseline: C 157 I_1 153 I_2 153 *LDL–C* % change compared to control: I_1 ↓ 8.9%* I_2 ↓ 6.6%* *p < 0.001
Ishiwata *et al.,* 2002 (Same subjects as Homma *et al.,* 2003) (Ref. 92).	Randomized double-blind, placebo-controlled, parallel trial, 4-wk test period, and 4-wk post-trial follow-up period	*See* Homma *et al.* 2003 n = 30–31/group Analysis stratified by apolipoprotein E phenotype	2 or 3 servings/d of low-fat test spread, eaten w/meals C = spread w/o added PS, 3 servings/d I_1 = 2 g PS/d as plant stanol esters in PS-enriched spread, 2 servings/d I_2 = 3 g PS/d as stanol esters in PS-enriched spread, 3 servings/d	Habitual Japanese diet	*Total-C* (mg/dL) Baseline: C $ApoE_3$ 236 C $ApoE_4$ 241 I_1 $ApoE_3$ 237 I_1 $ApoE_4$ 231 I_2 $ApoE_3$ 234 I_2 $ApoE_4$ 233 *Total-C* % change compared to control: I_1 $ApoE_3$ ↓ 7.1%* I_1 $ApoE_4$ ↓ 6.3%* I_2 $ApoE_3$ ↓ 5.9%* I_2 $ApoE_4$ ↓ 4.7% * p < 0.05 *LDL–C* (mg/dL) Baseline: C $ApoE_3$ 153 C $ApoE_4$ 161 I_1 $ApoE_3$ 155 I_1 $ApoE_4$ 148 I_2 $ApoE_3$ 155 I_2 $ApoE_4$ 151 *LDL–C* % change compared to control: I_1 $ApoE_3$ ↓ 9.2%* I_1 $ApoE_4$ ↓ 11.0%* I_2 $ApoE_3$ ↓ 8.7%* I_2 $ApoE_4$ ↓ 6.4% * p < 0.01
Jones *et al.,* 2003 (Ref. 34).	Randomized double-blind, crossover trial; three 3-wk controlled feeding test periods separated by 4-wk washout periods	Mildly hypercholesterolemic adults 15 enrolled, 15 completed age range 22–68 y n = 15 Inclusion criteria: BMI 22–32 kg/m^2, LDL–C 126–232 mg/dL, HDL < 31 mg/dL, TG < 355 mg/dL Canada	3 servings/d of nonfat or low fat test beverage consumed w/meals C = nonfat beverage w/o added PS I_1 = 1.8 g PS/d as nonesterified plant tall oil sterol/stanol in PS-enriched nonfat beverage I_2 = 1.8 g PS/d as nonesterified plant tall oil sterol/stanol in PS-enriched low fat beverage	Typical American diet. Controlled intake; all food/beverage prepared/provided by study	*Total-C* (mg/dL) Baseline: C 237 I_1 242 I_2 229 *Total-C* % change at 3 wk: C ↓ 8.5% I_1 ↓ 11.6% I_2 ↓ 10.1% no significant differences between control and PS periods *LDL–C* (mg/dL) Baseline: C 155 I_1 160 I_2 150 *LDL–C* % change at 3 wk: C ↓ 5.0% I_1 ↓ 10.4% I_2 ↓ 8.5% no significant differences between P and PS periods

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Naumann *et al.,* 2003 (Ref. 42).	Randomized double-blind, placebo-controlled, crossover trial; three consecutive 3-wk test periods	Healthy adults, 44 enrolled, 42 completed Mean age ± sd 32 ± 14 y F 37 ± 16 y M n = 42 Inclusion criteria: BP < 160/95, BMI < 30, stable body wgt, age 18–65 y, Total-C < 309 mg/dL, TG < 355 mg/dL The Netherlands	1 serving/d of test margarine C = margarine w/o added PS I_1 = 2 g PS/d as phytosterol ester, 1:1 sterol/stanol ester ratio in PS-enriched margarine I_2 = 2 g PS/d as phytosterol ester, 3:1 sterol/stanol ester ratio in PS-enriched margarine	Habitual diets; food frequency questionnaires assessed diet at end of each period. No margarine was allowed other than the provided test margarine. Study provided sunflower oil shortening (w/o added plant sterols and stanols) to control unintended plant sterol and stanol intake	*Total-C* (mg/dL) At end of 3 wk: C 173 I_1 167 I_2 168 *Total-C* % difference compared to control: I_1 ↓ 3.4%* I_2 ↓ 2.7%* *p < 0.05 *LDL–C* (mg/dL) At end of 3 wk C 109 I_1 102 I_2 102 *LDL–C* % difference compared to control 3 wk: I_1 ↓ 6.0%* I_2 ↓ 6.7%* *p < 0.05
Quílez *et al.,* 2003 (Ref. 93).	Randomized double-blind, placebo-controlled, parallel trial; 2 groups, 8 wk test period	Healthy subjects, 61 enrolled, 57 competed Mean age ± sd 30.9 ± 7.2 y (C) 31.0 ± 6.7 y (I) n = 29 (C) n = 28 (I) Inclusion criteria: BMI < 40, no R_X or diet that affect blood lipids, total-C < 240 mg/dL, global CV risk < 20% (Eur Soc for Atherosclerosis criteria), TG < 200 mg/dL, consumers of bakery products Spain	2 test bakery products/d (1 muffin, 1 croissant) eaten at any time of day C = bakery products w/o added PS I = 3.2 g PS/d as soy sterol esters; divided between PS-enriched croissant and muffin	Habitual diets with test foods replacing usual bakery product consumption	*Total-C* (mg/dL) Baseline: C 162 I 167 *Total-C* % change compared to control: I ↓ 8.9% (p < 0.001) *Total-C* (mg/dL) Baseline: C 93 I 97 *Total-C* % change compared to control: I ↓ 14.6% (p < 0.001)
Seki *et al.,* 2003 (Ref. 54)	Randomized double-blind, parallel trial with 2 groups; 2-wk run-in period followed by 12-wk test period	Healthy mildly hypercholesterolemic males 61 enrolled, 60 completed Mean age ± sd 39.4 ± 1.4 y n = 28 (C) n = 32 (I) Inclusion criteria: healthy; total-C < 280 mg/dL, TG < 400 mg/dL Japan	3 slices test bread/d C = bread made with veg oil w/o added PS I = 0.45 g PS/d as plant sterol esters in PS-enriched veg oil baked into bread	Habitual diets; diets assessed with three 3-d diet records	*Total-C* (mg/dL) Baseline: C 190 I 194 *Total-C* % change compared to control: I ↓ 3% *LDL–C* (mg/dL) Baseline: C 115 I 116 *LDL–C* % change compared to control: I ↓ 2.1% No significant treatment effects
Spilburg *et al.,* 2003 (Ref. 27).	Randomized double-blind, parallel trial, with 6-wk run-in period followed by 4-wk test period	Moderately hypercholesterolemic adults 26 randomized, 24 completed Mean age ± sd 50.6 ± 10 y Inclusion criteria: LDL–C 80–210 mg/dL, TG < 300; no illness; no R_X except for oral contraceptives, hormone replacement, anti-hypertensives, anti-depressants & analgesics USA	Powdered lemonade-flavored fat-free test beverage, 3 servings/d P = beverage w/added lecithin, w/o added PS I = 1.9 g PS/d as lecithin emulsified soy nonesterified stanol in PS-enriched beverage	American Heart Association Step I diet; diet counseling to maintain weight if needed	*Total-C* (mg/dL) Baseline: C 200 I 224 % change compared to control: I ↓ 10.1% (p < 0.05) *LDL–C* (mg/dL) C 128 I 148 % change compared to control: I ↓ 14.3% (p < 0.05)

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
De Graaf *et al.,* 2002 (Ref. 32).	Randomized double-blind, parallel trial; 4 wk run-in period; 4-wk test period	Mildly hypercholesterolemic adults 70 randomized, 62 completed Mean age 57.8 y (C) 56.2 y (I) n = 31/group Inclusion criteria: age 21–75 y; total-C 213–310 mg/dL, LDL–C ≥135 mg/dL; TG < 354 mg/dL; BMI < 35 The Netherlands	3 servings/d of test chocolate/d (10.5 g each), eaten with meals C = chocolate w/o added PS I = 1.8 g PS/day as nonesterified tall oil sterols/stanols in PS-enriched chocolate	Self-selected Step I diet; supplemented w/three servings/d of chocolate	*Total-C* (mg/dL) C 257 I 261 *Total-C*% change compared to control: I ↓ 6.4% ($p < 0.05$) *LDL–C* (mg/dL) C 177 I 182 *LDL–C*% change compared to control: I ↓ 11.1 ($p < 0.05$)
Geelen *et al.,* 2002 (Ref. 94).	Randomized double-blind, crossover trial, with 2 consecutive 3-wk test periods	Healthy adults with known apolipoprotein E phenotype 31 $ApoE_4$ subjects; 57 $ApoE_3$ subjects n = 88; Mean age 25.4 y Inclusion criteria: age ≥18 y; no prescribed diets; no lipid-lowering R_X; total-C ≤310 mg/dL; TG < 266 mg/dL The Netherlands	One tub (35 g) test margarine/d consumed in place of usual margarine C = margarine w/o added PS I = 3.2 g PS/d as vegetable oil sterol esters in PS-enriched margarine	Habitual diets; random 24-h recall diet surveys conducted during test	*Total-C* (mg/dL) Baseline: E3/4 & E4/4 201 E3/3 178 *Total-C*% change compared to control: I ↓ 7% ($p < 0.05$) *LDL–C*% change compared to control: I ↓ 11% ($P<0.05$)
Judd *et al.,* 2002 (Ref. 95).	Randomized double-blind, crossover trial; two consecutive 3-wk intervention periods, no wash out	Healthy adults, normal or slightly elevated total-C 58 enrolled, 53 completed Mean age ± sd 47.1 ± 1.5 y n = 53 Inclusion criteria: age 25–65 y; HDL >25 mg/dl (men) or >35 mg/dL (women), TG < 300 mg/dL USA	Two servings/d of test salad dressing (Ranch or Italian), eaten w/ meals C_1 = Ranch dressing w/o added PS I_1 = 2.2 g PS/d as soy sterol esters in PS-enriched Ranch dressing C_2 = Italian dressing w/o added PS I_2 = 2.2 g PS/d as soy sterol esters in PS-enriched Italian dressing	Typical American diet; Controlled diet provided by study and eaten on site	Type of salad dressing did not affect plasma lipids so data was combined *Total-C* (mg/dL) baseline: 214 *Total-C*% change compared to control: I ↓ 7.0% ($p < 0.0001$) *LDL–C* (mg/dL) Baseline: 141 LDL–C% change compared to control: I ↓ 9.2% ($p < 0.0001$)
Matvienko *et al,* 2002 (Ref. 60).	Randomized double-blind, placebo-controlled, parallel trial; single 4-wk test period	Hypercholesterolemic white males. 50% of subjects w/family H_X of premature CVD & hyperlipidemia 36 enrolled, 34 completed Mean age ± sd 22.2±3.9 y (C) 23.6±3.9 y (I) n = 17/group Inclusion criteria: total-C >197 mg/dL, LDL-total-C >130 mg/dL USA	One serving/d (112 g) of cooked lean ground beef eaten at lunch C = ground beef w/o added PS I = 2.7 g PS/d as soy sterols, partially esterified, in PS-enriched beef	Habitual diets w/limits on eggs (2–3 eggs/wk), and no red meat other than that in the test meal. Diets assessed by interviewer administered questionnaires	*Total-C* (mg/dL) Baseline: C 224 I 228 *Total-C*% change compared to control: I ↓ 8.4% ($p < 0.001$) *LDL–C* (mg/dL) Baseline: C 153 I 159 *LDL–C*% change compared to control: I ↓ 13.3% ($p < 0.001$)
Mensink *et al.,* 2002 (Ref. 86).	Randomized double-blind, placebo-controlled, parallel trial; 3-wk run-in followed by 4-wk test period	Mildly hypercholesterolemic adults 69 randomized, 60 completed Mean age ± sd 36 ± 14 y n = 30/group Inclusion criteria: no diets that affects lipids, no CAD H_X, BMI < 30, total-C < 251 mg/dL The Netherlands	3 servings/d of test yogurt, eaten w/meals C = yogurt w/o added PS I = 3 g PS/d as plant stanol esters in PS-enriched yogurt	Habitual diets supplemented with 3 servings/day test yogurt. Low erucic acid rapeseed oil margarine and shortening provided to standardize fatty acid intake. Diet questionnaires to assess diet	*Total-C* (mg/dL) Baseline: C 184 I 193 % change compared to control: I ↓ 8.7% ($p < 0.001$) *LDL–C* (mg/dL) Baseline: C 111 I 113 % change compared to control: I ↓ 13.7% ($p < 0.001$)

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Mussner *et al.,* 2002 (Ref. 96).	Randomized double-blind, crossover trial, with 2 consecutive 3-wk test periods	Mildly hypercholesterolemic adults 63 enrolled, 62 completed Mean age ± sd 42 ± 11 y n = 62 Inclusion criteria: BMI < 30, total-C 200–300 mg/dL, LDL–C 130–200 mg/dL; TG < 160 mg/dL Germany	Two servings/d (10 g each) of test margarine, consumed in morning and evening, replacing usual margarine C = margarine w/o added PS I = 1.82 g PS/d as plant sterol esters in PS-enriched margarine	Habitual diets; 3-day dietary recalls (at beginning and end of study) to assess diets	*Total-C* (mg/dL) Baseline: 233 *Total-C*% change compared to control: I ↓ 3.8% ($p < 0.05$) *LDL–C* (mg/dL) Baseline: 152 *LDL–C*% change compared to control: I ↓ 6.5% ($p < 0.05$)
Noakes *et al.,* 2002 (Ref. 41).	Randomized double-blind, crossover trial; three consecutive 3-wk test periods, no wash-out period; 1-wk run-in Study 1	Hypercholesterolemic adults 52 enrolled, 46 completed Mean age ± sd 55 ± 9.7 y M 58 ± 7.3 y F n = 46 Inclusion criteria: age 20–75 y; BMI < 31, no R_X that affect lipids, total-C 209–329 mg/dL, TG < 400 mg/dL The Netherlands	3 servings/d of reduced fat test spread replacing usual margarine, consumed w/meals C = spread w/o added PS I_1 = 2.3 g PS/d as plant sterol esters in PS-enriched spread I_2 = 2.5 g PS/d as plant stanol esters in PS-enriched spread	Usual low saturated fat diet; w/≥5 servings/d of fruit and vegetables, ≥1 of which was high in carotenoids	*Total-C* (mg/dL) After 3-wk intervention: C 244 I_1 229 I_2 226 *Total-C*% change compared to control: I_1 ↓ 6.0%* I_2 ↓ 7.3%* *$p < 0.001$ *LDL–C* (mg/dL) After 3-wk intervention: C 166 I_1 153 I_2 150 *LDL–C*% change compared to control: I_1 ↓ 7.7%* I_2 ↓ 9.5%* *$p < 0.001$ No significant difference between I_1 and I_2
	Randomized double-blind, crossover trial; two consecutive 3-wk test periods, no wash-out period; 1-wk run-in Study 2	Hypercholesterolemic adults 40 enrolled, 35 completed n = 35 Inclusion criteria: BMI < 31, no R_X that affect lipids, total-C 209–329 mg/dL, TG < 400 mg/dL The Netherlands	3 servings/d of reduced fat test spread replacing usual margarine, consumed w/meals C = spread w/o added PS I_3 = 2 g PS/d as plant sterol esters in PS-enriched spread	Diet same as in Study #1	*Total-C* (mg/dL) After 3-wk intervention: C 233 I_3 218 *Total-C*% change compared to control: I_3 ↓ 6.6%* *LDL–C* (mg/dL) After 3-wk intervention: C 161 I_3 145 LDL–C% change compared to control: I_3 ↓ 9.6%* *$p < 0.001$
Ntanios *et al.,* 2002 (Ref. 97).	Double-blind, placebo-controlled, crossover trial. 1-wk run-in; Two consecutive 3-wk test periods w/o wash-out period	Healthy adult Japanese, 53 enrolled, 53 completed Mean age ± sd 45.1 ± 10.4 y n = 53 Inclusion criteria: age 24–67 y; BMI 19–30, healthy, normal diet, no H_X of CVD or ↑ total-C Japan	Two servings/d low-fat test spread consumed w/meals C = spread w/o added PS I = 1.8 g PS/d as plant sterol esters in PS-enriched spread	Habitual Japanese diet. Diets assessed with food frequency questionnaire during run-in period	*Total-C* (mg/dL) After 3 wks of intervention: C 213 I 201 Total-C% change compared to control: I ↓ 5.8% ($p < 0.01$) *LDL–C* (mg/dL) After 3 wks of intervention C 119 I 109 *LDL–C*% change compared to control: I ↓ 9.1% ($p < 0.001$)

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Simons *et al.,* 2002 (Ref. 98).	Multicenter, randomized double-blind, placebo-controlled, parallel 2 X 2 factorial trial with 4-wk test period	Hypercholesterolemic adults, some using statin drugs 154 enrolled, 152 completed Mean age ± sd 60 ± 9 y (I_1) 58 ± 10 y (I_2) 58 ± 11 y (I_3) 62 ± 11 y (I_4) n = 37–29/group Inclusion criteria: LDL–C ≥97 mg/dL, TG < 400 mg/dL, age >18 y Australia	Two servings/d of test margarine, consumed w/meals. Drug intervention: 400 μg/day cerivastatin, or placebo tablet I_1 = tablet + margarine I_2 = placebo tablet + 2 g PS/d as plant sterol esters in PS-enriched margarine I_3 = statin + placebo margarine I_4 = statin + 2 g PS/d as plant sterol esters in PS-enriched margarine	American Heart Association Step I diet; closely supervised by a nutritionist	*Total-C* (mg/dL) Baseline: I_1 295 I_2 297 I_3 282 I_4 298 *Total-C*% change at 4 wk relative to baseline: I_1 ↑2.2% I_2 ↓ 5.3% I_3 ↓ 23.2% I_4 ↓ 28.9% Main effect of PS-enriched margarine: ↓ 6.7% ($p < 0.0001$) *LDL–C* (mg/dL) Baseline: I_1 210 I_2 209 I_3 195 I_4 209 *LDL–C*% change at 4 wk compared to baseline: I_1 ↑2% I_2 ↓ 8.2% I_3 ↓ 32.4% I_4 ↓ 38.5% Main effect of PS-enriched margarine: ↓ 8.1% ($p < 0.0001$)
Tammi *et al.,* 2002 (Ref. 99).	Randomized double-blind, crossover trial, with two 3 month test periods separated by a 6-wk wash out period	Healthy children (age 6 y) enrolled in Finnish STRIP* study 81 enrolled, 79 completed n = 35 F n = 44 M *Special Turku Coronary Risk Factor Project; subjects enrolled as infants; study diet aim was 1:1:1 ratio of PUFA:MUFA:sat fats, cholesterol < 200 mg/d	20 g/d test margarine replaced similar amount of usual dietary fat C = margarine w/o added PS I = 1.6 g PS/d as plant stanol esters in PS-enriched margarine	Continuation of STRIP study diet (low sat fat, low cholesterol) that the subjects had followed for several years	*Total-C* (mg/dL) Baseline: 158 (boys) 176 (girls) *Total-C*% change at 3-mo compared to control I_{boys} ↓ 6.4%* I_{girls} ↓ 4.4%* *$p < 0.05$ *LDL–C* (mg/dL) Baseline: 98 (boys) 123 (girls) *LDL–C*% change at 3-mo compared to control: I_{boys} ↓ 9.1%* I_{girls} ↓ 5.8%* *$p < 0.05$
Temme *et al.,* 2002 (Ref. 100).	Randomized double-blind, crossover trial; no run-in period; two consecutive 4-wk test periods	Healthy adults, 42 enrolled, 42 completed Mean age ± sd 55 ± 9 y n = 42 Inclusion criteria: BMI < 30, no R_X or prescribed diet that affect lipids Report states 70% of Belgium adult population is mildly hypercholesterolemic Belgium	3 portions/d of test margarine eaten w/meals replaced habitual margarine use C = spread w/o added PS I = 2.1 g PS/d as plant sterol esters in PS-enriched spread	Habitual diet	*Total-C* (mg/dL) After 4 wk test period: C 248 I 231 *Total-C*% change compared to control: I ↓ 6.9%* *LDL–C* (mg/dL) After 4 wk test period: C 166 I 150 *LDL–C* % change compared to control: I ↓ 9.6%* *$p < 0.05$

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Vanstone *et al.,* 2002 (Ref. 22).	Randomized double-blind, crossover trial; no run-in period; four 3-wk controlled test periods separated by 4-wk washout periods	Primary familial hyperlipidemia adults 16 enrolled, 15 completed Mean age ± sd 47.8 ± 1.9 y n = 15 Inclusion criteria: age 35–58 y; Total-C 201–348 mg/dL, and TG < 310 mg/dL Canada	3 portions/d test butter eaten w/meals C = butter w/cornstarch added to mimic appearance of PS-enriched butter I_1 =1.8 g PS/d as nonesterified soy sterols in PS-enriched butter I_2 = 1.8 g PS/d as nonesterified soy stanols in PS-enriched butter I_3 = 1.8 g PS/d as 50/50 mix of nonesterified soy sterols/stanols in PS-enriched butter	Controlled feeding of typical American diet, all food and beverage prepared/provided by study, 2 or more meals/d eaten onsite	*Total-C* (mg/dL) At end of 3 wk test period: C 238 I_1 214 I_2 215 I_3 216 *Total-C* % change compared to control: I_1 ↓ 7.8%* I_2 ↓ 11.9%* I_3 ↓ 13.1%* *LDL–C* (mg/dL) At end of three wk test period: C 155 I_1 139 I_2 139 I_3 137 *LDL–C* % change at 3 wk relative to placebo: I_1↓11.3* I_2↓13.4* I_3↓16.0* *p < 0.05 No significant difference between I_1, I_2 and I_3
Christiansen *et al.,* 2001 (Ref. 24).	Randomized double-blind, parallel design; three arm, 6-wk run-in, 6-month test period	Hypercholesterolemic adults 155 enrolled, 134 completed Mean age 50.7 y n = about 45/group Inclusion criteria: total-C ≥ 227 mg/dL, TG < 266 mg/dL Finland	2 servings/d of test spread (rapeseed oil margarine) in place of usual dietary fat C = spread w/o added PS I_1 = 1.5g PS/d as microcrystalline wood-derived (tall oil) nonesterified sterol/stanols in PS-enriched spread I_2 = 3 g PS/d as microcrystalline wood-derived (tall oil) nonesterified sterol/stanols in PS-enriched spread	Habitual Finnish diet; 7-day food diaries "were kept by half of subjects."	*Total-C* (mg/dL) Baseline: 257 *Total-C* % change compared to control: I_1 ↓ 9%* I_2 ↓ 8.3%* *p=0.001 *LDL–C* (mg/dL) Baseline: 166 *LDL–C* % change compared to control: I_1 ↓ 11.3%* I_2 ↓ 10.6%* *p=0.002
Davidson *et al.,* 2001 (Ref. 55).	Randomized double-blind, parallel trial; four arm, 8-wk test period	Healthy adults 84 randomized 77 completed Mean Age 46 y n = 19 (C) n = 19 (I_1) n = 18 (I_2) n = 21 (I_3) Inclusion criteria: total-C < 300 mg/dL, TG < 350 mg/dL, BMI < 35 USA	2 servings/d of reduced-fat test spread, and 1 serving/d of reduced-fat test salad dressing C = spread + salad dressing I_1 = 3 g PS/d as sterol esters in PS-enriched spread; placebo salad dressing I_2 = 6 g PS/d as sterol esters in PS-enriched salad dressing; placebo spread I_3 = 9 g PS/d as sterol esters in PS-enriched spread + PS-enriched salad dressing	Habitual diet supplemented w/3 servings/d of test foods. 3-day diet records collected at wk 0, 4, and 8	*Total-C* (mg/dL) Baseline: 205 *Total-C* % change compared to control: I_1 ↓ 3.9% I_2 ↓ 0.9% I_3 ↓ 4.6% *LDL–C* (mg/dL) Baseline: 130 *LDL–C* % change compared to control: C ↓ 1.3% I_1 ↓ 3.7% I_2 ↓ 1.5% I_3 ↓ 7.7% No significant treatment effects on total-C or LDL–C

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Maki *et al.,* 2001 (Ref. 101).	Randomized double-blind, placebo-controlled, parallel trial, 4-wk run-in; 5-wk test period	Hypercholesterolemic adults 224 enrolled, 192 included in analysis n = 83 (C) n = 75 (I_1) n = 35 (I_2) Mean age ± sd 57.5 ± 10.8 y (C) 58.7 ± 10.6 y (I_1) 60.4 ± 9.7 y (I_2) Inclusion criteria: no R_X that affect lipids, BMI < 35, LDL–C 130–200 mg/dL, TG < 350 mg/dL, BMI < 35 USA	2 servings/d of reduced-fat test spread eaten w/meals C = spread with w/o added PS I_1 = 1.1 g PS/d as soy sterol esters in PS-enriched spread I_2 = 2.2 g PS/d as soy sterol esters in PS-enriched spread	National Cholesterol Education Program Step I, supplemented w/reduced-fat test spread	*Total-C* (mg/dL) Baseline: 238 *Total-C* % change compared to control: I_1 ↓ 5.2%* I_2 – 6.6%* *p < 0.001 *LDL–C* (mg/dL) Baseline: 158 *LDL–C* % change compared to control: I_1 ↓ 7.6%* I_2 ↓ 8.1%* *p < 0.001
Nestel *et al.,* 2001 (Ref. 35).	Randomized single-blinded, crossover trial; 2-wk run-in, three 4-wk test periods w/o wash-out period Study 1	Hypercholesterolemic adults 22 enrolled, 22 completed Mean age ± sd 60 ± 9 y n = 22 Inclusion criteria: Total-C >213 mg/dL, TG < 266 mg/dL Australia	3 servings/d of test foods (low-fat wheat cereal, low-fat bread, spread), one serving eaten w/each meal C = test foods, w/o added phytosterols I_1 = 2.4 g PS/d as soy sterol esters in PS-enriched foods I_2 = 2.4 g PS/d as nonesterified soy stanols in PS-enriched foods	Habitual low sat fat, low cholesterol diet prescribed for cholesterol control; diet assessed by 3-day FFQ during run-in phase	Median *Total-C* (mg/dL) at 4 wk: C 271 I_1 247* I_2 261* *p < 0.001 compared to control Median *LDL–C* (mg/dL) at 4 wk: C 184 I_1 159* I_2 169* *p < 0.05 compared to control I_1 significantly lower than I_2
	Randomized single-blinded, crossover trial; 2-wk run-in followed by two 4-wk test periods w/o wash-out period Study 2	Hypercholesterolemic adults (all Study 1 participants) 15 enrolled, 15 completed Australia	1 serving/d of test dairy spread (butter + margarine blend) eaten w/a meal C = spread w/o added PS I_3 = 2.4 g PS/d as soy sterol esters in PS-enriched dairy spread	Habitual low sat fat, low cholesterol diet prescribed for cholesterol control	*Total-C* (mg/dL) Baseline: 257 *Total-C* % change compared to control: I_3 ↓ 9.8%* *p < 0.001 *LDL–C* (mg/dL) Baseline: 178 *LDL–C* % change compared to control: I_3 ↓ 13.0%* *p = 0.05
Tikkanen 2001 (Ref. 25) ..	Double-blind, placebo-controlled, parallel trial, two arms; 2-wk run-in period w/placebo foods, 3 consecutive 5-wk periods. PS dose doubled w/each successive test period	Hypercholesterolemic adults 78 enrolled, 71 completed Mean age ± sd 54 ± 11 y (C) 57 ± 8 y (I) n = 35 (C) n = 36 (I) Inclusion criteria: age 25–75 y; no familial ↑total-C, no H_X of CAD previous 3 mos, no H_X of revascularization previous 4 mo, no R_X that affect lipids, total-C 232–310 mg/dL; TG < 355 mg/dL Finland	3 servings/d of test foods/d (bread, meat, jam) C = test foods w/o added PS I=1.25 g PS/d for 5 wk, then 2.5 g PS/d for wks 6–10, then 5 g PS/d for wks 11–15. PS as nonesterified wood-derived sterol/stanol mixture in PS-enriched bread, meats, and jam	Subjects received individual dietary advice and kept 3-d food diaries 5 times during the study	*Total-C* (mg/dL) Baseline: C 253 I 263 *Total-C* % change compared to control: I wk_5 ↓ 4.4% I wk_{10} ↓ 6.2% I wk_{15} ↓ 5.5% Significant difference between P and I by repeated measures ANOVA p < 0.05 *LDL–C* (mg/dL) Baseline: C 166 I 173 *LDL–C* % change compared to control: I wk_5 ↓ 5.4% I wk_{10} ↓ 7.9% I wk_{15} ↓ 8.9% Significant difference between C and I by repeated measures ANOVA p < 0.05

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Blair *et al.,* 2000 (Ref. 102).	Randomized double-blind, placebo-controlled, parallel trial, two arms; 8-wk test period with additional 6-wk follow-up	Hypercholesterolemic adults on statin R_x 167 randomized, 141 completed Mean age ± sd 56 ± 10 y n = 72 (C) n = 69 (I) Inclusion criteria: age ≥20 y; LDL–C ≥130 mg/dL, TG ≤350 mg/dL, stable statin dose for >90d USA	3 servings/d of test margarine in place of usual margarine consumptions C = margarine w/o added PS I = 3.0g PS/d as stanol esters in PS-enriched margarine	Habitual diet. Diets assessed by 24-hr recalls	*Total-C* (mg/dL) Baseline: 231 *Total-C* % change compared to control: I ↓ 7% ($p < 0.0001$) *LDL–C* (mg/dL) Baseline: 147 *LDL–C* % change compared to control: I ↓ 9.6% ($p < 0.0001$)
Hallikainen *et al.,* 2000B (Ref. 39).	Randomized double-blind, crossover trial; 2-wk run-in period; three consecutive 4-wk test periods	Mildly hypercholesterolemic adults 42 enrolled, 34 completed Mean age ± sd 48.8 ± 8.1 y n = 34 Inclusion criteria: age 30–65 y, Total-C 186–271 mg/dL, TG < 220 mg/dL Finland	2–3 portions/d of test margarines eaten with meals C = margarine w/o added PS I_1 = 2 g PS/d as plant stanol ester in PS-enriched margarine I_2 = 2 g PS/d as plant sterol ester in PS-enriched margarine	Step I diet. Diet was assessed with 4-day food records at the end of each period	*Total-C* (mg/dL) At end of 4 wk: C 236 I_1 213 I_2 218 *Total-C* % change compared to control: I_1 ↓ 9.2%* I_2 ↓ 7.3%* *$p < 0.001$ *LDL–C* (mg/dL) At end of 4 wk: C 162 I_1 141 I_2 145 *LDL–C* % change compared to control: I_1 ↓ 12.7%* I_2 ↓ 10.4%* *$p < 0.001$ I_1 and I_2 not significantly different
Hallikainen *et al.,* 2000a (Ref. 53).	Randomized single-blind crossover trial; 1-wk run-in period, five 3-wk test periods	Hypercholsterolemic adults 22 entolled, 22 completed Mean age 50.5 ± 11.7 n = 22 Inclusion criteria: Total-C 194–329 mg/dL Finland	2–3 portions of test margarine w/meals C = margarine w/out added PS I_1 = 0.8 g PS/d as plant stanol esters I_2 = 1.6 g/d PS/d as plant stanol esters I_3 = 2.4 g PS/d as plant stanol esters I_4 = 3.2 g PD/d as plant stanol esters	Subjects consumed a standardized background diet	*Total-C* (mg/dL) Baseline: 266 ± 50 mg/dL0 *Total-C* % change compared to control: I_1 ↓ 2.8% I_2 ↓ 6.8%* I_3 ↓ 10.3%* I_4 ↓ 11.3%* *LDL–C* % change compared to control: I_1 ↓ 1.7% I_2 ↓ 5.6% I_3 ↓ 9.7%* I_4 ↓ 10.4%* *$p < 0.05$
Jones *et al.,* 2000 (Ref. 40).	Randomized double-blind, crossover trial; no run-in period; three 3-wk controlled feeding test periods separated by 5-wk washout periods	Hyperlipidemic males 18 enrolled, 15 included in analyses n = 15 Inclusion criteria: Age 37–61 y; Total-C 232–387 mg/dL, TG < 266 mg/dL Canada	3 servings/d of test margarine, eaten with meals C = margarine w/o added PS I_1 = 1.84 g PS/d as plant sterol esters in PS-enriched margarine I_2 = 1.84 g PS/d as plant stanol esters in PS-enriched margarine	Controlled diet formulated to meet Canadian Recommended Nutrient Intakes. All food and beverage prepared/provided by study; at least 2 meals/d eaten onsite	*Total-C* (mg/dL) Baseline: C 250 I_1 247 I_2 246 *Total-C* % change compared to control: I_1 ↓ 9.1%* I_2 ↓ 5.5% *$p < 0.02$ *LDL–C* (mg/dL) Baseline: C 172 I_1 166 I_2 168 *LDL–C* % change compared to control: I_1 ↓ 13.2%* I_2 ↓ 6.4%* * *$p < 0.02$ I_1 significantly lower than I_2

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Plat *et al.* 2000 (Ref. 87)	Randomized double-blind, placebo-controlled, crossover trial. Three consecutive 4-wk test periods, no washout periods	Healthy, normal or mildly hypercholesterolemic subjects 40 enrolled, 39 completed Mean age ± sd 31 ± 14 y n = 39 Inclusion criteria: age 18–65 y; Total-C < 250 mg/dL; TG < 266; BMI < 30, BP < 160/95, no R_X or diet that affect lipids, no H_X of CVD The Netherlands	One serving/d of test margarine and 3 servings/d of test shortening (in cookies/cakes) with each meals C = margarine & shortening w/o added PS I_1 = 2.5 g PS/d as stanol ester in PS-enriched margarine eaten w/ lunch I_2 = 2.5 g PS/d as stanol ester in PS-enriched margarine and PS-enriched shortening divided over 3 servings w/meals	Habitual diets supplemented w/test margarine and test cookies/cake. PS-free shortening was provided to subjects for baking and cooking	*Total-C* (mg/dL) At end of 4 wk: C 194 I_1 182 I_2 181 *Total-C* % change compared to control: I_1 ↓ 6.4%* I_2 ↓ 6.6%* *p < 0.001 *LDL–C* (mg/dL) At end of 4 wk C 118 I_1 106 I_2 106 *LDL–C* % change compared to control: I_1 ↓ 9.9%* I_2 ↓ 10.2%* *p < 0.001
Vissers *et al.,* 2000 (Ref. 36).	Double-blind, crossover trial; no run-in period; three consecutive 3-wk test periods	Normal adults 60 enrolled, 60 completed age range=18–59 y n = 60 Inclusion criteria: age >17 y; no R_X or prescribed diet that affect lipids, Total-C < 290 mg/dL, TG < 204 mg/dL The Netherlands	Test margarine, divided over multiple portions, eaten with meals in place of usual margarine C = margarine without added PS I_1 = 2.1 g PS/d as rice bran nonesterified oil sterols in PS-enriched margarine (~1 g/d of 4-desmethylsterols) I_2 = sheanut oil triterpenes in margarine	Habitual diets. Diet assessed each period with 24-h diet recall	*Total-C* (mg/dL) At end of 3 wks: C 164 I_1 157 I_2 162 *Total-C* % change compared to control: I_1 ↓ 4.5%* I_2 ↓ 1.2% *p < 0.05 *LDL–C* (mg/dL) At end of 3 wks: C 91 I_1 84 I_2 89 *LDL–C* % change compared to control: I_1 ↓ 8.5%* I_2 ↓ 3.0% *p < 0.05
Andersson *et al.,* 1999 (Ref. 103).	Randomized double blind controlled parallel trial; 4-wk run-in period, three 8-wk test periods	Moderately hypercholesterolemic adults Age ± sd 55.1 ± 7.9 y n = 21 (C) n = 19 (I) Inclusion criteria: Total-C < 330 mg/dL, BMI >30 Sweden	25 g/d margarine provided as 3 single servings C = margarine w/o added PS I_1 = 2 g PS/d as plant stanol esters in PS-enriched margarine	Consumed a test diet	*Total-C* % change compared to baseline C ↓ 8.0% I_1 ↓ 15%* *p = 0.0035 *LDL–C* % change compared to baseline C ↓ 12% I_1 ↓ 19%* *p = 0.0158
Ayesh *et al.,* 1999 (Ref. 104).	Randomized placebo-controlled parallel trial; 21 to 28 d run-in, 21–28 d test period	Healthy adults 24 enrolled, 21 completed Age 30–40 y n = 11 (C) n =10 (I) Inclusion criteria: Total-C 158–255 mg/dL United Kingdom	40 g/d margarine consumed at breakfast and dinner C = margarine w/o added PS I = 8.6 g PS/d as plant sterol esters in PS-enriched margarine	Typical British diet, breakfast and dinner consumed under supervision	*Total-C* % change compared to control: I ↓ 18%* *LDL–C* % change compared to control: I ↓ 23%* *p < 0.0001
Gylling and Miettinen, 1999 (Ref. 105).	Randomized double-blind crossover trial; 1-wk run-in period; two 5 wk test periods	Moderately hypercholesterolemic, postmenopausal women; 24 enrolled Age 50–55 y n = 21 butter period Inclusion criteria: Total-C between 213 and 310 mg/dL Finland	25 g/d butter C = butter w/out added PS I = 2.4 g PS/d as wood sitostanol ester in PS-enriched butter	Subjects were advised to replace 25 g of their normal dietary fat with butter	*Total-C* % change compared to control: I ↓ 8%* *LDL–C* % change compared to control: I ↓ 12%* *p < 0.05

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Hendriks *et al.,* 1999 (Ref. 51).	Randomized, double-blind, crossover trial; no run-in period, four test periods of 3.5 wks	Normocholesterolemic and mildly cholesterolemic adults, 100 enrolled, 80 per test period Age 19–58 y n = 80 Inclusion criteria: Total-C < 290 mg/dL The Netherlands	25 g/d butter or spread consumed at lunch or dinner C_1 = butter w/out added PS C_2 = spread w/out added PS I_1 = 0.8 g PS/d as plant sterol esters in PS-enriched spreads I_2 = 1.6 g PS/d as plant sterol esters in PS-enriched spreads I_3 = 3.2 g PS/d as plant sterol esters in PS-enriched spreads	Habitual diets. Spreads replace an equivalent amount of spreads habitually used	*Total-C* (mg/dL) Baseline: 197 mg/dL *Total-C* % change compared to C_2 I_1 ↓ 4.9%* I_2 ↓ 5.9%* I_3 ↓ 6.8%* *LDL–C* % change compared to C_2 I_1 ↓ 6.7%* I_2 ↓ 8.5%* I_3 ↓ 9.9%* *p < 0.0001
Jones *et al.,* 1999 (Ref. 21).	Randomized double-blind, placebo-controlled, parallel trial with 2 groups; No run-in period; 30-d test period; 20-d follow-up after test period	Hypercholsterolemic adults, 32 enrolled, 32 completed Age 25–60 y n = 16 (C) n = 16 (I) Inclusion criteria: Total-C 252–387 mg/dL Canada	30 g/d test margarine consumed with 3 meals C = margarine w/o added PS I = 1.7 g PS/d sistostanol-containing phytosterols (20% sitostanol, remaining plant sterols are sitosterol, campesterol) as nonesterified tall oil	Controlled feeding regimen; a prudent fixed North American diet formulated to meet Canadian recommended nutrient intakes	*Total-C* (mg/dL) Baseline: C 263 I 260 *LDL–C* % change compared to control: I ↓ 15.5% (p < 0.05)
Nguyen *et al.,* 1999 (Ref. 106).	Multicenter randomized, double-blind, placebo-controlled parallel trial; 4-wk run-in period, 8-wk test period	Mildly hypercholesterolemic adults Age ± sd 51.3 ± 12.0 to 54.5 ± 11.3 y n = 76 (C) n = 71 (I_1) n = 77 (I_2) Inclusion criteria: 20 y, Total-C 200 and 280 mg/dL USA	24 g/d U.S. vegetable oil spread (three 8 g servings/d) C = U.S. vegetable oil spread w/out added PS I_1 = 3 g PS/d as stanol esters in U.S. vegetable oil spread I_2 = 2 g PS/d as stanol esters in U.S. vegetable oil spread	Usual dietary habits maintained	*Total-C* % change compared to control: I_1 ↓ 6.4* I_2 ↓ 4.1* *p < 0.001 *LDL–C* % change compared to control: I_1 ↓ 10.1* I_2 ↓ 4.1* *p < 0.02
Sierksma *et al.,* 1999 (Ref. 29).	Balanced, double-blind crossover trial; 1-wk run-in, 3-wk test period	Healthy adults, 78 enrolled, 76 completed Age 18–62 y n = 75 Inclusion criteria: < Total-C < 309 mg/dL The Netherlands	25 g/d Flora spread, with meals C = Flora spread w/o added PS I_1 = 0.8 g PS/d as nonesterified sterols in PS-enriched Flora spread I_2 = 3.3 g PS/d as esterified sterols in PS-enriched Flora spread	Habitual diets. Phytosterol-containing spread replaced all or part of habitual spread or butter used for spreading	*Total-C* (mg/dL) Baseline: 310 mg/dL *Total-C* (mg/dL) C 196 I_1 188* I_2 194 *LDL–C* (mg/dL) C 122 I_1 114* I_2 119 *Total-C* % change compared to control: I_1 ↓ 3.8%* *LDL–C* % change compared to control: I_1 ↓ 6.0%* *p < 0.05
Westrate and Meijer, 1998 (Ref. 31).	Balanced, Randomized double-blind crossover trial; 5-d run-in, four test periods of 3.5 wks	Normocholesterolemic and mildly hypercholesterolemic adults, 100 enrolled, 95 completed Mean age ± sd 45 ± 12.8 y n = 95 Inclusion criteria: Total-C < 310 mg/dL The Netherlands	30 g/d margarine consumed at lunch and dinner C = Flora spread w/o added PS I_1 = 2.7 g PS/d as plant stanol esters (2.7 g/d I_2 = 3.0 g PS/d as soybean sterol esters I_3 = 1.6 g PS/d as rice bran nonesterified sterols I_4 = 2.9 g PS/day as sheanut nonesterified sterols Stanol source: wood	Test margarine replaced margarines habitually used	*Total-C* (mg/dL) Baseline: 207 *Total-C* % change compared to control: I_1 ↓ 7.3%* I_2 ↓ 8.3%* I_3 ↓ 1.1% I_4 ↓ 0.7% *LDL–C* % change compared to control: I_1 ↓ 13%* I_2 ↓ 13%* I_3 ↓ 1.5% I_4 ↓ 0.9% *p < 0.05

TABLE 1—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN CONVENTIONAL FOODS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Niinikoski *et al.,* 1997 (Ref. 107).	Randomized double-blind, placebo-controlled parallel trial; no run-in period, 5-wk test period	Normocholesterolemic adults, 24 enrolled Age 24–52 y n = 12 (C) n = 12 (I) Inclusion criteria: not provided Finland	24 g margarine consumed in 3 portions C = margarine w/out added PS I = 3 g PS/day as esterified sitostanol	Habitual diet. Replace normal dietary fat with test rapeseed oil margarine	*Total-C* (mg/dL) Baseline: 197 *Total C* % compared to control C ↓ 11 I ↓ 31* *p < 0.05
Pelletier *et al.,* 1995 (Ref. 30).	Randomized, crossover trial; 1-wk run-in, two test periods of 4 wks	Normolipidemic men Mean age ± sd 22.7 ± 2.6 y n = 12 Inclusion criteria: light smokers and normal physical activity France	50 g/d butter as part of a normal diet C =butter w/out added PS I = 0.74 g PS/d as soybean nonesterified sterols	Controlled but normal diet	*Total-C* % change compared to control: I ↓ 10%* *LDL–C* % change compared to control: I ↓ 15%* *p < 0.05
Miettinen *et al.,* 1994 (Ref. 28).	Randomized double-blind, placebo-controlled parallel trial; 6-wk run-in, 9-wk test period	Hypercholesterolemic adults, 31 enrolled Mean age ± sd 45 ± 3 y n = 31 Inclusion criteria: Total-C >232 mg/dL Finland	50 g rapeseed oil mayonnaise, with meals C = mayonnaise w/out added PS I_1 = 0.7 g PS/d as nonesterified sitosterol in mayonnaise I_2 = 0.7 g PS/d as nonesterified sitostanol in mayonnaise I_3 = 0.8 g PS/d as sitostanol ester in mayonnaise	Habitual diets. Advised to replace 50 g of typical daily fat with mayonnaise containing rapeseed oil	*Total-C* % change compared to control: I_1 ↓ 7.7% I_2 ↓ 0.4% I_3 ↓ 7.4%* *LDL–C* % change compared to control: I_1 ↓ 7.0% I_2 ↓ 1.2% I_3 ↓ 7.7%* *p < 0.05
Blomqvist *et al.,* 1993 Vanhanen *et al.,* 1993 (Ref. 108).	Randomized double-blind placebo controlled parallel trial; 4-wk run-in, 6-wk test period	Hypercholesterolemic adults, 37 enrolled Mean age ± sd 43–48 ± 2 y n = 33 (C) n =34 (I) Inclusion criteria: Total-C >232 mg/dL Finland	50 g rapeseed oil mayonnaise, with meals C = mayonnaise w/out added PS I = 3.4 g PS/d as sitosterol ester in mayonniase	Habitual diets. Advised to replace 50 g of daily fat intake with 50 of mayonnaise containing rapeseed oil	*Total-C* % change compared to control: C ↓ 2.7 I ↓ 17.0* *LDL–C* % change compared to control: C ↓ 1.5 I ↓ 14.3* *p < 0.051

[1] Weight represents nonesterified sterols or stanols.

TABLE 2—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN SUPPLEMENTS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION

Study	Design	Population	Intervention	Diet	Results
Nonesterified Phytosterols					
Denke 1995 (Ref. 65)	Non-random, non-blinded, 3 sequential 3-mos trial periods separated by 3-mos washout periods.	Moderately hypercholesterolemic males. 33 enrolled, 33 completed Age range 31–70 y Subjects' characteristics: mean LDL–C with Step I diet 175 mg/dL, TG < 250 mg/dL, mean BMI 26.2 USA	(1) Gelatin capsules containing tall oil sitostanol suspended in safflower oil; 3 doses/d of 4 capsules (total 12 capsules/d) taken with meals. (2) Cholestyramine supplied in flavored bars. I_1 = 3 g/d sitostanol[1] I_2 = cholestyramine I_3 = sitostanol + cholestyramine	Step I diet (control) during intervention and washout periods.	*Total-C* (mg/dL) Baseline: 239 *Total-C* % change compared to Step I diet: I_1 ↓ 0.5% I_2 ↓ 7.1%* I_3 ↓ 8.9%* *LDL–C* (mg/dL) Baseline: 175 *LDL–C* % change from Sep 1 diet: I_1 ↓ 1.8% I_2 ↓ 12.6%* I_3 ↓ 14.8%* *p < 0.001 compared to preceding and subsequent washout periods.

TABLE 2—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN SUPPLEMENTS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
McPherson *et al.,* 2005 (Ref. 66).	Randomized, double blind, placebo-controlled, parallel design; four arms; 6-wk trial period.	Healthy adults 52 enrolled, 52 completed. Mean age ± sd 46.5 ± 8.1 y (tablets) 50.7 ± 12.5 y (capsules) tablet trial n = 13 (I_T) n = 12 (P_T) n = 27 (capsule trial) Inclusion criteria: LDL–C 70–190 mg/dL, TG < 300 mg/dL USA	Dietary supplement of rapidly disintegrating tablets or slowly disintegrating capsules, twice/d with meals. C_T = lecithin-containing tablets w/o PS. C_C = lecithin-containing capsules w/o PS. I_T = 1.26 g PS/d as spray-dried plant stanol/lecithin emulsion in tablets. I_C = 1.26 g PS/d as spray-dried plant stanol/lecithin emulsion in gelatin capsules.	AHA heart healthy diet ...	*Total-C* (mg/dL) Baseline: C_T 195 I_T 186 C_C 198 I_C 203 *Total-C* % change compared to control: I_T ↓ 4.8% I_C ↓ 1.9% No significant differences between I_T and I_C and control *LDL–C* (mg/dL) Baseline: C_T 121 I_T 117 C_C 123 I_C 235 *LDL–C* % change relative to placebo: I_T ↓ 10.4%* I_C ↓ 2.5% * $p < 0.05$ compared to placebo
Goldberg *et al.,* 2006 (Ref. 67).	Randomized double-blind, placebo-controlled, parallel trial, 1-wk run-in, 6-wk test period.	Hyperlipidemic adults taking statins 26 enrolled, 26 completed.. age range 40–78 y n = 13/group Inclusion criteria: Stable statin dose, LDL–C >100 mg/dL, TG < 300 mg/dL USA	Soy stanols as a tableted stanol/lecithin emulsion. 225 mg PS/tablet; 4 tablets twice a day before meals. Starch replaced stanol/lecithin complex in placebo tablets. C = placebo tablet I = 1.8 g PS/d as stanol/lecithin emulsion in tablets	American Heart Association Heart Healthy Diet.	*Total-C* (mg/dL) Baseline: C 197 I 193 *Total-C* % change compared to control: I ↓ 5.7% ($p < 0.05$) *LDL–C* (mg/dL) Baseline: C 119 I 112 *LDL–C* % change compared to placebo: I ↓ 9.1% ($p < 0.05$)
Esterified Phytosterols					
Woodgate *et al.,* 2006 (Ref. 64).	Randomized, double-blind, placebo-controlled trial with 2 groups; 4-wk test period.	Hyperchoelsterolemic adults, 30 enrolled, 29 completed. Age 33–70 y Inclusion criteria: no diabetes, no cholesterol lowering Rx, no prior myocardial infarction or heart surgery	Total of 6 softgel (glyceron) capsules with breakfast and dinner. C = corn oil I = 1.6 g PS/d as stanol esters	Habitual diets	*Total-C* (mg/dL) Baseline: C 266 I 267 *Total-C* % change compared to control I ↓ 8% ($p < 0.05$) *LDL–C* (mg/dL) Baseline: C 207 I 201 *LDL–C* % change compared to control I ↓ 9% ($p < 0.05$)
Acuff *et al.,* 2007 (Ref. 62).	Randomized, double-blind, placebo-controlled, sequential trial; two 4-wk test periods separated by 2-wk washout period.	Hypercholesterolemic adults, 20 enrolled, 16 completed. Mean age ± sd 51 ± 13 y Inclusion criteria: hyperlipidemia, BMI < 30, no lipid lowering R_X, no diseases requiring tmt, no hypertension USA	2 dietary supplement capsules/d, one capsule w/lunch, second capsule w/dinner. C = soy oil capsules. I = 0.8 g PS/d as plant sterol esters divided between 2 capsules	Habitual diets, diets not monitored.	*Total-C* (mg/dL) Baseline: 256 After 4 wk test period: C 242 I 230 *Total-C* % change compared to control: I ↓ 4.7% (not significant) *LDL–C* (mg/dL) Baseline: 177 After 4 wk test period: C 169 I 163 *LDL–C* % change compared to control: I ↓ 3.5% ($p < 0.05$)

TABLE 2—RANDOMIZED CLINICAL TRIALS OF PHYTOSTEROLS IN SUPPLEMENTS AND TOTAL AND LDL CHOLESTEROL CONCENTRATION—Continued

Study	Design	Population	Intervention	Diet	Results
Earnest *et al.,* 2007 (Ref. 63).	Randomized double-blind, placebo-controlled, parallel trial with 2 groups; 12-wk test period.	Mildly hypercholesterolemic adults. 54 enrolled, 54 completed Age 20–70 y Inclusion criteria: LDL–C ≥130 mg/dL USA	4 dietary supplement capsules/d; 2 capsules w/each of 2 meals. C = capsule w/o PS I = 2.6 g PS/d as plant sterol esters divided among 4 capsules	Habitual diets, diets not monitored.	*Total-C* (mg/dL) Baseline: C 232 I 243 After 4 wk test period: C 237 I 234 *Total-C* % change compared to control: I ↓ 6.0% ($p < 0.05$) *LDL–C* (mg/dL) Baseline: P 155 I 165 After 4 wk test period: P 161 I 157 *LDL–C* % change compared to control: I ↓ 9.2% ($p < 0.05$)
Rader and Nguyen, 2000 (Ref. 61).	Randomized, double-blind, placebo-controlled, parallel trial, two arm. 3-wk trial period.	Hypercholesterolemic adults; 160 enrolled, 156 completed. n = 156 Inclusion criteria: Total-C 220–300 mg/dL; TG ≤350 mg/dL; good health USA	3 dietary supplement test capsules/d with meals. C = placebo capsules w/ o PS I = 1 g PS/d as plant stanol esters divided over 3 capsules	Habitual diets	*Total-C* (mg/dL) Baseline: P 245 I 248 *Total-C* % change compared to control: I ↓ 3.0% ($p < 0.05$) *LDL–C* (mg/dL) Baseline: C 154 I 155 *LDL–C* % change compared to control: I ↓ 5.2% ($p < 0.05$)

[1] Weight represents nonesterified sterols or stanols.
Abbreviations Used in table:
C control group/period
I intervention group/period
BMI body mass index
Total-C serum total cholesterol
LDL–C serum low density lipoprotein cholesterol
wk week
y years
PS phytosterols (mixture of sterols and stanols)
mg/dL milligrams per deciliter
g gram
g/d grams per day
w/ with
w/o without
TG serum triglycerides
tmt treatment
mos months
CAD coronary artery disease
CVD cardiovascular disease
Rx prescription drugs
Hx history
Sd standard deviation
d day
RSO Rape seed oil

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Part III

Commodity Futures Trading Commission

17 CFR Part 45

Swap Data Recordkeeping and Reporting Requirements; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 45

RIN 3038–AD19

Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission (CFTC).

ACTION: Proposed Rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission or CFTC") is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules apply to swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, designated contract markets, swap execution facilities, swap dealers, major swap participants, and swap counterparties who are neither swap dealers nor major swap participants (including counterparties who qualify for the end user exception with respect to particular swaps).

DATES: Comments must be received on or before February 7, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD19, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or must be accompanied by an English translation. Contents will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

FOR FURTHER INFORMATION CONTACT: David Taylor, Special Counsel, Division of Market Oversight, 202–418–5488, *dtaylor@cftc.gov,* or Irina Leonova, Financial Economist, Division of Market Oversight, 202–418–5646, *ileonova@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20851.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("CEA" or "Act")[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: providing for the registration and comprehensive regulation of swap dealers ("SDs") and major swap participants ("MSPs"); imposing clearing and trade execution requirements on standardized derivative products; creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real time reporting; and enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight.

B. Swap Data Provisions of the Dodd-Frank Act

To enhance transparency, promote standardization, and reduce systemic risk, Section 728 of the Dodd-Frank Act establishes a newly-created registered entity—the swap data repository ("SDR")[5]—to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data electronically available to regulators.[6]

Section 728 directs the Commission to prescribe standards for swap data recordkeeping and reporting. Specifically, Section 728 provides that:

> The Commission shall prescribe standards that specify the data elements for each swap

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1, *et seq.*

[5] *See also* CEA § 1a(40)(E).

[6] Regulations governing core principles and registration requirements for, and the duties of, SDRs are the subject of a separate notice of proposed rulemaking under Part 49 of the Commission's regulations.

that shall be collected and maintained by each registered swap data repository.[7] These standards are to apply to both registered entities and counterparties involved with swaps:

> In carrying out [the duty to prescribe data element standards], the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.[8]

Section 727 of the Dodd-Frank Act requires that each swap, either cleared or uncleared, shall be reported to a registered SDR. That Section also amends Section 1(a) of the CEA to add the definition of swap data repository:

> The term 'swap data repository' means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.[9]

Section 728 also directs the Commission to regulate data collection and maintenance by SDRs.

> The Commission shall prescribe data collection and data maintenance standards for swap data repositories.[10]

These standards are to be comparable to those for clearing organizations.

> The [data] standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.[11]

Section 729 of the Dodd-Frank Act added to the CEA new Section 4r, which addresses reporting and recordkeeping requirements for uncleared swaps. Pursuant to this section, each swap not accepted for clearing by any designated clearing organization ("DCO") must be reported to an SDR (or to the Commission if no repository will accept the swap).

Section 729 ensures that at least one counterparty to a swap has an obligation to report data concerning that swap. The determination of this reporting counterparty depends on the status of the counterparties involved. If only one counterparty is an SD, the SD is required to report the swap. If one counterparty is an MSP, and the other counterparty is neither an SD nor an MSP ("non-SD/MSP counterparty"), the MSP must report. Where the counterparties have the same status—two SDs, two MSPs, or two non-SD–MSP counterparties—the counterparties must select a counterparty to report the swap.[12]

In addition, Section 729 provides for reporting to the Commission of swaps neither cleared nor accepted by any SDR. Under this provision, counterparties to such swaps must maintain books and records pertaining to their swaps in the manner and for the time required by the Commission, and must make these books and records available for inspection by the Commission or other specified regulators if requested to do so.[13] It also requires counterparties to such swaps to provide reports concerning such swaps to the Commission upon its request, in the form and manner specified by the Commission.[14] Such reports must be as comprehensive as the data required to be collected by SDRs.[15]

C. International Developments Affecting Swap Data Reporting

An extensive amount of work has been done in the area of over-the-counter ("OTC") derivatives reporting, both internationally and domestically. The Commission has reviewed and considered this work in preparing these proposed regulations.

G–20 and FSB. In November 2008, as a response to the global economic crisis, the G–20 met in Washington. In September 2009, G–20 Leaders agreed in Pittsburgh to critical elements relating to the reform of OTC oversight, including a provision that all "OTC derivatives contracts should be reported to trade repositories."[16]

In October 2010, the Financial Stability Board ("FSB") published a report setting out 21 recommendations addressing implementation of G–20 commitments concerning standardization, central clearing, organized platform trading, and reporting to trade repositories ("TRs").[17] The report stated that regulatory authorities "must have full and timely access to the data needed to carry out their respective mandates."[18] It also provided that:

> Authorities with the legal mandate to set requirements for the reporting of transactions to trade repositories should consider the recommendations set out in the forthcoming report of the FSB Data Gaps and Systemic Linkages Group, and consult with the Committee on the Global Financial System (CGFS), the Bank for International Settlements (BIS), the ODSG and ODRF, to identify the data that should be reported to trade repositories to enable authorities to carry out their respective tasks . * * * Further, as the data must be able to be readily aggregated on a global basis, by end-2011 CPSS and IOSCO, in consultation with authorities, and with the ODRF, should develop both for market participants reporting to trade repositories and for trade repositories reporting to the public and to regulators: (i) minimum data reporting requirements and standardised formats, and (ii) the methodology and mechanism for the aggregation of data on a global basis.[19]

Standard-Setting for Repositories and Data Reporting by CPSS and IOSCO. To fulfill the mandate from FSB noted above, the Committee on Payment and Settlement Systems ("CPSS"), and the International Organization of Securities Commissions ("IOSCO"), which is recognized as the international standard setting body for securities markets, have formed an OTC Derivatives Regulation Task Force ("Task Force"). One purpose of the Task Force is "to take a leading role in coordinating securities and futures regulators' efforts to work together in the development of supervisory and oversight structures related to derivatives markets," and "to coordinate other international initiatives relating to OTC derivatives regulation."[20] Regarding data reporting, the Task Force will produce a data report, scheduled for release in July 2011, which:

> sets out, both for market participants reporting to trade repositories and for trade repositories reporting to the public and to regulators for the purpose of macro- and micro-surveillance: (1) Minimum data reporting requirements and standardised formats; and (2) the methodology and mechanism for the aggregation of data on a global basis.[21]

The Commission serves as a Co-Chair of the Task Force, and will participate in drafting its data report.

In May 2010, the IOSCO Technical Committee and CPSS issued a consultative report, *Considerations for Trade Repositories in OTC Derivatives Markets* ("*CPSS–IOSCO Considerations for Trade Repositories*"), that identified

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[7] CEA § 21(b)(1)(A).

[8] CEA § 21(b)(1)(B).

[9] CEA § 1a(48).

[10] CEA § 21(b)(2).

[11] CEA § 21(b)(3).

[12] *See* CEA § 4r(a)(3).

[13] CEA § 4r(c)(2) requires individuals or entities that enter into a swap transaction that is neither cleared nor accepted by an SDR to make required books and records open to inspection by any representative of the Commission; an appropriate prudential regulator; the Securities and Exchange Commission; the Financial Stability Oversight Council; and the Department of Justice.

[14] CEA § 4r(c).

[15] CEA § 4r(d).

[16] G–20 *Leaders' Statement, The Pittsburg Summit,* September 24–25, 2009.

[17] Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,* October 20, 2010.

[18] *Id.* at 1–2.

[19] Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,* October 20, 2010, at 49.

[20] IOSCO Technical Committee Task Force On OTC Derivatives Regulation, *Terms of Reference,* at 1–2.

[21] *Id.*

twelve factors for consideration by trade repositories and relevant authorities in developing more robust data recordkeeping and reporting arrangements for derivatives.[22] Regarding data reporting and recordkeeping, the report emphasizes that:

> [A] trade repository should promptly record the trade information it receives from its participants. To ensure the accuracy and currency of data, a trade repository should employ timely and efficient record keeping procedures to document changes to recorded trade information resulting from subsequent post-trade events. Ideally, a trade repository should record to its central registry trade information it receives from its participants in real-time, and at a minimum, within one business day.[23]

BIS. The Bank for International Settlements ("BIS") is an international organization that fosters international monetary and financial cooperation and serves as a bank for central banks. It is the parent organization of CPSS, which is a BIS standing committee. BIS's Coordination Group, a senior group of supervisory standard setters comprised of the Chairmen and Secretaries of BIS, IOSCO, and the International Association of Insurance Supervisors, meets twice annually to allow supervisory standard setting organizations to exchange views on priorities and key issues. BIS also publishes statistics on global banking, securities, foreign exchange and derivatives markets. Its *Semiannual Over-the-Counter (OTC) Derivatives Markets Statistics Report* is designed to obtain comprehensive and internationally consistent information on the size and structure of major derivatives markets, including information on swaps and options of foreign exchange, interest rate, equity and commodity derivatives. Every three years, this semiannual survey is part of a world-wide exercise concerning activity on derivatives markets. For these reasons, BIS's expertise is relevant to data recordkeeping and reporting for derivatives.

ODRF and ODSG. The OTC Derivative's Regulators' Forum ("ODRF") brings together representatives from central banks, prudential supervisors, securities regulators and market regulators to discuss issues of common interest, regarding central clearing parties ("CCPs") and TRs for OTC derivatives.[24] As part of its support for application and implementation of standards, the ODRF has developed an outline of trade repository functionality that is desired by its members.[25] The outline is designed to document trade repository attributes that will support the market transparency and data availability objectives set out in the CPSS–IOSCO *Considerations for Trade Repositories.* The outline addresses types, coverage, quality, and frequency of TR data, as well as access to TR data and desirable data elements. When discussing the frequency of data reporting to trade repositories, the outline suggests that transaction data in trade repositories should be updated at least once per day, such that all transaction records can be considered reliable as of the previous day. The OTC Derivatives Supervisors Group ("ODSG") brings together the prudential supervisors of the major OTC derivatives dealers for coordination among them concerning major industry initiatives in the OTC derivatives market. The ODSG has worked cooperatively with major industry participants concerning establishment of trade repositories for several OTC derivatives asset classes.

D. Regulatory Needs for Swap Data

The various parts of the U.S. financial sector are regulated by several agencies and institutions: the Commodity Futures Trading Commission ("CFTC"), Office of the Comptroller of the Currency ("OCC"), Federal Deposit Insurance Corporation ("FDIC"), Federal Reserve Board of Governors ("FRB"), National Credit Union Administration ("NCUA"), and Securities and Exchange Commission ("SEC").

The CFTC's mission is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity and financial futures and options, and to foster open, competitive, and financially sound futures and option markets. The OCC's primary mission is to charter, regulate, and supervise all national banks. The OCC supervises the Federal branches and agencies of foreign banks. The OCC's goal in supervising banks is to ensure that they operate in a safe and sound manner and in compliance with laws requiring fair treatment of their customers and fair access to credit and financial products. The FDIC is an independent agency created by the Congress to maintain stability and public confidence in the nation's financial system by: Insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, and managing receiverships. The Federal Reserve's duties fall into four general areas: Conducting the nation's monetary policy by influencing the monetary and credit conditions in the economy in pursuit of maximum employment, stable prices, and moderate long-term interest rates; supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers; maintaining the stability of the financial system and containing systemic risk that may arise in financial markets; providing financial services to depository institutions, the U.S. government, and foreign official institutions, including playing a major role in operating the nation's payments system. The NCUA is the independent Federal agency that charters and supervises Federal credit unions. The mission of the SEC is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

According to their regulatory mandates, the various U.S. financial regulators need different types of financial information to fulfill their missions. Systemic risk regulators, among other things, need data that will enable them to monitor gross and net counterparty exposures, wherever possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure values net of collateral with a full counterparty breakdown. Such data would allow for the calculation of measures that capture counterparty risk concentrations both for individual risk categories as well as the overall market. Market regulators need data that enables them to promote market competitiveness and efficiency, protect market participants against fraud, manipulation, and abusive trading

[22] Committee on Payment and Settlement Systems, and Technical Committee of the International Organization of Securities Commissions, *Considerations for Trade Repositories in OTC Derivatives Markets: Consultative Report,* May 2010.

[23] *Id.* at 11.

[24] As the ODRF itself states, "the Forum is not a legal entity in its own right with its own separate and independent authority, nor is it a standard setting body." Rather, the ODRF "provides mutual assistance among the [regulatory] Authorities in carrying out their respective responsibilities with respect to OTC derivatives CCPs and TRs. In doing so, the Forum acts without prejudice to each Authority's statutory duties, and to national and otherwise applicable laws." While the ODRF seeks to promote consistent standards, "This does not mean that the Forum will develop its own standards or provide guidance interpreting standards, but rather, the Forum supports the application and implementation of standards set by other bodies in the international regulatory community." OTC *Derivatives* Regulators' Forum, *Scope and Relationship with International Bodies,* March 23, 2010, at 1.

[25] ODRF, *Outline of Trade Repository Functionality Being Sought by Members of the OTC Derivatives Regulators' Forum* (version 2), August 27, 2010.

practices, enforce aggregate speculative position limits as adopted, and ensure the financial integrity of the clearing process.

International financial regulators have similarly varied data needs. As noted in FSB's *Report on Implementing OTC Derivative Market Reforms:*

> The breadth and depth of information needed by authorities varies according to their respective mandates and may continue to evolve over time. Such mandates and objectives include, (i) assessing systemic risk and financial stability; (ii) conducting market surveillance and enforcement; (iii) supervising market participants; and (iv) conducting resolution activities.[26]

When expanding on the level of data that must be collected to satisfy these regulatory functions, the Report addresses both transaction level data and portfolio level data. Regarding transaction level data, the Report says:

> Authorities must be able to retrieve transaction event (flow) data at different levels of granularity, from aggregate statistics to transaction level information. TRs must collect and maintain data at a high level of details. Transaction event data must preserve information on the original terms of the transaction that is complete as practical and possible, and includes, for example, preserving the underlying reference, trading counterparties, price, and the time and date of the original transactions.[27]

Regarding portfolio level data, the Report states that:

> TRs should collect data to enable monitoring of gross and net counterparty exposures where possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure value net of collateral with a full counterparty breakdown. This would allow for the calculation of measures that capture counterparty risk concentration both for individual risk categories as well as the overall market.[28]

E. Existing Trade Repositories

Currently there are global trade repositories for credit, interest rate, and equity derivatives, in various stages of maturity and development.

Credit Swaps Repository. The oldest and most fully developed of the three existing trade repositories is the current repository for credit swaps, the Depository Trust & Clearing Corporation's ("DTCC's") Trade Information Warehouse ("DTCC Warehouse" or "Warehouse"). It is operated by a DTCC subsidiary, The Warehouse Trust Company, LLC, which is registered as a bank and regulated as a member of the U.S. Federal Reserve System, and as a limited purpose trust company by the New York State Banking Department. All G–14 dealers began submitting credit swap data to DTCC Warehouse in 2009, after they committed to reporting all credit swap trades to a repository.

In addition to receiving and maintaining swap data, the Warehouse is substantially focused on providing a number of other services to swap counterparties. It calculates payments on all confirmed CDS contracts and creates real-time bilateral nets for each currency.[29] The Warehouse supports trade processing associated with events of default, such as bankruptcy, failure to pay and restructuring that may trigger pay-outs for the buyer of the credit protection for the underlying reference entity of the credit derivative. Its automated event processing includes coupon payment recalculations, and calculation of credit event recovery and rebate amounts based on auction results, automated exit of the transactions for single-named trades exhausted by the credit event, factor adjustment and re-versioning to new identification for affected index transactions.

Interest Rate Swaps Repository. In January 2010, TriOptima launched the Global OTC Derivatives Interest Rate Trade Reporting Repository ("TriOptima Interest Rate Repository" or "TriOptima IRTRR"), after being selected by the Rates Steering Committee of the International Swaps and Derivatives Association ("ISDA") to provide a trade repository to collect information on trades in the interest rate derivatives market. The TriOptima IRTRR is regulated by the Swedish Financial Supervisory Authority. TriOptima is also a provider of post-trade services for OTC derivatives, including portfolio reconciliation and compression.

Equity Swaps Repository. The newest existing trade repository is DTCC's Equity Derivatives Reporting Repository ("EDRR"), launched on August 5, 2010. EDRR is designed to hold key position data, including product types, notional value, open trade positions, maturity and currency denomination for transactions, and counterparty type indicators. Equity derivatives that EDRR plans to support initially include equity swaps, dividend swaps, variance swaps, portfolio swaps, and swaptions, among other categories. DTCC's MarkitSERV subsidiary will provide operational support, including account management, client sign-up and customer service, and other product management services. Derivatives Repository Ltd., the legal company that runs the EDRR service, is regulated by the United Kingdom Financial Services Authority ("UK FSA").

Existing Repository Data Access. Access to data in the existing repositories requires a Memorandum of Understanding between the primary regulator of a repository and any competent financial regulatory authority that requires the data for regulatory purposes.

F. Consultations With Other U.S. Financial Regulators

In developing the swap data recordkeeping and reporting rule, Commission staff has engaged in extensive consultations with U.S. domestic financial regulators. The agencies and institutions consulted include the Federal Reserve Board of Governors (including the Federal Reserve Bank of New York), Federal Deposit Insurance Corporation, Office of the Comptroller of Currency, Securities and Exchange Commission, and the Department of the Treasury. Commission staff welcomes and will continue consultations with these and other U.S. agencies and institutions while working on the final version of the rule.

G. Consultations With International Financial Regulators

In developing the swap data recordkeeping and reporting rule, Commission staff has had extensive consultations with numerous international financial regulators and organizations. The international organizations and institutions consulted have included the European Commission ("EC"), European Central Bank ("ECB"), Committee of European Securities Regulators ("CESR"), FSB Data Gaps and Systemic Linkages Group ("DGSLG"), UK FSA, and financial regulators from India, Brazil, and Canada, as well as IOSCO and the ODRF. Commission staff welcomes and will continue consultations with these and other international agencies, institutions and organizations while working on the final version of the rule.

H. Data Reporting Approaches

Two Conceptual Approaches to Swap Data Reporting. Conceptually, there are two distinct approaches to swap data reporting. One is commonly referred to as a life-cycle or event flow approach,

[26] Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,* October 20, 2010, at 47.

[27] *Id.* at 48.

[28] *Id.*

[29] For currency swaps involving foreign exchange (sometimes called FX swaps), DTCC also provides central, automated settlement of payments for contracts processed through the Warehouse's Central Settlement Service, in partnership with CLS Bank International.

and the other is a state or snapshot approach.

The life cycle approach is focused on managing the flow of an information system's data throughout the life cycle of the flow from creation and initial storage to the time when it becomes obsolete. Sometimes called an event flow approach, the life cycle method records the details of a swap at its inception, and thereafter records individual events that affect the terms of the swap, when they occur. Systems based on the life-cycle data reporting approach typically are based on, or interrelated with, operational infrastructure for other functions, such as central credit event processing, legal recordkeeping, settlement services, *etc.*

The state or snapshot approach is based on a report of all of the primary economic terms of a swap at its inception, followed by a daily update of the current state of the swap which incorporates all the changes that have happened to the swap since the previous snapshot. This approach also maintains daily synchronization and reconciliation of the data in a repository with the data of the reporting swap counterparty. Unlike the life cycle approach, the state or snapshot approach does not require specifying and prescribing the various events that require updating of data in a repository.

While both approaches are viable methods of data collection, one can be more efficient than the other in different assets classes, due to differences between asset classes in terms of market structure and market processes. While a life-cycle approach is an efficient and effective method of data processing for credit swaps, and may also be suitable for equity swaps, a state or snapshot approach maybe more appropriate for interest rate swaps, commodity swaps, and currency swaps.

Illustration of the Life Cycle Approach. The DTCC Warehouse, currently the only centralized global repository for OTC credit derivatives contracts, follows the life cycle approach to data reporting. The Warehouse supports the trade processing associated with events of default, including bankruptcy, failure to pay, restructuring, and other life cycle credit events which may trigger payouts for the buyer of credit protection for the underlying reference entity that is the subject of the credit swap.

DTCC cites several benefits of using a life cycle approach for credit swaps. These benefits include greater control over payment processing, by providing an automated way for participants to start or stop automatic calculation of coupon payments for a specific trade; minimization of time and cost by automating payment calculations and providing bilateral netting of payments for firms participating in the Warehouse; increased efficiency through streamlining of the trade adherence process for life cycle events; and reduction of risk by handling all credit events and successor events identically for each participant, in the same time frame and with the same deadlines.

DTCC itself recognizes that the life cycle approach is not the optimum approach for all asset classes, and that it often involves ancillary services not part of the core function of a repository. In responding to the *CPSS–IOSCO Considerations for Trade Repositories,* DTCC agreed with comments made by a European Commission staff working paper that highlighted the different fundamental natures of the OTC derivatives asset classes.[30] Due to these fundamental asset class differences, DTCC said, it should be recognized that:

> Therefore, for other asset classes (such as interest rates, equity derivatives, commodities, *etc.*) the nature of the products will dictate the overall operational infrastructure. For example, life cycle credit events are only relevant to CDSs.
>
> DTCC therefore agrees that repository services that fall broadly under (1) position recording, (2) data cleansing, [and] (3) reporting to regulators, the public and participant firms should be provided on a global basis for each OTC asset class. The stated goals of a repository—"to foster transparency, thus supporting the efficiency, stability of and orderly functioning (*i.e.* avoidance of abusive behavior) of financial markets"—are readily achieved through these services.
>
> However, DTCC does not believe it is appropriate to extend the definition of a repository to encompass the aspects of Asset Services (including legal record keeping) and Settlement Services that the TIW (Trade Information Warehouse) provides to the CDS market. These additional services are provided in addition to the trade repository and are complementary to it, as opposed to being an integral part.[31]

In contrast to the DTCC Warehouse, which offers a full suite of repository and life cycle event processing services, the DTCC Equity Derivatives Reporting Repository offers only position recording and reporting services. This aligns with the industry's primary focus in developing this repository.

Illustration of the State or Snapshot Approach. The TriOptima Interest Rate Repository, currently the only centralized, global repository for OTC interest rate derivatives contracts, uses the state or snapshot approach to data reporting for interest rate swaps. The TriOptima IRTRR collects transaction data on interest rate derivatives from market participants and provides regulators with monthly reports summarizing outstanding trade volumes and gross notionals as well as currency breakdown and maturity profiles by product type. It holds information for all types of both cleared and non-cleared OTC derivatives interest rate transactions.

TriOptima cites a number of benefits of using the state or snapshot approach for interest rate swaps. One is that this approach allows the repository to have complete and up-to-date records at all times for all live contracts to which the counterparties are legally bound (whether or not full legal confirmation—which can take weeks—has occurred). Such swap data comprehensiveness is a key consideration for systemic risk monitoring. Another is that the state or snapshot approach avoids a need to specify and prescribe all of the events that would need to be recorded by a repository. TriOptima notes that this would be extremely difficult for interest rate swaps—in contrast to credit swaps where the list of life cycle events is clearly established—due to the wide variety of different types of interest rate swaps, including "bespoke" swaps tailored to the specific needs of non-SD/MSP counterparties (including end users), and to ongoing interest rate swap product innovation. Provision of a daily snapshot also ensures that the swap data in the repository is reconciled and synchronized each day with the reporting counterparty's internal systems, which improves the quality of data in the repository through interfacing with the reporting counterparty's risk management systems.[32]

II. Proposed New Regulations, Part 45

A. Recordkeeping Requirements

The Commission's existing requirements for recordkeeping with respect to futures and options are found in Sections 5(b) and 5(d) of the CEA; §§ 1.31 and 1.35 of the Commission's Regulations; Appendix B to Part 38 of the Commission's Regulations, Core Principle 17, *Recordkeeping;* and Appendix A to Part 39 of the

[30] *European Commission Staff Working Paper Accompanying the Commission Communication* "*Ensuring Efficient, Safe and Sound Derivatives Markets* (SEC 2009) 905 final, 3 July 2009).

[31] Depository Trust & Clearing Corporation, *Response by The Depository Trust & Clearing Corporation to the CPSS–IOSCO Consultative Report,* June 22, 2010, at 8.

[32] *See* TriOptima Letter to the Commodity Futures Trading Commission, October 26, 2010.

Commission's Regulations, Core Principle K, *Recordkeeping.* Collectively, these provisions establish recordkeeping requirements for all designated contract markets ("DCMs"), DCOs, futures commission merchants ("FCMs"), introducing brokers ("IBs"), and members of contract markets. Each such entity or person is generally required to keep full and complete records, together with all pertinent data and memoranda, of all activities relating to the business of the entity or person that is subject to the Commission's authority. All such records must be kept for a period of five years from the date of the record, and must be readily accessible during the first two years of the five-year period. Copies of all such records must be provided, at the expense of the person required to keep the records, upon request by any representative of the Commission or the Department of Justice.

The Commission believes that the rationale for requiring Commission registrants to keep all records relating to the business involved must also govern recordkeeping with respect to swaps by registered entities and swap counterparties. Such records are essential to carrying out the regulatory functions of not only the Commission but all other financial regulators, and for appropriate risk management by registered entities and swap counterparties themselves. The need for such records is also recognized internationally. As CPSS has noted:

> [I]t should be clear that the data recorded in a TR [trade repository] cannot be a substitute for the records of transactions at original counterparties. Therefore, it is important that even where TRs have been established and used, market participants maintain their own records of the transactions that they are a counterparty to and reconcile them with their counterparties or TRs on an ongoing basis (including for their own risk management purposes).[33]

A swap can continue to exist for a substantial period of time prior to its final termination or expiration. During this time, which in some cases can extend for many years, the key economic terms of the swap can change. Thus, recordkeeping requirements with respect to a swap must necessarily cover the entire period of time during which the swap exists, as well as an appropriate period following final termination or expiration of the swap.

Accordingly, the Commission's proposed regulations establishing general swap recordkeeping requirements would require that all DCOs, DCMs, swap execution facilities ("SEFs"), SDs, and MSPs must keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entities or persons with respect to swaps. For all such entities and swap counterparties, these requirements would include, without limitation, records of all data required to be reported in connection with any swap.

The proposed regulations would require that all records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties must be kept throughout the existence of the swap and for five years following final termination of the swap.[34] Records required to be kept by DCOs, DCMs, SEFs, SDs, and MSPs would be required to be readily accessible by the registered entity or person in question via real time electronic access throughout the life of the swap and for two years following the final termination of the swap, and retrievable within three business days through the remainder of the required retention period.

Non-SD/MSP counterparties, including counterparties who qualify as end users counterparties pursuant to Section 2(h)(7) of the CEA with respect to particular swaps, would be required to keep full, complete, and systematic records, including all pertinent data and memoranda, with respect to each swap in which they are a counterparty. Each such record would be required to be retrievable by the counterparty within three business days during the required retention period.

The proposed rules would place lesser recordkeeping requirements on non-SD/MSP counterparties than on SD or MSP counterparties or registered entities because the Commission understands that non-SD/MSP counterparties are less likely than other counterparties or registered entities to have appropriate systems in place for this purpose, and that the number of swaps in which they are counterparties is likely to be smaller than the corresponding number for SDs or MSPs. The Commission believes that this approach also effectuates a policy choice made by Congress in Dodd-Frank to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation. The Commission requests comment concerning whether it should adopt a phase-in approach for recordkeeping requirements by non-SD/MSP counterparties.

Because of the importance of swap data held in SDRs to all of the various regulatory functions of financial regulators across the U.S. financial sector and internationally, the proposed regulations would require that all records required to be kept by SDRs must be kept by the SDR both: (a) Throughout the existence of the swap and for five years following final termination or expiration of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access; and (b) thereafter, for a period determined by the Commission, in archival storage from which they are retrievable by the SDR within three business days. The Commission believes that SDR records must be readily accessible via real time electronic access throughout the existence of the swap and for five years following final termination or expiration of the swap in order to make effective the statutory mandate that SDRs must "provide direct electronic access to the Commission (or any designee of the Commission including another registered entity."[35] Regarding the length of the additional period, commencing five years after final termination or expiration of a swap, during which an SDR must keep swap records in archival storage, the Commission notes that the ODRF has called for trade repositories to "retain historical data for an indefinite period."[36] The Commission seeks comment concerning whether SDRs should be required to keep swap data in archival storage in perpetuity, or whether a limited term in years should be required, and, if so, what archival storage period should be required.

The proposed regulations would also require that all records required to be kept pursuant to the regulations must be

[33] Committee on Payment and Settlement Systems, *Considerations for Trade Repositories in OTC Derivatives Markets,* May 2010, at 1.

[34] The Commission is aware that the European Commission's *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on OTC derivatives, central counterparties, and trade repositories,* SEC(2010) 1058 and 1059, September 15, 2010, would require retention of records concerning swaps for ten years following final termination of a swap. The Commission is proposing to require record retention for five years following final termination of a swap because it believes that a ten-year post-termination retention period may not be necessary for regulatory purposes, and could possibly impose an undue burden and costs on registered entities and swap counterparties. The Commission requests comment concerning the appropriate length of the required post-termination retention period.

[35] Dodd-Frank § 728, CEA § 21(c)(4)(A).

[36] ODRF, Outline *of Trade Repository Functionality Being Sought by Members of the OTC Derivatives Regulators' Forum* (version 2), August 27, 2010, at 2.

open to inspection upon request by any representative of the Commission, the Department of Justice, or the SEC, or by any representative of a prudential regulator as authorized by the Commission. The registered entity or swap counterparty involved would be required to provide copies to the Commission, at the expense of the registered entity or swap counterparty involved, either by electronic means, in hard copy, or both, as requested by the Commission.

As referenced in the proposed regulations, in addition to the general recordkeeping requirements discussed above, specific recordkeeping requirements are being proposed in the Commission's other proposed rulemakings concerning SDRs, DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties.

The Commission requests comment on all aspects of the proposed recordkeeping requirements. The Commission specifically requests comment on the following aspects of the requirements:

- The necessity, for risk management and other business purposes, of the records required to be kept;
- The length of time the records are required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties; the technology with which the records can be kept, any burden created by this requirement, and the usefulness of the records in question over the time required;
- The length of time the records are required to be kept by SDRs, the technology with which the records would be kept, any burden created by this requirement, and the usefulness of the records in question over the time required;
- Whether records should be required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties for ten years following final termination of a swap rather than five years; and
- The requirement that records be accessible in real time for the periods required in the proposed regulation.
- Whether the Commission should adopt a phase-in approach to recordkeeping requirements for non-SD/MSP counterparties.

B. Swap Data Reporting

Swap Data Reporting from Two Stages of a Swap's Existence. The Commission believes that it is important for fulfillment of the purposes of Dodd-Frank to ensure that complete data concerning swaps is maintained in SDRs and available to regulators.[37] Accordingly, the Commission believes that swap data reporting should include data from each of two important stages of the existence of a swap: The creation of the swap, and the continuation of the swap over its existence until its final termination or expiration.[38]

Swap Creation Data Reporting: Two Sets of Data. With regard to the creation of a swap, the proposed regulation calls for reporting of two sets of data generated in connection with creation of the swap: Primary economic terms data, and confirmation data.

Primary Economic Terms Data. The primary economic terms of a swap include all of the terms of the swap verified or matched by the counterparties at or shortly after the execution of the swap. Such terms can differ not only for swaps in different swap asset classes, but also for standardized versus non-standardized swaps. For swaps executed on a SEF or DCM, the primary economic terms will be those specified in the contract listed on the platform in question. For non-standardized or bespoke swaps executed bilaterally, primary economic terms are typically far less standardized. However, counterparties verify the primary or essential economic terms of their swap with each other in some fashion following execution in the case of every swap.[39] The industry does not have a single agreed-upon term for this verification process, which is variously called affirmation, matching, or confirmation of primary economic terms. By whatever name, the proposed regulation would require that all of the terms of the swap thus verified by the counterparties be reported to an SDR.

Minimum primary economic terms data. In order to ensure that the array of primary economic terms reported to an SDR for a swap is sufficient in each case for regulatory purposes, the proposed regulations would require that the primary economic terms reported must include, at a minimum, all of the data elements listed by the Commission in the table of data elements for a swap of the asset class involved, found in Appendix 1 to Part 45.[40] The tables in Appendix 1 to Part 45 are designed to include data elements that reflect generic economic terms and conditions common to most standardized products in the asset class in question.[41] They reflect the focus of required reporting of primary economic terms data on the basic nature and essential economic terms of the product involved, and are provided in order to ensure to the extent possible that most such essential terms are included when required primary economic terms are reported for each swap. The proposed regulations are designed to capture the additional,

[37] It is important to note that the reporting requirements addressed in this proposed rulemaking are separate from the public reporting of swap transactions requirements found in CEA § 2(a)(13)(A) through (F), commonly called real time reporting. Real time reporting requires swap data to be publicly disseminated in a manner that protects anonymity. *See* CEA §§ 2(a)(13)(C)(iii) and 2(a)(13)(E)(i).

It is also important to note that the Commission intends to establish data recordkeeping and reporting requirements for "transitional swaps" in a separate rulemaking. "Transitional swap" means a swap executed on or after the date of enactment of the Dodd-Frank Act (*i.e.,* July 21, 2010) and before the effective date of the final rule issued pursuant to this present rulemaking. CEA Section 2(h)(5) *Reporting Transition Rules* provides that "Swaps entered into on or after [the] date of enactment [of the Dodd-Frank Act] shall be reported to a registered swap data repository or the Commission no later than the later of (i) 90 days after [the] effective date [of Section 2(h)(5)] or (ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation." The Commission anticipates that the rulemaking for transitional swaps will address the records, information and data regarding transitional swaps that must be retained and the timeframe for reporting such information to the SDR or the Commission.

[38] The proposed regulation uses the terms "swap creation data" and "swap continuation data" to refer to these two stages in the life of a swap, instead of referring to these stages as, for example, the "execution" and "life cycle" of a swap, in order to avoid the confusion that could result from the fact that those and other commonly used terms do not have universally accepted definitions and are used in different ways by different people in the derivatives marketplace.

[39] For example, in the case of a swap involving an SD, the SD's front office is where the trade starts. The order is placed, and the SD will price the swap and give the quote to the counterparty. If the counterparty agrees to the details of the trade and is willing to enter into the deal, the trade is executed. Typically, the trade is then captured by the SD's deal capture system, which will validate all the necessary trade economics. An acknowledgement is sent to the counterparty with the trade details, and the counterparty either agrees or disagrees with those details.

[40] When the final regulations are published, the Commission intends to publish such tables in a separate **Federal Register** release, which will be referenced in the final regulations. This procedure is intended to allow the Commission to update the tables from time to time, in response to swap market developments, without a need to issue new regulations. The Commission requests comment concerning this approach, including comments on its possible utility, benefits, or drawbacks; on whether the data tables should instead be published as an Appendix to the final regulations; and on whether the data tables should be published in some other fashion.

[41] On December 22, 2008, the FDIC published in the **Federal Register** a final rule, effective January 21, 2009, that established recordkeeping requirements for "qualified financial contracts" held by insured depository institutions in a "troubled condition." *Recordkeeping Requirements for Qualified Financial Contracts,* 12 CFR part 371, RIN 3064–AD30, December 22, 2008. Both terms are defined in the rule. Upon written notification by FDIC, such an institution is required by the rule to produce certain data required by the FDIC over a period specified by the FDIC. The Commission requests comment on whether it should incorporate the recordkeeping and data reporting requirements in this FDIC rule in its final data reporting rules, in its internal business conduct rules, or in other rules swap-related rules promulgated by the Commission, and, if so, on how such requirements should be incorporated.

unique features of particular swaps in the asset class in question through required reporting of confirmation data, which will include reporting of all terms of each swap.

In addition to the tables included in Appendix 1 to Part 45, Appendix 2 to Part 45 contains a Master Reference Generic Data Fields List, which includes data elements that the Commission believes could be relevant for standardized swaps in some or all swap asset classes. The Commission requests comment on whether any of the data fields in this Master Reference Generic Data Fields List should be included in one or more of the Tables of Required Minimum Primary Economic Terms Data for specific swap asset classes, or in the Minimum Valuation Data table, that are included in Appendix 1 to Part 45.

The minimum primary economic terms data elements listed in the tables in Appendix 1 to Part 45 include futures contract equivalent data fields. The rationale for including those fields is the statutory mandate to the Commission to promulgate regulations to limit the amount of positions, other than bona fide hedge positions, that may be held by any person with respect to commodity futures and option contracts in exempt and agricultural commodities. The Commission would require position data for not only futures and option contracts but also for economically equivalent swaps, if the Commission's proposed rules titled "Position Reports for Physical Commodity Swaps" become final.[42] In order to decrease potential burdens on persons that could be subject to the requirement to file position reports under those proposed rules (should they become final), the Commission requests comment on whether certain aspects of the proposed position reports should be a part of data reporting to SDRs.

Confirmation data. The second set of data generated in connection with the creation of a swap and required by the proposed regulations to be reported is confirmation data. The proposed rulemaking defines "confirmation" as the full, signed, legal confirmation by the counterparties of all of the terms of a swap, and defines "confirmation data" as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. The proposed regulations would require reporting of confirmation data, in addition to the earlier reporting of primary economic terms data, in order to help ensure the completeness and accuracy of the data maintained in an SDR with respect to a swap. Reporting of the terms of the confirmation, which has the assent of both counterparties, provides a means of fulfilling the statutory directive that an SDR "shall confirm with both counterparties to the swap the accuracy of the data that was submitted."[43] The goal of ensuring the highest possible degree of swap data accuracy is shared internationally, as noted in the statement included in the FSB Report *Implementing OTC Derivatives Market Reforms* that "authorities should ensure that market participants report and TRs collect and provide data of the highest reliability practicable * * *"[44]

Who Reports Swap Creation Data. Under the proposed regulations, determination of who must report required swap creation data is based on two criteria. The first criterion is whether the swap is (1) executed on a SEF or DCM and cleared on a DCO; (2) executed on a SEF or DCM but not cleared; (3) not executed on a SEF or DCM but cleared on a DCO; or (4) not executed on a SEF or DCM and not cleared. The second criterion is whether the reporting counterparty (as determined according to § 45.5) is an SD or MSP, or instead is a non-SD/MSP counterparty. Using these two criteria to determine who reports is intended to streamline and simplify the data reporting approach, by calling for reporting of each set of swap creation data by the registered entity or counterparty that has the easiest, fastest, and cheapest access to the set of data in question. The results of this approach are shown in the following table:

REPORTING OF SWAP CREATION DATA

Reporting counterparty	Executed on a platform and cleared	Executed on a platform and not cleared	Not executed on a platform and cleared	Not executed on a platform and not cleared
SD or MSP	SEF/DCM (primary economic terms). DCO (confirmation)	SEF (primary economic terms). SD/MSP (confirmation)	SD/MSP (primary economic terms). DCO (confirmation)	SD/MSP (primary economic terms). SD/MSP (confirmation).
Non-SD/MSP Counterparty	SEF/DCM (primary economic terms). DCO (confirmation)	SEF (primary economic terms). Non-SD/MSP (confirmation).	Non-SD/MSP (primary economic terms). DCO (confirmation)	Non-SD/MSP (primary economic terms). Non-SD/MSP (confirmation).

Who Reports Primary Economic Terms Data. For a swap executed on a SEF or DCM, the Commission anticipates that the swap contract certification process conducted by the SEF or DCM will define all or most of the primary economic terms of the swap, and that all or most of the required primary economic terms data for the swap will be created, in electronic form, on the electronic platform by virtue of execution of the swap contract offered by the SEF or DCM. The proposed regulations therefore call for the SEF or DCM to report the required primary economic terms data for the swap to an SDR in electronic form.[45] In the case of a swap not executed on a SEF or DCM, primary economic terms data will be created by the counterparties' verification of the primary economic terms of the swap. The proposed regulations therefore call for the reporting counterparty (as defined in the proposed regulations) to report the required primary economic terms data for the swap to an SDR in electronic form.

Who Reports Confirmation Data. For cleared swaps, confirmation data will be generated by DCOs in the course of the normal clearing process. The proposed regulations thus call for DCOs to report confirmation data for all cleared swaps to the appropriate SDR in electronic form. For non-cleared swaps, confirmation will be done by the counterparties, in many cases with the assistance of a third-party confirmation

[42] 75 FR 67258 (November 2, 2010).

[43] CEA § 21(c)(2).

[44] FSB, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,* October 20, 2010, at 47.

[45] To ensure that no required primary economic terms data goes unreported in any circumstance, the proposed regulations also contain a "catch-all" clause requiring the reporting counterparty to report any required primary economic terms data not reported by the SEF or DCM.

service provider. The proposed regulations therefore would require the reporting counterparty to report confirmation data for each uncleared swap.

Time of Reporting for Primary Economic Terms Data. Dodd-Frank does not specify the timeframes for reporting of swap data to SDRs for regulatory purposes (as opposed to real time reporting). However, to further the objectives of Dodd-Frank regarding systemic risk mitigation, transparency of the entire swaps market to regulators, and enhanced market surveillance and position limit monitoring, the Commission believes it is important that swap data be reported to SDRs either immediately following execution of the swap—the point of time at which the counterparties become irrevocably bound by contract under applicable law—or within a short but reasonable time following execution, rather than waiting until the time that full, signed, legal confirmation by the counterparties of all terms (not just the primary economic terms) of the swap is completed.[46] Requiring reporting only at or after the time when full legal confirmation is completed, rather than at the time (shortly after execution) when verification of the primary economic terms of the swap occurs, could encourage counterparties to delay full legal confirmation in order to delay the reporting of a swap. In addition, the Commission has been informed by various existing trade repositories, third party service providers, and swap counterparties (notably including non-SD/MSP counterparties) that full legal confirmation of a swap currently can take weeks or even months in an appreciable number of cases.

Allowing the first report of swap data concerning a swap to come from a DCO following clearing, or from a counterparty following full legal confirmation, would result in reporting delays that the Commission does not believe are desirable. Without reporting of primary economic terms data shortly following execution of a swap, regulators examining SDR data for regulatory purposes in many cases would not see the swap in question for hours or in some cases nearly an entire day (if initial reporting followed clearing), or even for days or weeks (if initial reporting followed full legal confirmation). This lack of complete swap data would frustrate fundamental purposes of financial reform, recognized not only by Congress in passing Dodd-Frank, but internationally. As the FSB Report *Implementing OTC Derivatives Market Reforms* states:

> [A]uthorities (i) should ensure that TRs are established to collect and maintain *comprehensive* OTC derivative transaction data; and (ii) must require market participants to report *all OTC transactions, both centrally cleared and non-centrally cleared* accurately and in a timely manner to TRs (or in exceptional circumstances, to relevant authorities). Where transactions are centrally cleared or otherwise terminated early, *reporting to TRs also must capture and preserve information on the original terms of the transaction.*[47]

It would also be undesirable to have all reporting of required swap creation data for cleared swaps done by DCOs, because such a limitation could have anti-competitive effects. Dodd-Frank explicitly permits DCOs to register as SDRs.[48] However, the statute does not limit SDR registration to DCOs, and it contemplates free market competition between registered SDRs on a level playing field (as the existence of its antitrust provisions makes clear).[49] If Commission regulations directed that all reporting of swap creation data for cleared swaps was to be done by DCOs, this could give DCOs a competitive advantage in comparison with other non-DCO SDRs, since non-DCO SDRs would not be able to offer data reporting to an SDR as part of a possible bundling of services to customers. The proposed regulations are designed to ensure fair competition in the provision of SDR services.

Primary Economic Terms Reporting Time for Swaps Executed on a SEF or DCM. In the case of swaps executed on a SEF or DCM, where the platform possess the necessary primary economic terms data in electronic form at the time of execution, the Commission believes that required primary execution data should be reported to an SDR by the SEF or DCM electronically, as soon as technologically practicable following execution of the swap.

Primary Economic Terms Reporting Time for Swaps Not Executed on a SEF or DCM. With respect to swaps not executed on a SEF or DCM, where reporting of required primary economic terms data will be done by the reporting counterparty, the Commission recognizes that the amount of time needed for reporting could vary depending on, among other things, the extent to which the swap is standardized, and whether execution of the swap and verification by the parties of the primary economic terms of the swap occur electronically or manually.

Based on discussions with industry participants, the Commission believes that required primary economic terms data would be available relatively quickly for a swap for which execution and verification of primary economic terms occur electronically, because in many cases all of the required data would already be in an electronic format. The Commission understands that the majority of swaps, which are likely to have an SD or MSP as the reporting counterparty, are likely to fall into this category.

Conversely, the Commission is aware that, where execution and verification of primary economic terms do not occur electronically—a situation which may occur more frequently for the relatively small number of swaps between non-SD/MSP counterparties, including end users—additional time may be needed to put the required data into an electronic format.

Accordingly, the proposed regulation would require reporting counterparty to report required primary economic terms data promptly, but in no event later than:

- 15 minutes after execution of a swap for which execution and verification of primary economic terms occur electronically;
- 30 minutes after execution of a swap which is not executed electronically but for which verification of primary economic terms occurs electronically; or
- In the case of a swap for which neither execution nor verification of primary economic terms occurs electronically, within a time after execution of the swap to be determined by the Commission prior to promulgation of its final data reporting regulations.[50]

The Commission believes that requiring reporting of required primary economic terms data by a reporting counterparty within 15 minutes of a swap's execution would be appropriate for a swap for which execution and verification of primary economic terms occur electronically, because data for such a swap could easily be put into the necessary electronic format if it is not in such a format already.

The Commission also believes that, for a swap which is not executed electronically but for which verification of primary economic terms occurs electronically, the reporting counterparty could need additional time for reporting. The Commission believes that 30 minutes would be a sufficient

[46] Proposed § 45.1(c) defines "confirmation" as the full, signed, legal confirmation by the counterparties of all of the terms of a swap.

[47] FSB, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,* October 20, 2010, at 44 (emphasis added).

[48] Dodd-Frank § 728, CEA § 21(a)(1)(B).

[49] *See* CEA § 21(f)(1).

[50] The Commission requests comment concerning the appropriate deadline for reporting of required primary economic terms data in the case of a swap for which neither execution nor verification of primary economic terms occurs electronically.

amount of time, because the required primary economic terms data for such a swap would have been put into electronic form for verification of primary economic terms, which would not require a significant amount of manual intervention.

Finally, since required primary economic terms data with respect to a swap for which neither execution nor verification of primary economic terms occurs electronically would not likely be already in electronic format, and could require a significant amount of manual intervention, the Commission believes that additional time would be needed for reporting. The Commission believes that 24 hours would be a sufficient amount of time to enable such reporting while still making data for the swap available to regulators without undue delay, based on conversations with industry representatives.

Time of Reporting for Confirmation Data. The proposed regulations follow similar principles for the reporting of required confirmation data. For swaps cleared on a DCO, where the DCO possesses the necessary confirmation data in electronic form at the time the swap is cleared, the Commission believes that required confirmation data should be reported to an SDR by the DCO electronically, as soon as technologically practicable following the clearing of the swap. With respect to swaps not cleared on a DCO, where reporting of required confirmation data will be done by the reporting counterparty, the Commission recognizes that the amount of time needed for reporting could vary, depending on whether the reporting counterparty is an SD or MSP or conversely is a non-SD/MSP counterparty, and depending on whether confirmation is done electronically (via the automated systems of a third-party confirmation service provider or of an SD or MSP counterparty), or is done manually with a resulting need to put the confirmation terms into an electronic format for confirmation reporting purposes.

Accordingly, the proposed regulations would require a DCO to report required confirmation data for a cleared swap electronically, as soon as technologically practicable following clearing of the swap. In the case of an uncleared swap, the proposed regulations would require the reporting counterparty to report required confirmation data electronically, making such a report promptly following confirmation, but in no event later than:

- 15 minutes after confirmation of a swap for which confirmation occurs electronically; or
- In the case of a swap for which confirmation was done manually rather than electronically, within a time to be determined by the Commission prior to promulgation of its final data reporting regulations.[51]

Swap Continuation Data Reporting. As noted earlier, the Commission believes that it is important to fulfilling the purposes of Dodd-Frank to ensure that complete data concerning swaps is maintained in SDRs and available to regulators. This requires reporting of data from the continuation of a swap over its existence from the time it is created until its final termination or expiration.

Two Approaches to Swap Continuation Data Reporting. Swap continuation data reporting can follow either of the two conceptual approaches to data reporting discussed above: the life cycle or event flow approach, or the state or snapshot approach. As previously noted, while both approaches are viable methods of data collection, one can be more efficient than the other in different assets classes, due to differences between asset classes in terms of market structure and market processes. With respect to swap continuation data reporting, the life cycle approach involves managing the flow of an information system's data throughout the data's life cycle from creation and initial storage to the time when it becomes obsolete, while the state or snapshot approach involves a daily update of the current state of the swap which incorporates all the changes that have happened to the swap since the previous snapshot.

Life Cycle Approach for Credit Swap and Equity Swap Asset Classes. The proposed regulations define the swap continuation data required to be reported for credit and equity swaps in terms of the life cycle approach, in part because the Commission understands that the life cycle approach is likely to be followed in the SEC's proposed regulations concerning swap data reporting for security-based swaps in these asset classes. The Commission believes that, to the extent possible, a unified approach to the reporting of swap data over the existence of swaps in asset classes where the SEC and the Commission share jurisdiction may serve the public interest, by avoiding imposition of differing reporting requirements for security-based and non-security-based swaps in the same asset class, and thus avoiding imposition of an undue burden on swap market participants. The Commission is also aware of the work already done by the industry with respect to credit swap data reporting using the life cycle approach, and of the fact that the existing global trade repository for credit swaps, the DTCC Warehouse, uses the life cycle approach. The Commission believes that the life cycle approach may be appropriate for the credit swap asset class, and to an extent for the equity swap asset class, due to their market structure, market processes, and present degree of product standardization.

State or Snapshot Approach for Interest Rate Swap, Currency Swap, and Other Commodity Swap Asset Classes. In light of the work already done by the industry with respect to data reporting in the other swap asset classes—notably the interest rate swap asset class—using the state or snapshot approach, and in light of the fact that the existing global trade repository for interest rate swaps, the TriOptima Interest Rate Repository, uses the state or snapshot approach, the proposed regulations define the swap continuation data required to be reported for interest rate swaps, currency swaps, and other commodity swaps in terms of the state or snapshot approach. The Commission believes that this approach may be better suited to these asset classes, due to their market structure, market processes, and present degree of product standardization.

One reason for this is that the Commission understands that the interest rate swap, currency swap, and other commodity swap asset classes involve numerous and widely varying types of derivatives products and a considerable degree of innovation and change with regard to instrument types. Swaps in these asset classes are often tailored to the specific needs of non-SD/MSP counterparties including end users. Thus, it would be very difficult, if not impossible, to enumerate all of the events that would need to be reported during the continuation of such swaps. This situation contrasts, for example, with the situation prevailing in the credit swap asset class, where a greater degree of standardization exists.

Another reason why the state or snapshot approach may be better suited to the interest rate swap, currency swap, and other commodity swap asset classes is that in the life cycle or event flow approach, reporting counterparties must be able to generate messages to the SDR not only for all relevant life cycle events, but also for correction of errors and omissions in previously submitted data. Such messages must be tracked between reporting counterparties and

[51] The Commission requests comment concerning the appropriate deadline for reporting of required confirmation data in the case of a swap for which confirmation was done manually rather than electronically.

the SDR. This can create a need for manual intervention and produce information backlog. It also creates a need to reconcile data between the SDR and the reporting counterparty's internal systems to ensure that all events have been captured correctly in the SDR's data. These problems are exacerbated in the case of asset classes with relatively less standardization of swap terms. By contrast, the state or snapshot approach eliminates the need to specify and require reporting of all of the individual life cycle events that require updating of SDR data, since the current state of all of the primary economic terms of all existing swaps is submitted daily to the SDR. This daily snapshot ensures that SDR data is reconciled with a reporting counterparty's internal systems on a daily basis, and provides automatic daily corrections of errors and omissions in previously submitted data.

The daily snapshot also ensures that SDR data is continually refreshed by the data contained in the risk management systems of reporting counterparties, who for business reasons normally devote considerable resources to ensuring data correctness. Leveraging the data quality assurance processes of reporting counterparties in this way can provide significant benefits in terms of the accuracy of swap data resident in SDRs.

Finally, the state or snapshot approach eliminates the need for a complex array of exception management messages, and reduces the reporting burden for reporting counterparties by permitting the systems of reporting counterparties to submit one basic type of message, the daily snapshot of updated primary economic terms. The greater technological simplicity thus permitted can be a significant benefit where non-SD/MSP counterparties (including end users) are concerned.

Four Sets of Swap Continuation Data. For the above reasons, with regard to the continuation of a swap, the proposed regulations would call for reporting of four sets of data generated in connection with the continuation of the swap: (1) Life cycle data for credit swaps and equity swaps; (2) contract-intrinsic data for credit swaps and equity swaps; (3) daily state data for interest rate swaps, currency swaps, and other commodity swaps; and (4) valuation data for swaps in all five swap asset classes.

Life Cycle Event Data Reporting for Credit Swaps and Equity Swaps. For the purpose of required continuation data reporting for credit swaps and equity swaps, the proposed regulations require reporting, throughout the existence of a swap until its final termination or expiration, of "life cycle event data", defined as all of the data elements necessary to fully report any life cycle event, or any adjustment due to a life cycle event, that results in a change to data previously reported for the swap in question. The proposed regulations define "life cycle event" to mean any event that would result in a change in the data previously reported to an SDR in connection with the swap, including, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change in the cash flows originally reported; for a credit swap or equity swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy).

Contract-Intrinsic Data Reporting for Credit Swaps and Equity Swaps. For the purpose of required continuation data reporting for credit swaps and equity swaps, the proposed regulations would also require reporting, throughout the existence of a swap until its final termination or expiration, of "contract-intrinsic event data," defined as all of the data elements necessary to fully report any contract-intrinsic event with respect to the swap in question. The proposed regulations define "contract-intrinsic event" to mean a scheduled, anticipated event occurring during the existence of a swap that does not result in any change to the contractual terms of the swap, including, without limitation, the scheduled expiration of a swap, or a previously described and anticipated interest rate adjustment.

State Data Snapshot Reporting for Interest Rate Swaps, Currency Swaps, and Other Commodity Swaps. For the purpose of required continuation data reporting for interest rate swaps, currency swaps, and other commodity swaps, the proposed regulations would require reporting of all "state data" for the swap, reported daily throughout the existence of the swap until its final termination or expiration. The proposed regulations define "state data" to mean all of the data elements necessary to provide a snapshot view, on a daily basis, of all of the primary economic terms of a swap, including any changes to such terms since the last snapshot. The proposed regulations also require that, at a minimum, this data must include all of the economic terms reflected in the appropriate table of data elements for a swap of the asset class involved. These tables can be found in Appendix 1 to Part 45.

Valuation Data Reporting for Swaps in All Swap Asset Classes. Valuation data is defined in the proposed regulations to mean all of the data elements necessary for a person to determine the current market value of a swap, including, without limitation, daily margin, daily mark-to-market, and other measures of valuation to be determined by the Commission prior to promulgation of its final swap data reporting regulations. Swap valuation data is essential to a variety of the regulatory functions of many financial regulators, and is crucial to fulfillment of fundamental purposes of Dodd-Frank, including systemic risk reduction and increased transparency of the derivatives marketplace to regulators. The Commission and other regulators would use valuation information regarding swaps reported to SDRs for prudential oversight, to monitor potential systemic risk, and to monitor compliance with regulatory requirements for SDs and MSPs. The importance of reporting swap valuation data to SDRs is recognized internationally. The FSB Report *Implementing OTC Derivatives Market Reforms* provides that:

> TRs should collect data to enable monitoring of gross and net counterparty exposures, wherever possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure value net of collateral with a full counterparty breakdown. This would allow for the calculation of measures that capture counterparty risk concentrations both for individual risk categories as well as for the overall market.[52]

Accordingly, the proposed regulations would require reporting of valuation data for swaps in all five asset classes.

Who Reports Swap Continuation Data. Under the proposed regulations, determination of who must report required swap continuation data is based on two criteria. The first criterion is whether or not the swap is cleared on a DCO. The second criterion is whether the reporting counterparty (as provided in the proposed regulations) is an SD or MSP, or instead is a non-SD/MSP counterparty. Using these two criteria to determine who reports is intended to streamline and simplify the data reporting approach, by calling for reporting of each set of swap

[52] FSB, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,* October 20, 2010, at 48.

continuation data by the registered entity or counterparty that has the easiest, fastest, and cheapest access to the set of data in question. The results of this approach are shown in the following table:

REPORTING OF SWAP CONTINUATION DATA

Reporting counterparty	Credit and equity asset classes		Interest rate, currency, and other commodity asset classes	
	Cleared	Not cleared	Cleared	Not cleared
SD or MSP	DCO (life-cycle data)	SD/MSP (life-cycle data)	SD/MSP (state snapshot data).	SD/MSP (state snapshot data).
	SD/MSP (intrinsic data)	SD/MSP (intrinsic data)	DCO and SD/MSP (valuation data).	SD/MSP (valuation data).
	DCO and SD/MSP (valuation data).	SD/MSP (valuation data).		
Non-SD/MSP Counterparty	DCO (life-cycle data)	Non-SD/MSP (life-cycle data)	Non-SD/MSP (state snapshot data).	Non-SD/MSP (state snapshot data).
	Non-SD/MSP (intrinsic data)	Non-SD/MSP (intrinsic data).		
	DCO (valuation data)	Non-SD/MSP (valuation data).	DCO (valuation data)	Non-SD/MSP (valuation data).

Who Reports Life Cycle Event Data and Contract-Intrinsic Event Data. For a credit swap or equity swap cleared on a DCO, the Commission understands that the DCO will possess information in electronic form concerning some life cycle events required to be reported over the existence of the swap, due to its status as a central counterparty, while the swap counterparty (as defined in the proposed regulations) will possess information concerning other life cycle events. The proposed regulations therefore call for the DCO to report required life cycle event data in its possession, and for the reporting counterparty to report life cycle event data in its possession. For a credit swap or equity swap that is not cleared, the proposed regulations call for the reporting counterparty to report all required life cycle event data and all contract-intrinsic event data.

The Commission understands that contract-intrinsic event data, which involves anticipated events such as scheduled adjustments, will be available to, and known in advance by, the reporting counterparty. The proposed regulations thus require the reporting counterparty to report all required contract-intrinsic event data for all credit swaps or equity swaps.

Who Reports a Daily Snapshot of State Data. For an interest rate swap, currency swap, or other commodity swap cleared on a DCO, the proposed regulations require the reporting counterparty to report all required state data, on a daily basis.

Who Reports Valuation Data. For cleared swaps in all five swap assets classes, both the DCO and the reporting counterparty may possess different types of valuation data.[53] Therefore, for each cleared swap, the proposed regulations would call for both the DCO and the reporting counterparty to report valuation data. For uncleared swaps in all five swap asset classes, the only source of valuation data will be a counterparty. Accordingly, for each uncleared swap, the proposed regulations would call for the reporting counterparty to report valuation data.

Time of Reporting for Life Cycle and Contract-Intrinsic Event Data. For credit swaps and equity swaps, whether cleared or uncleared, the proposed regulations would require that life cycle event data must be reported on the same day in which any life cycle event occurs, while contract-intrinsic event data must be reported on the same day in which any contract-intrinsic event occurs.

Time of Reporting for a Daily Snapshot of State Data. For interest rate swaps, currency swaps, and other commodity swaps, whether cleared or uncleared, the proposed regulations would require that all required state data for the swap be reported daily through the existence of the swap until its final termination or expiration.

Time of Reporting for Valuation Data. For each swap (regardless of asset class) cleared on a DCO, the proposed regulations would require the DCO to report all valuation data in its possession on a daily basis. Where the reporting counterparty for such a swap is an SD or MSP, the proposed regulations would require the SD or MSP to report all valuation data in its possession on a daily basis. The Commission understands that DCOs and SD or MSP reporting counterparties are likely to have the automated system capacity necessary for such daily reporting. The Commission also understands that, as of the effective date of the final swap data reporting regulations, non-SD/MSP reporting counterparties may not have a comparable level of automated system capacity. Accordingly, where the reporting counterparty for such a swap is a non-SD/MSP counterparty, the proposed regulations would call for the reporting counterparty to report all valuation data in its possession at times to be determined by the Commission prior to its adoption of final swap data reporting regulations. The Commission requests comment concerning the time intervals necessary and appropriate for reporting of valuation data by non-SD/MSP counterparties, and concerning whether the Commission should adopt a phase-in approach to valuation data reporting by non-SD/MSP counterparties.

Swap Asset Classes and Other Swap Classifications. For the purpose of the proposed regulations, a swap would be classified as belonging to one of five swap asset classes, including: (1) Credit swaps; (2) currency swaps (including FX swaps and their variations); (3) equity swaps; (4) interest rate swaps; and (5) other commodity swaps. The proposed regulations would define these swap asset classes as follows.

[53] As noted earlier, the proposed regulations define "valuation data" as including "other measures of valuation as determined by the Commission" in addition to specified valuation measures. The Commission is requesting comment concerning what other measures of valuation of a swap should be required to be reported to an SDR. The Commission's eventual determination as to what other measures of valuation should be required may affect what valuation data must be reported by a DCO or by a reporting counterparty.

"Credit swap" means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness: Any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

"Currency swap" means any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates. This category includes foreign exchange swaps as defined in CEA Section 1a(25).[54]

"Equity swap" means any swap that is primarily based on equity securities, including, without limitation: any swap primarily based on one or more broad-based indices of equity securities; any total return swap on one or more equity indices.

"Interest rate swap" means any swap which is primarily based on one or more reference rates, such as swaps of payments determined by fixed and floating rates.

"Other commodity swap" means any swap not included in the credit swap, currency swap, equity swap, or interest rate swap categories, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

"Asset class" means the particular broad category of goods, services or commodities underlying a swap. The asset classes include interest rate, currency, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

In addition, the Commission anticipates that some swaps subject to its jurisdiction may belong to two other swap categories: mixed swaps, and multi-asset swaps. Generally, a mixed swap is in part a security-based swap subject to the jurisdiction of the SEC and in part a swap belonging to one of the swap asset classes subject to the jurisdiction of the Commission.[55] Multi-asset swaps are those that do not have one easily identifiable primary underlying notional item within the Commission's jurisdiction. The Commission requests comment concerning how such swaps should be treated with respect to swap data reporting, and concerning the category or categories under which swap data for such swaps should be reported to SDRs and maintained by SDRs.

Requests for Comment. The Commission requests comment on all aspects of the proposed data reporting regulation and the definitions associated with it. The Commission specifically requests comment on the following questions relating to this proposed regulation.

- Is the separation of reporting counterparties into two categories (SD or MSP, versus non-SD/MSP counterparty) appropriate, and does it further the purposes described?
- Is the second criterion for swap creation data—division of swaps into four categories depending on whether they are platform executed and cleared or not—appropriate?
- Should the Commission take the internal recordkeeping systems of SDs and MSPs into account as it does in the proposed regulation?
- Is the concept of primary economic terms data, as defined, inclusive enough to capture all of the primary economic terms of a swap upon execution?
- What are the benefits or drawbacks of required reporting of primary economic terms data? Will such reporting serve to verify the accuracy of swap execution data?
- Will the required reporting of confirmation data to an SDR, after the reporting of primary economic terms data to the SDR, help enable the SDR to satisfy the statutory requirement to confirm with both counterparties to the swap the accuracy of the data and information submitted?
- Should back-office confirmation be an acceptable means of confirming a swap?
- What is the proper way to report bunched (block) orders that are allocated to ultimate owners after execution?
- What is the appropriate time delay for reporting of primary economic terms by (1) SDs, (2) MSPs, and (3) non-SD/MSP counterparties? Should the time required differ according to these categories?
- What is the appropriate time delay for reporting of confirmation terms by (1) SDs, (2) MSPs, and (3) non-SD/MSP counterparties? Should the time required differ according to these categories?
- Is there sufficient industry infrastructure in place to support the life cycle data reporting approach for credit and equity swaps?
- Is it appropriate to use the life cycle approach to swap data reporting for credit swaps, or for equity swaps? Why or why not?
- Is it appropriate to use the daily snapshot of state data approach to swap data reporting for interest rate, currency and commodity swaps? Why or why not?
- Is there currently infrastructure in place to support alternative approaches for data reporting for credit, equity, interest rate, currency and commodity swaps?
- Is the definition of "multi-asset swap" appropriate? Why or why not?
- For the purposes of the data recordkeeping and reporting rule, should a multi-asset swap be reported within any of the following categories: credit swaps, equity swaps, currency swaps, commodity swaps, or interest rate swaps? What criteria should govern this determination?
- Should a separate procedure be established for reporting of multi-asset swaps?
- Should the Commission require that, for multi-asset swaps, reporting counterparties must report all required swap data in each asset class involved?
- Should a separate procedure be established for reporting of mixed swaps?
- Is the list of swap asset classes all-inclusive and appropriately defined? Why or why not?
- Should a phase-in approach be used for the time of reporting of confirmation by non-SD/MSP counterparties?
- Should a separate collateral warehouse system be established as part of an SDR to enable systemic risk and prudential regulators to monitor collateral management and gross exposure on a portfolio level for swap participants? How should this be done?
- Should a separate master agreement library system be established as part of an SDR? How should this be done?
- In what asset class should cross-currency swaps be reported? Should this be done in the interest rate swap asset class, or in the currency swap asset class?
- For multi-asset class swaps, should the swap data required to be reported

[54] CEA § 1a(25) provides that: "The term 'foreign exchange swap' means a transaction that solely involves—(A) an exchange of 2 [sic] different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 [sic] currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange."

[55] Dodd-Frank defines "mixed swap" as follows: "The term 'security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and is also based on the value of 1 [sic] or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)." Dodd-Frank § 721(21), CEA § 1a(47)(D).

include all required primary economic terms data for each asset class involved in any leg or part of the swap?

• How should asset class classification be done for the purpose of data reporting? What should be the criteria to classify a swap within a certain asset class?

• Should foreign exchange swaps be included in the currency swap asset class, or should they be treated separately for data reporting purposes? A foreign exchange swap is usually defined as a financial transaction whereby two parties exchange agreed-upon amounts of two currencies as a spot transaction, simultaneously agreeing to unwind the exchange at a future date, based on a rule that reflects both interest and principal payments.

C. Unique Identifiers

Need for Unique Identifiers. Over the course of the last decade, virtually all stakeholders in the financial sector have come to recognize the need for universal, accurate, and trusted methods of identifying particular financial transactions, the legal entities that are parties to financial transactions, and the product type involved in particular financial transactions. Such identifiers will be crucial tools for financial regulators tasked with measuring and monitoring systemic risk, preventing fraud and market manipulation, conducting market and trade practice surveillance, enforcing position limits, and exercising resolution authority. Without such unique identifiers, and the ability to aggregate data across multiple markets, entities, and transactions that they would provide, the enhanced monitoring of systemic risk and greater market transparency that are fundamental goals of Dodd-Frank cannot be fully achieved. Such identifiers would also have great benefits for financial transaction processing, internal recordkeeping, compliance, due diligence, and risk management by financial entities. The Commission believes, in light of recent economic events, that the need for unique identifiers that are based on open standards and are capable of international adoption is now urgent, and that their creation has become essential.

The Commission understands that this conceptual approach is supported by the SEC. Commission staff have consulted closely with SEC staff concerning the unique ID provisions of these regulations. The Commission anticipates that proposed regulations issued by SEC with respect to swap data recordkeeping and reporting will follow the same principles with respect to unique ID that are included in the unique ID provisions of the Commission's proposed regulations. The Commission understands, from discussions with staff of the Department of the Treasury, that this conceptual approach could also be followed by the Office of Financial Research ("OFR"), created in the Department of the Treasury by the Dodd-Frank Act [56] in part for the purposes of standardizing the types and formats of data reported and collected by the OFR with regard to swaps, and of assisting agencies that are members of the Financial Stability Oversight Council ("FSOC") in determining the types and formats of data they will collect, as required by Dodd-Frank.[57]

The Commission's own need for unique identifiers for swap transactions, counterparties, and products arises from a need to aggregate and track information on swap transactions efficiently across a diverse array of market participants, trading venues, and product classes. Unlike centralized futures markets where standardized contracts are traded among participants in a fairly closed system, swaps have been and will continue to be offered in a variety of forms and market venues. There is a close relationship between the swap markets and the underlying cash and futures markets that typically provide the basis for the price references and benchmark prices. In addition, because swaps can serve as a substitute for a transaction in the underlying reference market, market participants are often free to transact in the market of their choice, meaning that an entity may hold positions, for example, in both the futures market and in swaps that reference the futures market price.

With respect to futures markets futures commission merchants, clearing members, and foreign brokers are required to file reports on the positions of large traders (as defined by the Commission), and in doing so to aggregate the positions of traders that may be held in various accounts at the firm, and to report them under a single, unique, identifying account number. Thus, at least with respect to reporting by a single reporting firm, the Commission is able to see the total position of a trader in a particular futures or option contract offered at an exchange. By contrast, swap counterparties will not necessarily conduct their trading through a single entity or trading venue that could easily aggregate an entity's position. Instead, swaps having similar underlying product characteristics may be entered into through a variety of dealers or MSPs, on different DCMs or SEFs, or in bilateral trades. In addition, because each swap contract potentially has a unique set of terms and conditions, as opposed to the common set of terms and conditions that define an exchange-traded futures contract, defining a position or transaction in a particular contract can be complicated.

Unique identifiers would also serve the important goal of enabling the Commission to link together all of the various types of data that it collects in fulfilling its regulatory missions, including data concerning swaps, futures, and large traders. This would enhance the effectiveness of the Commission's various market monitoring tools, and improve its ability to detect and respond to market risks. The ability of unique identifiers to serve as a data linchpin will also be of great benefit to other financial regulators with respect to the different types of data they collect.

Accordingly, the Commission is proposing to require use of unique identifiers designed to ensure the Commission's ability to aggregate transaction and position data for the purpose of conducting market and financial risk surveillance, enforcing position limits, analyzing market data, enforcing Commission regulations, monitoring systemic risk, and improving market transparency. Such unique identifiers will better enable the Commission to ascertain the overall positions and activity of traders in and across markets, track activity over the life of individual transactions, and determine overall activity in particular product classes.

Unique Swap Identifiers. The Unique Swap Identifier ("USI") called for by the proposed rules would be created and assigned to a swap at the time it is executed, and used to identify that particular swap transaction throughout its existence. Swaps will typically have a number of events associated with them over their lifetime, often referred to as life cycle events. These can include economic revisions, counterparty changes, early partial or full terminations, normal terminations, option exercises, credit events, servicing events and cash flow settlements. Because a swap might have a life that extends over many years, it is important that the Commission be able to identify the origins of the transaction as well as events related to that swap over its lifetime. Without the ability to track transactions through the use of a unique

[56] *See* Dodd-Frank Act Title 1, Subtitle B, Sections 151 through 156.

[57] Dodd-Frank Act, Title 1, Sections 153(2) and 153(7).

identifier, it would be difficult for the Commission to separate new transactions from existing ones and to identify changes that have occurred to a specific swap contract. Use of USIs is also essential to collating swap creation data, swap continuation data, and error corrections reported by execution platforms, clearing houses, and counterparties concerning a single swap into a single, accurate data record that tracks the swap over its duration.

The Commission believes that workable USIs for all swaps under its jurisdiction can be created via a "first-touch" approach. For a swap executed on a trading platform, the USI would be created and assigned by the SEF or DCM involved. For a swap executed bilaterally, the USI would be created and assigned by the SD or MSP required to report concerning the swap, or in the case of a swap between non-SD/MSP counterparties would be created by the SDR to which the swap is reported.

The proposed rules would ensure the uniqueness of each USI by specifying that the USI must include two components. The first component would be the unique, extensible, alphanumeric code assigned by the Commission to each registered entity required by the proposed regulations to create USIs, at the time of its registration, for the purpose of identifying that entity in the context of USI creation. The second component would be an extensible, alphanumeric code generated and assigned by the automated systems of the registered entity that must be unique with respect to all such codes generated and assigned by the entity.

The registered entity creating the USI would be required to transmit the USI to all other registered entities and swap counterparties involved with the swap, as soon as technologically practicable after its creation and assignment. Thereafter, all registered entities and swap counterparties would be required to include the USI in all records and all swap data reporting concerning that swap, throughout the existence of the swap and for as long as any records are required to be kept concerning that swap.

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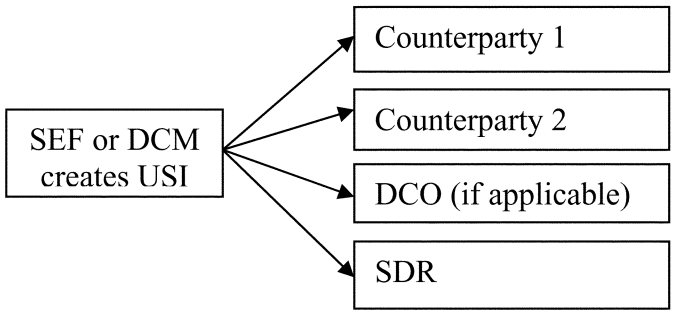
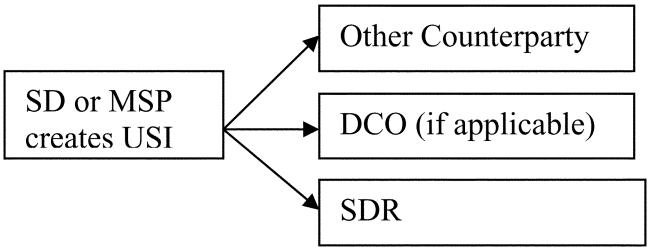
UNIQUE SWAP IDENTIFIER (USI) FLOW CHARTS

Swap executed on a SEF or DCM

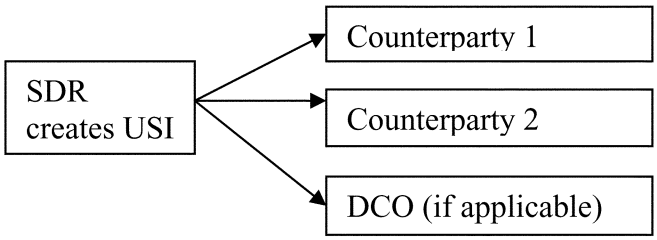


Swap not executed on a SEF or DCM

When the reporting counterparty is an SD or MSP



When both counterparties are non-SD/MSP counterparties



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The required use of USIs would not prohibit the additional use or reporting of other identifiers internally generated by the automated systems of registered entities or counterparties.

The Commission seeks comment concerning the required use of USIs; the benefits or burdens that required use of USIs would create; the practicability of the Commission's proposed method of creating USIs; other possible methods of creating USIs; and possible transmission methods for USIs among registered entities and reporting parties.

Unique Counterparty Identifiers. The Unique Counterparty Identifier ("UCI") called for by the proposed rules would be used for precise, reliable, and unique identification of each counterparty to any swap subject to the Commission's jurisdiction, in all recordkeeping and data reporting concerning swaps. The Commission believes that full realization of the systemic risk mitigation and transparency purposes of Dodd-Frank cannot be fully achieved without mandatory use of UCIs. To assess systemic risk, it is essential to understand how individual financial firms are exposed to specific risks across all their activities, and the interconnectedness between firms. The way that financial firms are identified is critical to understanding those issues. With such identifiers, regulators will be able to aggregate exposures consistently and accurately across the financial system. As noted in February 2010 by Daniel K. Tarullo, member of the Board of Governors of the Federal Reserve System, in testimony before the U.S. Senate:

> Clearly, the [recent financial] crisis exposed the need for a regulatory mechanism that will provide real time analysis across multiple financial markets to identify systemic risk and stresses in market conditions before they occur. A unique entity identifier for data sharing and use in data collections between the Federal financial regulatory agencies is the critical missing component for this analysis.[58]

[58] Daniel K. Tarullo, Member, Board of Governors of the Federal Reserve System, *Equipping Financial Regulators With the Tools Necessary to Monitor*

Continued

An important purpose of the UCI required by the proposed rules would be to enable effective assessment of counterparty positions and aggregation of swap data across asset classes, markets, and related legal entities, in order to effectuate the systemic risk prevention and transparency purposes of Dodd-Frank.

Policy analysis by financial regulators employs legal entity reference data as the basic infrastructure for identifying, describing, classifying, labeling, organizing, and using other information. Such reference data allows identification of interconnections between firms.

In the business world, legal entity reference data can support communication between systems, facilitate transaction processing, and allow for accurate aggregation of positions vis-à-vis individual counterparties or classes of counterparties, something necessary for effective risk management and calculation of margin. Sales, compliance, and due diligence functions also rely on entity identifiers, and would benefit from availability of unique entity identifiers.

Today, there is no universal legal entity identification system available to serve the financial sector and regulatory community.[59] In the absence of such a universal system, private firms and regulators have created a variety of identifiers. This creates inefficiencies for firms, and presents obstacles to regulators and policymakers.

At private firms, because there is no industry-wide legal entity identification standard, tracking counterparties and calculating exposures across multiple data systems is complicated, expensive, and can result in costly errors. For example, maintaining internal identifier databases and reconciling entity identification with counterparties is expensive for large firms and disproportionately so for small firms. In the worst case scenario, identification problems can lead to transactions that are broken or fail to settle.

The lack of a universal identification standard also creates problems for financial regulators. Precise identification of financial firms is necessary to understand systemic risk, which involves entities operating across a range of industries. The problems that firms face in aggregating exposure are magnified in measuring risk across the system. In addition, futures and securities regulators must often identify parents and affiliates of futures commission merchants or broker-dealers manually and by name. Multiple and generally different identifiers for participants can make it difficult to create a consolidated order audit trail.

It is worth noting in this context that leaders in the information technology industry have stated that data standardization is a significant obstacle to using technology to further the needs of private industry and regulators. Complete automation of back-office activities and "straight through processing" remain elusive, in part because of the lack of a universal identifier for legal entities.

The vendor community has attempted to provide solutions for these private and public challenges. However, none is sufficiently robust, comprehensive, and open to serve as an industry-wide standard. Indeed, most of the solutions offered by vendors are proprietary and restricted in use and redistribution. In addition, current identifiers are not sufficiently unique or persistent. Current vendor identifiers that are unique and unrestricted with respect to use and redistribution are limited in scope; for example, limited to institutions engaged in payment activities.

All of these challenges are magnified in the international context. Many in industry and the world regulatory community have recognized the potential benefit of a universal standard for legal entity identification for years. For example, the ODRF has stated that:

> A number of key data items related to registered OTC derivatives transactions span OTC derivative asset classes—*for example, entity representation.* * * * In order to ensure consistency across asset classes, infrastructure platforms and services should model these items in a consistent manner, preferably through the development of open standards in industry forums.[60]

ODRF's *Outline of Trade Repository Functionality* states that trade repository data:

> should represent the counterparties of the transaction records it maintains as precise legal entities, enriched with further counterparty information including affiliate relationships, sector and geography. Affiliate relationship data should enable the analysis of aggregated transaction records in terms of netting, guaranty, and credit support arrangements.[61]

Efforts have been made to create such a standard through domestic and international processes. Heretofore, a lack of focus, funding and investment issues, and competing priorities have prevented consensus and implementation.

However, circumstances have changed. The financial crisis has focused both industry and regulators on this issue. Dodd-Frank's mandate to the Commission and the SEC to promulgate regulations for swap data reporting has created a window of opportunity for the world financial sector to come together in creation of a universal, internationally accepted standard for legal entity identification. The Commission believes that the data reporting regulations to be issued simultaneously by the Commission and the SEC pursuant to Dodd-Frank can and should provide the necessary impetus for achieving this long-sought goal.

The proposed regulations would mandate that each counterparty in any swap subject to the Commission's jurisdiction and executed after the effective date of the Commission's final swap data reporting regulations must be identified in all recordkeeping and reporting by means of a single UCI having the characteristics specified by the Commission.

It should be noted that the UCI requirement included in the proposed regulations differs markedly from the concept of identifying the ultimate beneficial owners of particular futures and options accounts, a subject addressed in a previous Commission proposed rulemaking.[62] Unlike identification of the ownership and control of existing accounts, use of UCIs for swap data reporting would not require modification of existing systems or alteration of existing data. The UCI requirement would only apply prospectively to new swap transactions executed following the effective date of the Commission's final swap data reporting regulations. No substantial alteration of system architecture would be required; instead, only a single data

Systemic Risk, before the Subcommittee on Security and International Trade and Finance, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC, February 12, 2010.

[59] Discussions of the concept of a universal legal entity identification system for financial firms of all types often refer to a legal entity identifier or "LEI." This is the same concept addressed by the proposed rule. The proposal refers to the identifier as a UCI, rather than an LEI, because in the context of this rule it would be used to identify the legal entities who are counterparties to a swap. The Commission recognizes that identifiers provided by a universal legal identification system through an international consensus process could appropriately be used to identify legal entities in various other contexts across the financial sector.

[60] OTC Derivatives Regulators' Forum, *Prioritization and Communication of Regulatory Data Requests: Consolidated Report and Recommendations,* 10 November 2009, at 5 (emphasis added).

[61] ODRF *Outline of Trade Repository Functionality Being Sought by Members of the OTC Derivatives Regulators' Forum,* August 27, 2010 (revision 2), at 3.

[62] CFTC, Account Ownership and Control Report, 17 CFR Part 16, September 9, 2010.

field would need to be added to the information submitted with an order for a swap transaction or with a report of swap data to an SDR. Where compiling the information necessary to create the type of account ownership and control report addressed in the Commission's proposed ownership and control rule would depend on collecting data points not in the possession of any single entity, by contrast, once a legal entity that intends to be a swap counterparty has obtained an UCI—something it would only need to do once—it would possess all the information required for its subsequent use.

Information concerning a counterparty's affiliations must be available in conjunction with UCIs in order to enable regulators to aggregate data across entities and markets for the purpose of effective monitoring of systemic risk. For this purpose, regulators need to be able to identify all swap positions within the same ownership group. Accordingly, the proposed regulations would require each swap counterparty to report all of its corporate affiliations into a confidential, non-public corporate affiliations reference database, maintained and located as determined by the Commission. Data contained in the corporate affiliations reference database would be available only to the Commission, and to other financial regulators via the same data access procedures applicable to data in SDRs, for regulatory purposes. For these purposes, "corporate affiliations" would mean the identity of all legal entities that own the counterparty, that are under common ownership with the counterparty, or that are owned by the counterparty. The corporate affiliation information reported would be required to be sufficient to disclose parent-subsidiary and affiliate relationships, such that each legal entity within or affiliated with the corporate hierarchy or ownership group to which the counterparty belongs would be separately identified. Each counterparty would also be required to report to the corporate affiliations reference database all changes to the information previously reported concerning the counterparty's corporate affiliations, so as to ensure that the corporate affiliation information recorded in the corporate affiliations reference database remains current and accurate at all times.

The corporate affiliations reference database would need to be accessible to both national and international financial regulators in order to make the identification system involving UCIs fully effective for regulatory purposes. To ensure the availability of comprehensive and accurate information, it would therefore appear to be optimal that there be a single corporate affiliations reference database, maintained by a single organization in a single location. The Commission seeks comment on where and by what organization the corporate affiliations database would best be maintained: whether by an international voluntary consensus standards body (discussed below); by a self-regulatory organization; by the Commission; by the OFR; or by some other organization.

The Commission understands that, while a single identifier satisfying the requirements included in the proposed regulations is not currently published by any standard-setting body, market participants have been working diligently to solve practical issues that stand in the way of such publication.

The Commission believes, and understands that the SEC and the OFR also believe, that optimum effectiveness of UCIs for achieving the systemic risk protection and transparency goals of Dodd-Frank—goals shared by financial regulators world-wide—would come from creation of an identification system, including UCIs, on an international basis, through an international "voluntary consensus standards body" as defined in Office of Management and Budget ("OMB") Circular No. A–119 Revised. The National Technology Transfer and Advancement Act of 1995 codified OMB Circular No. A–119, and directs Federal agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.[63] This provision's intent is to eliminate the cost to the government of developing its own standards, decrease the burden of complying with agency regulations, provide incentives and opportunities to establish standards that serve national needs, encourage long-term growth for U.S. enterprises, promote efficiency and economic competition through harmonization of standards, and further the policy of reliance upon the private sector to supply government needs for goods and services. Further, to promote trade and implement the provisions of international treaty agreements, the provision requires Federal agencies to consider international standards in procurement and regulatory applications.

As defined in OMB Circular A–119, "voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. "Voluntary consensus standards bodies" are domestic or international organizations that plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures.

For the reasons set forth above, the Commission proposes to use its rulemaking authority to require the use of UCIs in all swap data reporting subject to its jurisdiction. The Commission prefers to have its swap data reporting regulations prescribe use of a universally-available UCI that is part of an identification system created on an international basis through an international "voluntary consensus standards body," and intends to promulgate final regulations to that effect if such an identification is available sufficiently prior to the implementation date included in the Commission's final swap data reporting regulations. However, the Commission will prescribe its own method for creation of UCIs to be used in swap data reporting subject to the Commission's regulations if no such internationally-accepted identification system acceptable to the Commission is available prior to the implementation date of the final regulations.

The Commission anticipates that a system for publication of UCIs meeting the requirements of the proposed regulations may be developed through an international voluntary consensus body and be available as of the implementation date for the UCI requirement. Dodd-Frank explicitly permits the Commission to "take into consideration any evolving standard of the United States or the international community."[64]

Accordingly, the proposed regulations set forth principles that the Commission believes must govern the identification system used to establish UCIs for swap counterparties, among other purposes. Under these principles, the identification system must:

- Result in a unique identifier format that is capable of becoming the single international standard for unique identification of legal entities in the financial sector on a global basis.
- Be developed via an international "voluntary consensus standards body" as defined in OMB Circular No. A–119 Revised, such as the International Organization for

[63] Public Law 104–113, § 12(d).

[64] CEA § 21(f)(4)(B).

Standardization ("ISO"), and must be maintained by such a body and an associated Registration Authority. Both the standards body and Registration Authority must have a formally documented governance structure acceptable to the Commission.

- Be available to all interested parties on a non-discriminatory, royalty-free or reasonable royalty basis. While reasonable initial and annual fees would be appropriate to cover the cost of issuance, maintenance, and initial and ongoing verification of unique identifiers, fees must not be charged for redistribution, publication or other use by the counterparty identified or any other entity or person, and the identification system must be operated on a non-profit basis. Information concerning the issuance process for new identifiers and a comprehensive, current directory of the UCIs issued by the identification system (but not the entity relationship or affiliation information reported by counterparties), must be available publicly and free of charge.
- Be supported by a trusted and auditable method of verifying the identity of each legal entity receiving a UCI, both initially and at appropriate intervals thereafter. The Registration Authority must maintain reference data sufficient to verify that a user has been correctly identified as an entity. Issuance of identifiers must be speedy and unbiased.
- Maintain robust quality assurance practices and system safeguards acceptable to the Commission.
- Be sufficiently extensible to cover all existing and potential future legal entities of all types that are or may become swap counterparties, are or may become involved in any aspect of the financial issuance and transactions process, or may be subject to required due diligence by financial sector entities.
- Assign only one unique identifier to any legal entity.
- Have a unique identifier format consisting of a single data field, and contain either no embedded intelligence or as little embedded intelligence as practicable.
- Persist despite all corporate events.

In the event that an identification system satisfying these principles is not available as of the effective date of the proposed regulations, the proposed regulations provide that a UCI for each swap counterparty must be created and assigned by an SDR, using the method specified for this purpose in the proposed regulations.

The Commission seeks comment concerning the required use of UCIs; concerning the benefits that required use of UCIs would create; concerning the required reporting of affiliation information by swap counterparties and the scope of affiliation information necessary to achieve regulatory purposes; concerning the principles set forth in the proposed regulations for development of an identification system including UCIs; concerning possible means of achieving international adoption of a suitable identification system for financial sector legal entities that involves UCIs; and concerning what international voluntary consensus standards body can best provide the needed identification standard including UCIs, and what advantages are offered by the standards body recommended by the commenter.

Unique Product Identifiers. The Unique Product Identifier ("UPI") called for by the proposed rules would be used for categorization of swaps with respect to the underlying products referenced in them. While the UPI would be assigned to a particular level of the taxonomy of the asset class or sub-asset class in question, its existence would enable the Commission and other regulators to aggregate transactions at various taxonomy levels based on the type of product underlying the swap. For example, a UPI might identify a swap referencing the NYMEX futures price for light, sweet crude oil as a NYMEX WTI crude oil futures price swap. The taxonomy associated with the UPI would enable regulators to identify the product underlying the swap as a commodity, an energy product, a petroleum product, a crude oil product, or ultimately the NYMEX crude oil futures price, as desired.

The ability to identify underlying products in a categorical way would serve several regulatory purposes. First, it would enhance transparency, by allowing the Commission or other regulators to aggregate and report swap activity at a variety of product type levels. Second, it would enhance position limit enforcement. The Dodd-Frank Act requires the Commission to establish position limits for agricultural and exempt commodities that would span across the futures, options and swap markets. A UPI that provides information indicating what swaps need to be aggregated with other contracts would enhance the Commission's ability to develop and oversee its position limit regulatory program. Third, it would enhance analysis of swap data. For example, classification of swaps via UPIs would facilitate examination of the activity of market participants at various levels of a product class. The Commission is required by Dodd-Frank to prepare semi-annual reports regarding swap market activity, and such classification via UPIs would be necessary for meaningful evaluation of such activity.

Effective use of UPIs for regulatory purposes would require a robust taxonomy for swaps in each swap asset class, as well as decisions concerning what classification scheme to use, and concerning the appropriate level for UPI assignment within such taxonomies.

The Commission seeks comments concerning the most effective classification scheme for swap products, and concerning the taxonomy level within each swap asset class at which UPIs should be assigned. In considering these issues, commenters should take into consideration what levels of aggregation are desirable for reporting swap activity. The Commission also seeks comment concerning the benefits or burdens that required use of UPIs would create, and concerning the optimal implementation date for effective adoption and use of UPIs.

D. Determination of Which Counterparty Must Report

New Section 4r(3) of the CEA specifies the counterparty obligated to report a swap transaction to a swap data repository.[65] Specifically, Section 4r(3) provides that:

> With respect to a swap in which only 1 [sic] counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap * * * With respect to a swap in which 1 [sic] counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap. * * * With respect to any other swap * * * the counterparties to the swap shall select a counterparty to report the swap * * *.

The effect of this provision is to establish a hierarchy of counterparty types for reporting obligation purposes, in which SDs outrank MSPs, who outrank non-SD/MSP counterparties. Where both counterparties are at the same hierarchical level, the statute calls for them to select the counterparty obligated to report.

The Commission believes that, regardless of the possible merits of swap data reporting by both counterparties to a swap, this statutory provision does not permit the Commission by regulation or other regulatory action to require swap data reporting by both counterparties to a swap. New CEA Section 21 does provide, with respect to the duties of an SDR, that an SDR shall "confirm with both counterparties to the swap the accuracy of the data that was submitted."[66] However, the obligation to report swap data to an SDR is distinct from the duty of the SDR to confirm the accuracy of the reported data. Congress could have provided for reporting by both counterparties, but chose instead to establish which counterparty bears the obligation to report.[67] The proposed

[65] Dodd-Frank § 729.

[66] CEA § 21(c)(2).

[67] The Commission does not believe that Dodd-Frank precludes an SDR from accepting and

regulations require reporting of confirmation data for all swaps as a means of verification of the accuracy of the data submitted in connection with each swap.

While Section 4r(a) of the CEA applies explicitly to swaps not accepted for clearing by any DCO, the Commission believes, preliminarily, that for the sake of uniformity and ease of applicability, the duty to report should be borne by the same counterparty regardless of whether the swap is cleared or uncleared. The Commission also believes it is appropriate for SDs and MSPs to have the responsibility of reporting with respect to the majority of swaps, because they are more likely than other counterparties to have automated systems in place that can facilitate reporting.

The proposed regulations establish a mechanism for counterparties to follow in choosing the counterparty to report in situations where both counterparties have the same hierarchical status, in order to prevent confusion or delay concerning this choice. Where both counterparties are SDs, or both are MSPs, or both are non-SD/MSP counterparties, the proposed regulations require the counterparties to agree as one term of their swap transaction which counterparty will fulfill reporting obligations with respect to that swap.

The proposed regulations also provide that, where only one counterparty to a swap is a U.S. person, the U.S. person should be the reporting counterparty. The Commission believes this approach is necessary in order to ensure compliance with reporting requirements in such situations.

The Commission requests comment concerning the possible utility of some type of swap data reporting by both counterparties, and how such dual reporting could be achieved other than by regulations requiring such reporting (which regulations appear barred by Dodd-Frank); regarding whether reporting of confirmation data is a sufficient means of verifying with both parties the accuracy of swap data reported to an SDR, and if not, what other means should be employed; on whether selection of the reporting counterparty should be the same for cleared swaps as for non-cleared swaps, and if not on how the reporting counterparty should be selected for cleared swaps; and on the mechanisms provided in the proposed regulation for counterparties to follow in choosing the counterparty to report in situations where both counterparties have the same hierarchical status, and on possible alternative mechanisms for this purpose.

E. Third Party Facilitation of Swap Data Reporting

While the various reporting obligations established in the proposed regulations fall explicitly on registered entities and swap counterparties, the Commission recognizes that practicality, efficiencies, and decreased cost could in some circumstances be gained by engaging third parties to facilitate the actual reporting of information. The use of such third-party facilitators, however, should not allow the counterparty with the obligation to report to avoid its responsibility to report swap data in a timely and accurate manner. Therefore, the proposed regulations explicitly recognize that registered entities and counterparties required to report under provisions in Part 45 may contract with third-party service providers to facilitate reporting, but, nonetheless, remain fully responsible for reporting as required by the regulations.

The Commission requests comment on the merits of allowing third party facilitation of swap data reporting; on appropriate types of third party facilitators and functions to be used for this purpose; and on the automated system and connectivity technology that may be required or should be used in this connection.

F. Reporting to a Single SDR

The Commission believes that important regulatory purposes of Dodd-Frank would be frustrated, and that regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs. Accordingly, the proposed regulations would require that all swap data for a given swap must be reported to a single SDR, which shall be the SDR to which required primary economic terms data for that swap is first reported. The proposed regulations would also provide that the SDR receiving this initial report must transmit its own identity, together with the USI for the swap (created as provided in § 45.4) to each counterparty to the swap, to the SEF or DCM, if any, on which the swap was executed, and to the DCO, if any, to which the swap is submitted for clearing. Thereafter, the proposed regulations would require that all data reported for the swap by any registered entity or any counterparty to the swap, and all corrections of errors and omissions in previously reported data, must be reported to that same SDR (or to its successor in the event that it ceases to operate).

Where the initial report of required primary economic terms data is made by the SEF or DCM on which a swap is executed, or by an SD or MSP counterparty in the case of a swap not executed on a SEF or DCM, the proposed regulations would provide that the choice of the SDR to receive the initial report shall be made in a manner to be determined by the Commission prior to adoption of its final swap data reporting regulations. Where the initial report of required primary economic terms data is made by a non-SD/MSP counterparty, the proposed regulations would provide that the non-SD/MSP counterparty making that report shall choose the SDR to which the report is made.

The Commission requests comment concerning the benefits or drawbacks of requiring that all swap data for a given swap should be reported to the same SDR; concerning how the choice of the SDR to which swap data is to be reported for a swap should be made, and concerning what registered entity or swap counterparty should make this choice.

G. Data Reporting for Swaps in Asset Classes Not Accepted by Any Swap Data Repository

Section 4r(a)(1)(B) of the CEA recognizes that in some circumstances there may be no SDR that will accept swap data for certain swap transactions. This category of swaps should be limited, since proposed regulations for SDRs set forth in the Commission's separate advance notice of proposed rulemaking regarding SDRs will require an SDR that accepts swap data for any swap in an asset class to accept data for all swaps in that asset class. However, situations could arise where a novel product does not fit into any existing asset class, or where no SDR yet accepts swap data for any swap in an existing asset class. In such situations, the CEA and the proposed regulations would require the reporting counterparty to report to the Commission all swap data required by Part 45 to be reported to an SDR where one is available. This report would be required to be made at a time and in a form and manner determined by the Commission.

The Commission requests comment on whether SDRs that accept data for any swap in a swap asset class should be required to accept data for all swaps

maintaining swap data from both counterparties to a swap. For example, an SDR or its affiliate performing the ancillary service of maintaining the single binding legal record of a swap, such as the "gold" record maintained by the Depository Trust & Clearing Corporation ("DTCC") for credit swaps, would not be barred from receiving dual reporting in that connection.

in that asset class; and on the time and the form and manner of reporting that the Commission should require with respect to data reporting for swaps that must be reported to the Commission because no SDR presently accepts swap data for swaps in the asset class involved.

H. Required Data Standards

Dodd-Frank directs the Commission to "prescribe data collection and data maintenance standards for swap data repositories." [68] It also provides that SDRs shall maintain swap data reported to them "in such form, in such manner, and for such period as may be required by the Commission," and directs SDRs to "provide direct electronic access to the Commission." [69] These requirements are designed to effectuate the fundamental purpose for the legislation's swap data reporting requirements: making swap data available to the Commission and other financial regulators so as to enable them to better fulfill their market oversight and other regulatory functions, increase market transparency, and mitigate systemic risk. Accordingly, the Commission believes that data standards for SDRs must enable them to provide data to the Commission in a format that enables its effective and timely use for such purposes.

The Commission has considered, and will continue to consider, whether it would be preferable to require that all swap data reporting to SDRs be done in a uniform reporting format or via a single data standard. However, the Commission is aware that such a requirement would be likely to require changes to the existing automated systems of some entities and counterparties that will be required to report swap data pursuant to these regulations, and that in some cases such changes could impose a substantial burden on such entities and counterparties. The Commission has been advised by some existing trade repositories that they are able to accept data in multiple formats or data standards from different counterparties, and to map the data they receive into a common data standard within the repository, without undue difficulty, delay, or cost. The Commission understands that automated systems and data standards evolve over time, and that it may be desirable for regulations concerning data standards to avoid locking reporting entities, reporting counterparties, and SDRs into particular data standards that could become less appropriate in the future. Dodd-Frank explicitly permits the Commission to "take into consideration any evolving standard of the United States or the international community." [70]

Finally, the Commission anticipates that the degree of flexibility offered by SDRs concerning data standards for swap data reporting could become an element of marketplace competition with respect to SDRs.

Accordingly, the proposed regulations would require an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission. The proposed regulations would require reporting entities and counterparties to use the facilities, methods, or data standards provided or required by an SDR to which they report data, but also would allow an SDR to permit reporting via various facilities, methods, or data standards, provided that its requirements in this regard enable it to maintain swap data and transmit it to the Commission as the Commission requires. The Commission believes that this approach can provide market participants sufficient flexibility and opportunity to innovate, while also ensuring that SDRs can meet their legal mandates to transmit swap data to the Commission in a timely fashion. Finally, the proposed regulations would delegate to the Director of the Division of Market Oversight the ability to accommodate the needs of different communities of users and to provide the flexibility to adapt to changing circumstances and evolving data standards.

The Commission requests comments concerning the approach to data standards taken in the proposed regulation; and concerning the relative merits of leaving SDRs free to permit reporting via various facilities, methods, or data standards, provided that its requirements in this regard enable it to maintain swap data and transmit it to the Commission as the Commission requires; concerning whether the Commission should require use of a single data standard (*e.g.,* FpML) by all reporting entities and counterparties and by all SDRs.

I. Reporting of Errors and Omissions in Previously Reported Data

Accurate swap data is essential to effective fulfillment of the various regulatory functions of financial regulators. To help ensure data accuracy, the proposed regulations would require registered entities and swap counterparties that report swap data to an SDR or to any other registered entity or swap counterparty to report any errors or omissions in the data they report, as soon as technologically practicable after discovery of any error or omission. Because daily snapshot reports of state data by reporting counterparties by their nature can correct errors or omissions in previous snapshot reports, the proposed regulations provide that for interest rate swaps, commodity swaps, and currency swaps, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making corrections in their next daily report of state data. Because Dodd-Frank permits the Commission to require reporting by only one swap counterparty, and because error and omission correction from non-reporting counterparties is nevertheless desirable to better ensure data accuracy, the proposed regulation (a) would require a non-reporting swap counterparty that discovers any error or omission with respect to any swap data reported to an SDR for its swaps to notify the reporting counterparty promptly of each such error or omission, and (b) would require the reporting counterparty, upon receiving such notice, to report a correction of each such error or omission to the SDR, as soon as technologically practicable after receiving notice of it from the non-reporting counterparty.

To ensure consistency of data within an SDR with respect to error corrections, the proposed regulations would require an entity or counterparty correcting an error or omission to do so in the same data format it used in making the erroneous report. To similarly ensure consistency of data transmitted to the Commission with respect to error corrections, the proposed regulations impose the same requirement on SDRs with respect to transmission of error corrections.

The Commission requests comment concerning the requirement that all entities and counterparties that report swap data to an SDR or to any other registered entity or swap counterparty must report any errors or omissions in the data they report, as soon as technologically practicable after discovery of any error or omission; concerning the mechanism provided in the proposed regulation for reporting of errors or omissions discovered by a non-reporting swap counterparty, and whether any alternative methods for this purpose would be preferable; and

[68] CEA § 21(b)(2).

[69] CEA § 21(c)(3) and (4).

[70] CEA § 21(f)(4)(B).

concerning the requirement for use of the same data format to report errors or omissions that was used to report the erroneous data in question.

III. Related Matters

A. Regulatory Flexibility Act

The RFA[71] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[72] The rules proposed by the Commission would affect SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/MSP counterparties who are counterparties to one of more swaps and subject to the Commission's jurisdiction. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[73] In its previous determinations, the Commission has concluded that DCMs and DCOs are not small entities for the purpose of the RFA.[74]

As SDRs, SDs, MSPs and SEFs are new entities to be regulated by the Commission pursuant to the Dodd-Frank Act, the Commission has not previously determined whether they are small entities for the purpose of the RFA. The Commission is proposing to determine that SDRs, SDs, MSPs and SEFs covered by these rules, for reasons similar to those applicable to DCMs and DCOs, are not small entities for purposes of the RFA.

Specifically, the Commission proposes that SDRs, SDs, MSPs and SEFs should not be considered small entities based on, among other things, the central role they will play in the national regulatory scheme overseeing the trading of swaps. Because they will be required to accept swaps across asset classes, SDRs will require significant operational resources. With respect to SDs, the Commission previously has determined that FCMs should not be considered to be small entities for purposes of the RFA.[75] Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms. Additionally, the Commission is required to exempt from designation entities that engage in a de minimis level of swaps.[76] Similarly, with respect to MSPs, the Commission has also previously determined that large traders are not "small entities" for RFA purposes.[77] Like large traders, MSPs will maintain substantial positions, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. With respect to SEFs, not only will SEFs play a vital role in the national economy, but they will be required to operate as self-regulatory organizations, subject to Commission oversight, with statutory duties to enforce the rules adopted by their own governing bodies. Most of these entities will not be small entities for RFA purposes.

The proposed regulations would require reporting by a non-SD/MSP counterparty only with respect to swaps in which neither counterparty is an SD or MSP. The considerable majority of swaps involve at least one SD or MSP. In addition, most end users and other non-SD/MSP counterparties who are regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), such as pension funds, which are among the most active participants in the swap market, are prohibited from transacting directly with other ERISA-regulated participants.[78] Therefore, the Commission does not believe that the reporting obligations under this rulemaking will create a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

Introduction. Provisions of proposed Commission Regulations 45.2, 45.3, and 45.4 would result in new collection of information requirements within the meaning of the Paperwork Reduction Act ("PRA").[79] The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Regulations 45.2, 45.3, and 45.4—Swap Data Recordkeeping and Reporting Requirements," OMB control number 3038—NEW). If adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

Information Provided by Reporting Entities/Persons. Under proposed Regulation 45.2, SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties—which presently would include an estimated 30,384 entities or persons[80]—would be required to keep records of all activities relating to swaps. Specifically, proposed Regulation 45.2 would require SDRs, SEFs, DCMs, DCOs, SDs, and MSPs to keep complete records of all activities relating to their business with respect to swaps. The proposed regulation would require non-SD/MSP counterparties to keep complete records with respect to each swap in which they are a counterparty. With respect to SDs and MSPs, the Commission has determined that proposed Regulation 45.2 will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act. Requirements for maintaining and recording swap transaction data by SDs and MSPs will be addressed by related rulemakings associated with business conduct standards for SDs and MSPs as part of the Commission's overall

[71] 5 U.S.C. 601 *et seq.*

[72] 5 U.S.C. 601 *et seq.*

[73] 47 FR 18618 (Apr. 30, 1982).

[74] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets; and 66 FR 45604, 45609 (August 29, 2001) discussing derivatives clearing organizations.

[75] 47 FR 18618 (Apr. 30, 1982).

[76] *Id.* at 18619.

[77] 47 FR at 18620.

[78] 29 U.S.C. 1106

[79] 44 U.S.C. 3501 *et seq.*

[80] Because SDRs, MSPs, SDs, DCOs, and SEFs are new entities, estimates were made by the Commission: 15 SDRs, 50 MSPs, 250 SDs, 12 DCOs, and 40 SEFs. The number of DCMs was estimated to be 17 DCMs based on the current (as of October 18, 2010) number of designated DCMs (*http://services.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations&implicit=true&type=DCM&CustomColumnDisplay=TTTTTTTT*). Additionally, for purposes of the Paperwork Reduction Act, the Commission estimates that there would be 30,000 non-SD/MSP counterparties who would annually be subject to the recordkeeping requirements of proposed Regulation 45.1. Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

rulemaking initiative implementing the Dodd-Frank Act.[81] With respect to SDRs, SEFs, DCMs, DCOs (an estimated 84 entities or persons), which will have higher levels of swap recording activity[82] than non-SD/MSP counterparties, the Commission estimates that there may be approximately 40 annual burden hours per entity, excluding customary and usual business practices. With respect to non-SD/MSP reporting counterparties (an estimated 30,000 entities or persons), who will have lower levels of swap recording activity, the Commission estimates that there may be approximately 10 annual burden hours per entity, excluding customary and usual business practices. Therefore, there are 303,360 estimated aggregate annual burden hours.

Under proposed Regulation 45.3, SEFs, DCMs, DCOs, MSPs, SDs, and non-SD/MSP counterparties would be required to provide reports to SDRs regarding swap transactions. SEFs and DCMs are required to report certain information once at the time of swap execution. DCOs, SDs, MSPs, and non-SD/MSP counterparties are required to report certain information once, as well as other information on a daily basis. With respect to reporting by SDs, MSPs, and non-SD/MSP counterparties, only one counterparty to a swap is required to report, typically an SD or an MSP as determined by proposed Regulation 45.4. The Commission anticipates that the reporting will to a significant extent be automatically completed by electronic computer systems; the following burden hours are calculated based on the annual burden hours necessary to oversee and maintain the reporting functionality.[83] SEFs, DCMs, DCOs, MSPs, and SDs (an estimated 369 entities or persons) are anticipated to have high levels of reporting activity; the Commission estimates that their average annual burden may be approximately 2,080 hours.[84] Non-SD/MSP counterparties who would be required to report—which presently would include an estimated 1,500 entities[85]—are anticipated to have lower levels of activity with respect to reporting; the Commission estimates that their annual burden may be approximately 75 hours. Therefore, there are 880,020 estimated aggregate annual burden hours.

Under proposed Regulation 45.4, SDRs, SEFs, DCMs, SDs, and MSPs would be required to report a unique swap identifier to other registered entities and swap participants. SEFs and DCMs are anticipated to have higher levels of activity than SDRs, SDs, and MSPs with respect to unique swap identifier reporting. The Commission anticipates that the reporting of the unique swap identifier will be automatically completed by electronic computer systems. The following burden hours are based on the estimated burden hours necessary to oversee and maintain the electronic functionality of unique swap ID reporting.[86] The Commission estimates that SEFs and DCMs (an estimated 57 entities or persons) may have approximately 22 annual burden hours per entity. The Commission estimates that SDRs, SDs, and MSPs (an estimated 315 entities or persons) may have approximately 6 annual burden hours per entity. Therefore, there are 3,144 estimated aggregated annual burden hours.

Additionally under Proposed Regulation 45.4, SDs, MSPs, and non-SD/MSP counterparties (an estimated 30,300 entities and persons), would be required to report into a confidential database their ownership and affiliations information (as well as changes to ownership and affiliations). The report would be made once at the time of the first swap reported to an SDR, and would be made anytime thereafter that the entity's legal affiliations change. The estimated number of burden hours per report is approximately two hours per entity, excluding customary and usual business practices. The number of reports required to be made per year is estimated to vary between zero and four, depending on the number of changes an entity has in its legal affiliations in that year. Thus, the estimated annual burden per entity varies between zero and eight burden hours. Therefore, there are between 0 and 242,400 estimated aggregate annual burden hours.

Information Collection Comments. The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

C. Cost-Benefit Analysis

Introduction. Section 15(a) of the Commodity Exchange Act ("CEA") requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require

[81] The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements related to SDs and MSP would result from the rules proposed herein.

[82] For purposes of this Paperwork Reduction Act analysis, the Commission estimates that "high activity" entities or persons are those who process or enter into hundreds or thousands of swaps per week that are subject to the jurisdiction of the Commission. Low activity users would be those who process or enter into substantially fewer than the high activity users. The Commission requests comment on its estimate.

[83] Estimated burden hours were obtained in consultation with the Commission's information technology staff. The Commission requests comment on these estimates.

[84] The Commission estimated 2,080 hours by assuming that a significant number of SEFs, DCMs, DCOs, MSP, and SDs will dedicate the equivalent of at least one full-time employee to ensuring compliance with the reporting obligations of Regulation 45.3 (2,080 hours = 52 weeks × 5 days × 8 hours). The Commission believes that this is a reasonable assumption due to the volume of swap transactions that will be processed by these entities, the varied nature of the information required to be reported by Regulation 45.3, and the frequency (daily) with which some reports must be made. The Commission requests comment on its estimate.

[85] This is the estimated number of non-SD/MSP counterparties who would be required to report in a given year. Only one counterparty to a swap is required to report, typically an SD or a MSP as determined by proposed Regulation 45.4. The Commission requests comment on this estimate.

[86] Estimated burden hours were obtained in consultation with the Commission's information technology staff. The Commission requests comment on these estimates.

the Commission to quantify the costs and benefits of the rulemaking or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) the efficiency, competitiveness and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions to accomplish any of the purposes of the Act.

Summary of proposed requirements. The proposed Commission regulations in Part 45 would provide for certain recordkeeping and data reporting requirements for SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties. The proposed regulations would require SDRs, SEFs, DCMs, DCOs, SDs, and MSPs to keep records of all activities relating to their business with respect to swaps; non-SD/MSP counterparties would be required to keep records with respect to each swap in which they are a counterparty. The proposed regulations would require SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties to report to SDRs various types of swap data, as defined and required in the regulations. Further, in some instances the proposed regulations would require SDRs, SEFs, DCMs, SDs, and MSPs to create unique swap identifiers and transmit them to other registered entities and swap participants. Additionally, the proposed regulations would require SDs, MSPs, and non-SD/MSP counterparties to report their ownership and affiliations information (as well as changes to ownership and affiliations), in a manner to be determined by the Commission prior to its adoption of final swap data reporting regulations.

Costs. With respect to costs, the Commission believes that the proposed reporting and recordkeeping requirements could impose significant compliance costs on some SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties. The proposed regulations could require capital expenditures for some such entities that could affect the ability of some regulated entities to compete in the global marketplace because of reductions in available resources.

Benefits. Notwithstanding the potential costs that could be incurred by SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties, the Commission believes that the benefits of the proposed regulations are significant and important. Through the requirement that swap information be reported to SDRs, the proposed regulations will greatly improve the efficiency and transparency of the swap market. Through the Commission's access to swap data, market participants and the public will be better protected, as the result of increased market surveillance and monitoring.

The Commission believes that the proposed regulations are essential to the financial protection of swap market participants and the public. With their support for greater transparency and more effective oversight, the proposed regulations will help to ensure the efficiency, competitiveness, and financial integrity of swap markets. By providing regulators data necessary for effective prudential supervision, the proposed regulations will enable enhanced protection against systemic risk. The proposed regulations will also improve the important function of price discovery. For all these reasons, the proposed regulations would serve the public interest.

Public Comment. For the reasons set forth above, the Commission believes that the benefits of the proposed regulations outweigh their costs, and has decided to issue them. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

IV. Proposed Effective Date

The Commission understands that, after the date on which the Commission promulgates its final swap data reporting regulations, the industry will need a reasonable period of time to implement the requirements of those regulations. Time may be required for entities to register as SEFs, DCMs, DCOs, or SDRs (or to update current registrations as DCMs or DCOs) pursuant to new Commission regulations concerning such entities. Time may also be needed for registered entities and potential swap counterparties to adapt or create automated systems capable of fulfilling the requirements of Commission regulations concerning swap data reporting. Accordingly, it may be appropriate for the Commission's final swap data reporting regulations to establish an effective date for the requirements contained in those regulations that is later than the date of their promulgation.

The Commission requests comment concerning the need for an implementation date for its final swap data reporting regulations that is later than the date of their promulgation; concerning the benefits or drawbacks of such an approach; concerning the length of time needed for registered entities and potential swap counterparties to prepare for implementation in the ways discussed above, or otherwise; and concerning the implementation date which the Commission should specify in its final regulations concerning swap data reporting.

V. General Solicitation of Comments

The Commission requests comments concerning all aspects of the proposed regulations, including, without limitation, all of the aspects of the proposed regulations on which comments have been requested specifically herein.

Proposed Rules

List of Subjects in 17 CFR Part 45

Swaps, data recordkeeping requirements and data reporting requirements.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission proposes to add a new part 45 to read as follows:

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

Sec.

Authority: 7 U.S.C. §§ 2(a)(13)(G), 4r, 6s, 7, 7a–1, 7b–3, 12a and 21(b), as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (2010).

§ 45.1 Definitions.

As used in this part 45, the following terms shall have the definitions set forth below.

(a) "Asset class" means the particular broad category of goods, services or commodities underlying a swap. The asset classes include interest rate, currency, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

(b) "Confirmation" ("confirming") means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

(c) "Confirmation data" means all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap.

(d) "Contract-intrinsic event" means a scheduled, anticipated event occurring during the existence of a swap that does not result in any change to the contractual terms of the swap, including, without limitation, the scheduled expiration of a swap, or a previously described and anticipated interest rate adjustment (*e.g.,* a quarterly interest rate adjustment).

(e) "Contract-intrinsic event data" means, with respect to a credit swap or equity swap, all of the data elements necessary to fully report any contract-intrinsic event with respect to that swap.

(f) "Credit swap" means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

(g) "Currency swap" means any swap which is primarily based on rates of exchange between difference currencies, changes in such rates, or other aspects of such rates. This category includes foreign exchange swaps as defined in CEA Section 1a(25).

(h) "Derivatives Clearing Organization" or "DCO" has the meaning set forth in CEA Section 1a(9), and any Commission regulation implementing that Section, including, without limitation, § 39.5 of this chapter.

(i) "Designated Contract Market" or "DCM" has the meaning set forth in CEA Section 5, and any Commission regulation implementing that Section.

(j) "Equity swap" means any swap that is primarily based on equity securities, including, without limitation: Any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices.

(k) "Interest rate swap" means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates.

(l) "Life cycle event" means, with respect to a credit swap or equity swap, any event that would result in a change in the data previously reported to an SDR in connection with the swap, including, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change in the cash flows originally reported; for a credit swap or equity swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy).

(m) "Life cycle event data" means, with respect to a credit swap or equity swap, all of the data elements necessary to fully report any life cycle event, or any adjustment due to a life cycle event, that results in a change to data previously reported with respect to that swap.

(n) "Major Swap Participant" or "MSP" has the meaning set forth in CEA Section 1a(33), and any Commission regulation implementing that Section.

(o) "Non-SD/MSP counterparty" means a swap counterparty that is neither a Swap Dealer nor a Major Swap Participant.

(p) "Other commodity swap" means any swap not included in the credit swap, currency swap, equity swap, or interest rate swap categories, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

(q) "Primary economic terms" for a credit swap or equity swap means:

(1) The Unique Swap Identifier for the swap, pursuant to § 45.4(a);

(2) The Unique Counterparty Identifier of each counterparty to the swap, pursuant to § 45.4(b);

(3) The Unique Product Identifier assigned to the swap, pursuant to § 45.4(c);

(4) An indication of the counterparty purchasing protection and of the counterparty selling protection;

(5) Information identifying the reference entity for the swap, in a format determined by the Commission;

(6) An indication of whether or not both counterparties are SDs;

(7) An indication of whether or not both counterparties are MSPs;

(8) An indication of whether or not both counterparties are non-SD/MSP counterparties;

(9) The date and time of execution, expressed using Coordinated Universal time ("UTC");

(10) The venue where the swap was executed;

(11) The effective date;

(12) The scheduled termination date;

(13) The price;

(14) The notional amount, the currency in which the notional amount is expressed, and the equivalent notional amount in U.S. dollars;

(15) The amount and currency or currencies of any up-front payment;

(16) A description of the payment streams of each counterparty;

(17) The title of any master agreement incorporated by reference and the date of any such agreement;

(18) If the transaction involved an existing swap, an indication that the transaction did not involve an opportunity to negotiate a material term of the contract, other than the counterparty;

(19) The data elements necessary for a person to determine the market value of the transaction;

(20) Whether or not the swap will be cleared by a designated clearing organization;

(21) The name of the designated clearing organization that will clear the swap, if any;

(22) If the swap is not cleared, whether the exception in § 2(h)(7) ("End User exception") was invoked;

(23) If the swap is not cleared, all of the settlement terms, including, without limitation, whether the swap is cash-settled or physically settled, and the method for determining the settlement value; and

(24) Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.

(r) "Primary economic terms" means, for an interest rate swap, other commodity swap, or currency swap, all of the terms of a swap matched by the counterparties in verifying the swap, including at a minimum each of the terms included in the most recent **Federal Register** release by the Commission listing minimum primary economic terms for interest rate swaps, other commodity swaps, or currency swaps. The Commission's current lists of minimum primary economic terms for interest rate, commodity, and currency swaps are found in Appendix 1 to part 45.

(s) "Primary economic terms data" means all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question.

(t) "Reporting counterparty" means the counterparty required to report swap data pursuant to § 45.5.

(u) "Required swap creation data" for a credit swap or equity swap means:

(1) All primary economic terms data for a credit swap or equity swap; and

(2) All confirmation data for the swap.

(v) "Required swap creation data" for an interest rate swap, commodity swap, or currency swap means:

(1) All primary economic terms data for an interest rate swap, commodity swap, or currency swap, as appropriate; and

(2) All confirmation data for the swap.

(w) "Required swap continuation data" for a credit swap or equity swap means:

(1) All life cycle event data for the swap;

(2) All contract-intrinsic event data for the swap; and

(3) All valuation data for the swap, and all changes to valuation data previously reported concerning the swap, reported at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(x) "Required swap continuation data" for an interest rate swap, other commodity swap, or currency swap means:

(1) All state data for the swap, reported daily throughout the existence of the swap until its final termination; and

(2) A report at intervals specified by the Commission, throughout the existence of the swap until its final termination, of all valuation data and all changes to valuation data concerning the swap.

(y) "State data" means all of the data elements necessary to provide a snapshot view, on a daily basis, of all of the primary economic terms of a swap in the swap asset class of the swap in question, including any changes to such terms since the last snapshot. At a minimum, state data must include all of the economic terms listed in the most recent **Federal Register** release by the Commission concerning minimum primary state data elements for interest rate, commodity, or currency swaps. The Commission's current lists of minimum primary economic terms for interest rate, commodity, and currency swaps are found in Appendix 1 to Part 45.

(z) "Swap Data Repository" or "SDR" has the meaning set forth in CEA Section 1a(48), and any Commission regulation implementing that Section.

(aa) "Swap Dealer" or "SD" has the meaning set forth in CEA Section 1a(49), and any Commission regulation implementing that Section.

(bb) "Swap Execution Facility" or "SEF" has the meaning set forth in CEA Section 1a(50), and any Commission regulation implementing that Section.

(cc) "Valuation data" means all of the data elements necessary for a person to determine the current market value of the swap, including, without limitation, daily margin, daily mark-to-market, and other measures of valuation as determined by the Commission.

(dd) "Verification" ("verify" or "verifying") means the matching by the counterparties to a swap of each of the primary economic terms of a swap, at or shortly after the time the swap is executed.

§ 45.2 Swap recordkeeping.

(a) All DCOs, DCMs, SEFs, SDs, and MSPs who are subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entities or persons with respect to swaps, as prescribed by the Commission. Such records shall include, without limitation, the following:

(1) For DCOs, all records required by part 39 of this chapter.

(2) For SEFs, all records required by part 37 of this chapter.

(3) For DCMs, all records required by part 38 of this chapter.

(4) For SDs and MSPs, all records required by part 23 of this chapter.

(b) All non-SD/MSP counterparties subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty, including all required swap creation data and all required swap continuation data that they are required to report pursuant to this part 45, and including all records demonstrating that they are entitled, with respect to any swap, to the end user exception pursuant to Section 2(h)(7).

(c) All records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties pursuant to this Section shall be kept with respect to each swap from the date of the creation of the swap through the life of the swap and for a period of at least five years from the final termination of the swap, in a form and manner acceptable to the Commission.

(d) Records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, or non-SD/MSP counterparties pursuant to this Section shall be retrievable as follows:

(1) Each record required by this Section or any other Section of the Act to be kept by an SDR shall be readily accessible via real time electronic access by the SDR indefinitely.

(2) Each record required by this Section or any other Section of the Act to be kept by a DCO, DCM, SEF, SD, or MSP shall be readily accessible via real time electronic access by the registrant throughout the life of the swap and for two years following the final termination of the swap, and shall be retrievable by the registrant or its affiliates within three business days through the remainder of the period following final termination of the swap during which it is required to be kept.

(3) Each record required by this Section or any other Section of the Act to be kept by a non-SD/MSP counterparty shall be retrievable by that counterparty within three business days throughout the period during which it is required to be kept.

(e) All SDRs registered with the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR and all swap data reported to the SDR, as prescribed by the Commission. Such records shall include, without limitation, all records required by § 45.10 of the Commission's proposed swap data repositories regulations.

(f) All records required to be kept by an SDR pursuant to this § 45.2 must be kept by the SDR both:

(1) Throughout the existence of the swap and for five following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access; and

(2) Thereafter, for a period to be determined by the Commission prior to promulgation of its final swap data recordkeeping and reporting regulations, in archival storage from which they are retrievable by the SDR within three business days.

(g) All records required to be kept pursuant to this Section by any registrant or its affiliates or by any non-SD/MSP counterparty shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the

expense of the entity or person required to keep the record, to any representative of the Commission upon request, either by electronic means, in hard copy, or both, as requested by the Commission.

§ 45.3 Swap data Reporting.

This Section establishes the general swap data reporting obligations of SDs, MSPs, non-SD/MSP counterparties, SEFs, DCMs, and DCOs to report swap data to an SDR. In addition to the reporting obligations set forth in this Section, SDs, MSPs, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.4(b)(2); DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43; and, where applicable, SDs, MSPs, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter.

(a) *Reporting of required swap creation data.* Registered entities and swap counterparties must report required swap creation data electronically to an SDR as set forth in this Section.

(1) *Swaps for which the reporting counterparty is an SD or MSP.* For all swaps in which the reporting counterparty is an SD or MSP, required swap creation data must be reported as follows:

(i) *Swaps executed on a SEF or DCM and cleared on a DCO.* (A) The SEF or DCM on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in its possession, as soon as technologically practicable following execution of the swap.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(C) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap asset class of the swap that is not reported by the SEF or DCM. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(ii) *Swaps Executed on a SEF but Not Cleared on a DCO.* (A) The SEF on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in its possession, as soon as technologically practicable following execution of the swap.

(B) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap that is not reported by the SEF. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(C) The reporting counterparty must report all confirmation data for the swap. This report must be made promptly following confirmation of the swap, but in no event later than: 15 minutes after confirmation of the swap if confirmation occurs electronically, or 24 hours after confirmation of the swap if confirmation was done manually rather than electronically.

(iii) *Swaps Not Executed on a SEF or DCM but Cleared on a DCO.* (A) The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap asset class of the swap. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at or immediately following execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of a swap if verification of primary economic terms does not occur electronically.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(iv) *Swaps Not Executed on a SEF or DCM and Not Cleared on a DCO.* The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap, and must report electronically all confirmation data for the swap. The report of primary economic terms data must be made promptly following verification of the primary economic terms by the counterparties with each other at or immediately following execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of a swap if verification of primary economic terms does not occur electronically. The report of confirmation data must be made promptly following confirmation of the swap, but in no event later than: 15 minutes after confirmation of the swap if confirmation occurs electronically, or 24 hours after confirmation of the swap if confirmation was done manually rather than electronically.

(2) *Swaps for which the reporting counterparty is a non-SD/MSP counterparty.* For all swaps in which the reporting counterparty is a non-SD/MSP counterparty, required swap creation data must be reported as set forth in this Section.

(i) *Swaps executed on a SEF or DCM and cleared on a DCO.* (A) The SEF or DCM on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in its possession, as soon as technologically practicable following execution of the swap.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(C) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap asset class of the swap that is not reported by the SEF or DCM. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(ii) *Swaps Executed on a SEF but Not Cleared on a DCO.* (A) The SEF on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in

its possession, as soon as technologically practicable following execution of the swap.

(B) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap that is not reported by the SEF. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(C) The reporting counterparty must report all confirmation data for the swap. This report must be made within a time to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(iii) *Swaps Not Executed on a SEF or DCM but Cleared on a DCO.* (A) The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if verification of primary economic terms does not occur electronically.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(iv) *Swaps Not Executed on a SEF or DCM and Not Cleared on a DCO.* (A) The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap asset class of the swap, and must report all confirmation data. The report of primary economic terms data must be made promptly following verification of the primary economic terms by the counterparties with each other at or immediately following execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of a swap if verification of primary economic terms does not occur electronically.

(B) The reporting counterparty must report all confirmation data for the swap. This report must be made within a time to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(b) *Reporting of required swap continuation data.* Registered entities and swap counterparties must report required swap continuation data to an SDR as set forth in this Section.

(1) *Credit swaps and equity swaps.* For all credit swaps and equity swaps, registered entities and counterparties must report as set forth below.

(i) *Swaps for which the reporting counterparty is an SD or MSP.* For all credit swaps and equity swaps in which the reporting counterparty is an SD or MSP, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.* (*1*) The DCO on which the swap is cleared must report all life cycle event data, on the same day in which any life cycle event occurs; and must report all valuation data in its possession, on a daily basis.

(*2*) The reporting counterparty must report all valuation data in its possession, on a daily basis; and must report all contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report:

(*1*) All life cycle event data, on the same day in which any life cycle event occurs;

(*2*) All valuation data, on a daily basis; and

(*3*) All contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(ii) *Swaps for which the reporting counterparty is a non-SD/MSP counterparty.* For all credit swaps in which the reporting counterparty is neither an SD nor MSP, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.*

(*1*) The DCO on which the swap is cleared must report all life cycle event data, on the same day in which any life cycle event occurs; and must report all valuation data in its possession, on a daily basis.

(*2*) The reporting counterparty must report all valuation data in its possession, at times to be determined by the Commission prior to its adoption of final swap data reporting regulations; and must report all contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report all life cycle event data, on the same day in which any life cycle event occurs; all valuation data, at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations; and all contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(2) *Interest rate swaps, commodity swaps, and currency swaps.* For all interest rate swaps, commodity swaps, and currency swaps, registered entities and counterparties must report as follows:

(i) *Swaps for which the reporting counterparty is an SD or MSP.* For all interest rate swaps, commodity swaps, and currency swaps in which the reporting counterparty is an SD or MSP, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.* (*1*) The reporting counterparty must report all required state data, on a daily basis.

(*2*) The DCO must report all required valuation data in its possession, on a daily basis.

(*3*) The reporting counterparty must report all required valuation data in its possession, on a daily basis.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report:

(*1*) All required state data, on a daily basis; and

(*2*) All required valuation data, on a daily basis.

(ii) *Swaps for which the reporting counterparty is a non-SD/MSP counterparty.* For all interest rate swaps, commodity swaps, or currency swaps in which the reporting counterparty is a non-SD/MSP counterparty, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.* (*1*) The reporting counterparty must report all state data, on a daily basis.

(*2*) The DCO must report all valuation data in its possession, on a daily basis.

(*3*) The reporting counterparty must report all valuation data in its possession, at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report:

(*1*) All state data, on a daily basis; and

(*2*) All valuation data, at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations.

§ 45.4 Unique identifiers.

Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting concerning that swap by the use of three unique identifiers: A Unique Swap Identifier ("USI"), a

Unique Counterparty Identifier ("UCI"), and a Unique Product Identifier ("UPI").

(a) *Unique Swap Identifiers.* (1) *Creation and Transmission for Swaps Executed on a SEF or DCM.* For each swap executed on a SEF or DCM, a Unique Swap Identifier shall be created and transmitted as follows.

(i) *Creation.* The SEF or DCM shall generate and assign a Unique Swap Identifier at the time of execution of the swap, in the form specified by the Commission. The Unique Swap Identifier shall consist of a single data field that contains two components:

(A) The unique, extensible, alphanumeric code assigned to the SEF or DCM by the Commission at the time of its registration, for the purpose of identifying the SEF or DCM; and

(B) an extensible, alphanumeric code generated and assigned to that swap by the automated systems of the SEF or DCM, which shall be unique with respect to all such codes generated and assigned by that SEF or DCM.

(ii) *Transmission.* The SEF or DCM creating the Unique Swap Identifier for the swap shall transmit the identifier electronically as follows:

(A) To each counterparty to the swap, as soon as technologically practicable after execution of the swap;

(B) to the DCO, if any, to which the swap is submitted for clearing, simultaneously with the transmission of required swap creation data to the DCO for clearing purposes; and

(C) to the SDR to which the SEF or DCM reports required swap creation data for the swap, simultaneously with the transmission by the SEF or DCM to the SDR of required swap creation.

(2) *Creation and Transmission for Swaps Not Executed on a SEF or DCM.* For each swap not executed on a SEF or DCM but rather bilaterally by the counterparties, a Unique Swap Identifier shall be created and transmitted as follows.

(i) *Creation Where the Reporting Counterparty Is an SD or MSP.* If the reporting counterparty determined in accordance with § 45.5 is an SD or MSP, that counterparty shall generate and assign a Unique Swap Identifier at the time of execution of the swap, in the form specified by the Commission. The Unique Swap Identifier shall consist of a single data field that contains two components:

(A) The unique, extensible, alphanumeric code assigned to the SD or MSP by the Commission at the time of its registration as such, for the purpose of identifying the SD or MSP with respect to USI creation; and

(B) an extensible, alphanumeric code generated and assigned to that swap by the automated systems of the SD or MSP, which shall be unique with respect to all such codes generated and assigned by that SD or MSP for USI purposes.

(ii) *Transmission Where the Reporting Counterparty Is an SD or MSP.* The SD or MSP creating the Unique Swap Identifier for the swap shall transmit the identifier electronically as follows:

(A) To the other counterparty to the swap, as soon as technologically practicable after execution of the swap;

(B) to the DCO, if any, to which the swap is submitted for clearing, simultaneously with the transmission of required swap creation data to the DCO for clearing purposes; and

(C) to the SDR to which the SD or MSP reports required swap creation data for the swap, as part of the report of that data.

(iii) *Creation Where the Reporting Counterparty Is a non-SD–MSP Counterparty.* If the reporting counterparty determined in accordance with § 45.5 is a non-SD/MSP counterparty, the SDR to which the reporting counterparty reports required swap creation data shall generate and assign a Unique Swap Identifier as soon as technologically practicable following receipt of the first report of required swap creation data concerning the swap, in the form specified by the Commission. The Unique Swap Identifier shall consist of a single data field that contains two components:

(A) The unique, extensible, alphanumeric code assigned to the SDR by the Commission at the time of its registration as such, for the purpose of identifying the SDR with respect to USI creation; and

(B) An extensible, alphanumeric code generated and assigned to that swap by the automated systems of the SDR, which shall be unique with respect to all such codes generated and assigned by that SDR for USI purposes.

(iv) *Transmission Where the Reporting Counterparty Is a Non-SD/MSP counterparty.* The SDR creating the Unique Swap Identifier for the swap shall transmit the identifier electronically as follows:

(A) To the counterparties to the swap, as soon as technologically practicable following creation of the USI; and

(B) To the DCO, if any, to which the swap is submitted for clearing, as soon as technologically practicable following creation of the USI.

(3) *Use.* Each registered entity or swap counterparty subject to the rules of the Commission shall include the Unique Swap Identifier for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it receives the identifier throughout the existence of the swap and for as long as any records are required by the rules of the Commission to be kept concerning the swap, regardless of any changes that may occur from time to time with respect to the state of the swap or with respect to the counterparties to or the ownership of the swap. This requirement shall not prohibit the use by a registered entity or swap counterparty in its own records of any additional identifier or identifiers internally generated by the automated systems of the registered entity or swap counterparty, or the reporting to an SDR or to a regulator of such internally generated identifiers in addition to the reporting of the Unique Swap Identifier.

(b) *Unique Counterparty Identifiers.* (1) Each counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping with respect to swaps and in all swap data reporting by means of a single, unique counterparty identifier having the characteristics specified by the Commission.

(2) Each counterparty to any swap subject to the jurisdiction of the Commission shall report all of its corporate affiliations into a confidential, non-public corporate affiliations reference database maintained and located as determined by the Commission. Data contained in the corporate affiliations reference database shall be available only to the Commission, and to other financial regulators via the same data access procedures applicable to data in SDRs as provided in part 49, for regulatory purposes. For purposes of this rule, "corporate affiliations" means the identity of all legal entities that own the counterparty, that are under common ownership with the counterparty, or that are owned by the counterparty. This corporate affiliation information must be sufficient to disclose parent-subsidiary and affiliate relationships, such that each legal entity within or affiliated with the corporate hierarchy or ownership group to which the counterparty belongs is separately identified. Each counterparty shall also report to the corporate affiliations reference database all changes to the information previously reported concerning the counterparty's corporate affiliations, so as to ensure that the corporate affiliation information recorded in the corporate affiliations reference database is current and accurate at all times.

(3) The identification system characteristics required for the Commission to approve an internationally-developed UCI as the

means by which registered entities and swap counterparties must fulfill their obligations under § 45.4(b)(1) shall be as follows:

(i) The identification system must result in a unique identifier format that is capable of becoming the single international standard for unique identification of legal entities in the financial sector on a global basis, if it is adopted world-wide.

(ii) The identification system must be developed via an international "voluntary consensus standards body" as defined in Office of Management and Budget ("OMB") Circular No. A–119 Revised, such as the International Organization for Standardization, and must be maintained by such a body and an associated Registration Authority. The standards body and Registration Authority must have a formally documented governance structure acceptable to the Commission, and must have proven expertise in designing and implementing standards for the financial sector. The standards body and Registration Authority must coordinate with the Commission, the Securities and Exchange Commission, the Office of Financial Research, and other financial regulators.

(iii) As provided in OMB Circular No. A–119 Revised, the identification system must be available to all interested parties on a non-discriminatory, royalty-free or reasonable royalty basis.

(A) Information concerning the issuance process for new identifiers must be available publicly and free of charge.

(B) While reasonable initial registration fees and reasonable annual fees would be appropriate for issuance, maintenance, and initial and ongoing verification of a unique identifier, fees must not be charged for use of unique identifiers provided via the identification system, and the identification system must be operated on a non-profit basis.

(C) A comprehensive and reasonably current directory of the Unique Counterparty Identifiers issued by the identification system (but not the entity relationship information reported by the counterparties to the Office of Financial Research or to an SDR as provided above) must be made available free of charge over the Internet or by similarly convenient means.

(iv) The identification system must be supported by a trusted and auditable method of verifying the identity of each legal entity to whom a unique identifier is assigned, both initially and at appropriate intervals thereafter.

(A) The Registration Authority must maintain reference data sufficient to verify that a user has been correctly identified as an entity. At a minimum, the reference data (though not the identifier itself) should include the entity's name and location.

(B) Issuance of identifiers must be speedy and unbiased. It must not materially hinder the normal course of a firm's business. Any updates to the reference data must be done with a minimal lag.

(v) The Registration Authority must establish quality assurance practices. The necessary quality assurance processes must ensure that duplicate identifiers are not erroneously assigned, and that reference data for legal entities is accurate. For this purpose, the Registration Authority should accept request for updates or amendments from any identification system participant or financial regulator.

(vi) The Registration Authority must maintain system safeguards comparable to those required for SDRs pursuant to part 49 of this chapter.

(vii) The identification system must be sufficiently extensible to cover all existing and potential future legal entities of all types that are or may become swap counterparties or that are or may become involved in any aspect of the financial issuance and transactions process, and to cover entities of all types with respect to which financial sector entities are required by any financial regulator world-wide to perform due diligence for reporting or risk management purposes.

(viii) The identification system must assign only one unique identifier to any legal entity.

(ix) The unique identifier format must consist of a single data field, and must contain either no embedded intelligence or as little embedded intelligence as practicable.

(x) The unique identifier assigned must persist despite all corporate events. When a corporate event (*e.g.*, a merger or spin-off) results in a new entity, the new entity must receive a new identifier, while the previous identifier continues to identify the predecessor entity.

(xi) The identification system must use data standards and formats that will enable consistency of standards and formats across platforms, data repositories, and asset classes, in order to ensure data comparability and enable data aggregation and cross-sectional analysis.

(4) The Commission shall determine, at least 100 days prior to the implementation date for its final data reporting regulations, whether an identification system that satisfies the requirements set forth in § 45.4(b)(3) is available and can provide UCIs for all registered entities and swap counterparties required by § 45.4 to use UCIs. If the Commission determines that such an identification system is available, then:

(i) The Commission shall publish in the **Federal Register** and on the Web site of the Commission, no later than 90 days prior to the implementation date for the Commission's final swap data reporting, the name of the identification system approved by the Commission, the name and contact information of the Registration Authority through which registered entities and swap counterparties can obtain UCIs provided through the approved identification system, and information concerning the procedure and requirements for obtaining such a UCI; and

(ii) All registered entities and swap counterparties subject to these regulations shall comply with § 45.4(b)(1) by using a UCI provided by the identification system approved by the Commission for that purpose.

(5) The Commission may, in its discretion, delegate to the Director of the Division of Market Oversight ("Director"), until the Commission orders otherwise, the authority to make the determination called for by § 45.4(b)(4), to be exercised by the Director or by such other employee or employees of the Commission as may be designated from time to time by the Director. The Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(6) If the Commission, or the Director as provided in § 45.4(b)(5), determines pursuant to § 45.4(b)(4) that an identification system that satisfies the requirements set forth in § 45.4(b)(3) is not then available, then until such time as the Commission determines that such an identification system has become available, registered entities and swap counterparties shall comply with § 45.4(b)(1) by using a UCI created and assigned by an SDR as follows:

(i) When a swap involving one or more counterparties for which no unique counterparty identifier has yet been created and assigned is reported to an SDR, the repository shall create and assign a unique counterparty identifier for each such counterparty, in a format determined by the Commission, as soon as technologically practicable after that swap is first reported to the repository.

(ii) Each such repository-created unique identifier shall consist of a single data field that contains two components, including:

(A) The unique, extensible, alphanumeric code assigned to the SDR by the Commission at the time of its registration, for the purpose of identifying the SDR; and

(B) An extensible, alphanumeric code generated and assigned to that counterparty by the automated systems of the SDR, which shall be unique with respect to all such unique counterparty identifier codes generated and assigned by that SDR.

(iii) The SDR shall transmit each unique counterparty identifier thus created to each counterparty to the swap, to each other registered entity associated with the swap, to each registered entity or swap counterparty who has made any report of any swap data to the SDR, and to each SDR registered with the Commission, as soon as technologically practicable after creation and assignment of the identifier.

(iv) Once any SDR has created and assigned such a UCI to a swap counterparty and has transmitted it as required by § 45.4(b)(6)(iii), all registered entities and swap counterparties shall use that UCI to identify that counterparty in all swap data recordkeeping and reporting, until such time as the Commission determines that an identification system complying with § 45.4(b)(3) has become available, and by regulation requires the use of a different UCI provided by that identification system.

(c) *Unique Product ID.* (1) Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping with respect to swaps and in all swap data reporting by means of a unique product identifier, having the characteristics specified by the Commission.

(2) The unique product identifier shall identify the swap asset class to which the swap belongs and the sub-type within that swap asset class to which the swap belongs, with sufficient distinctiveness and specificity to enable the Commission and other financial regulators to fulfill their regulatory responsibilities and to enable real time reporting of swaps as provided in the Act and the Commission's regulations. The level of distinctiveness and specificity which the unique product identifier will provide shall be determined separately for each swap asset class.

(3) The system of swap product classification used by unique product identifiers shall be as determined by the Commission.

§ 45.5 Determination of which counterparty must report.

(a) If only one counterparty is an SD, the SD shall fulfill all counterparty reporting obligations.

(b) If neither party is an SD, and only one counterparty is an MSP, the MSP shall fulfill all counterparty reporting obligations.

(c) If both counterparties are SDs, or both counterparties are MSPs, or both counterparties are non-SD/MSP counterparties, the counterparties shall agree as one term of their swap transaction which counterparty shall fulfill reporting obligations with respect to that swap; and the counterparty so selected shall fulfill all counterparty reporting obligations.

(d) Notwithstanding the provisions of § 45.5(a) through (c), if only one counterparty to a swap is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(e) Notwithstanding the provisions of § 45.5(a) through (c), if neither counterparty to a swap is a U.S. person, but the swap is executed on a SEF or DCM or otherwise executed in the United States, or is cleared by a DCO, then:

(1) The counterparties to the swap shall select one counterparty to be the reporting counterparty, making such selection as one term of the swap; and

(2) The counterparty so selected shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(f) If a reporting counterparty selected pursuant to § 45.5(a) through (f) ceases to be a counterparty to a swap due to an assignment or novation, and the new counterparty is a U.S. person, the new counterparty shall be the reporting counterparty and fulfill all reporting counterparty obligations following such assignment or novation. If a new counterparty to a swap due to an assignment or novation is not a U.S. person, the counterparty that is a U.S. person shall be the reporting counterparty and fulfill all reporting counterparty obligations following such assignment or novation.

§ 45.6 Third-party facilitation of data reporting.

Registered entities and counterparties required by this part 45 to report required swap creation data or required swap continuation data, while remaining fully responsible for reporting as required by this part 45, may contract with third-party service providers to facilitate reporting.

§ 45.7 Reporting to a single SDR.

(a) A SEF, DCM, SD or MSP that creates the USI for a swap as provided in § 45.5 shall report all primary economic terms data required to be reported for that swap to a single SDR. The choice of the SDR to receive this report shall be made in a manner to be determined by the Commission.

(b) Where a non-SD/MSP counterparty is the reporting counterparty pursuant to Section 45.5, that reporting counterparty shall report all primary economic terms data required to be reported for that swap to a single SDR of its choosing, which SDR shall create the USI for that swap as provided in § 45.5.

(c) When the SDR chosen as provided in § 45.8(a) and (b) receives the initial report of primary economic terms data for a swap, the SDR shall transmit its own identity, together with the USI for the swap, to each counterparty to the swap, to the SEF or DCM, if any, on which the swap was executed, and to the DCO, if any, to which the swap is submitted for clearing, as soon as technologically practicable following the SDR's receipt of the initial report of primary economic terms data for the swap.

(d) Thereafter, all data reported for the swap, and all corrections of errors and omissions in previously reported data for the swap, by any registered entity or counterparty, shall be reported to that same SDR (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

§ 45.8 Data reporting for swaps in a swap asset class not accepted by any SDR.

Should there be a swap asset class for which no SDR currently accepts swap data, each registered entity or counterparty required by § 45.3 to report any required swap creation data or required swap continuation data with respect to a swap in that asset class must report that same data at a time and in a form and manner determined by the Commission.

§ 45.9 Required data standards.

(a) *Data Maintained and Furnished to the Commission by SDRs.* An SDR shall maintain all swap data reported to it in a format acceptable to the Commission, and shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

(b) *Data Reported To SDRs.* In reporting swap data to an SDR as required by this Part 45, each reporting entity or counterparty shall use the facilities, methods, or data standards provided or required by the SDR to

which the entity or counterparty reports the data. SDRs may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to meet the requirements of § 45.9(a) with respect to maintenance and transmission of swap data.

(c) *Delegation of Authority to the Director of the Division of Market Oversight.* The Commission hereby delegates to the Director of the Division of Market Oversight ("Director"), until the Commission orders otherwise, the authority set forth in this § 45.9(c), to be exercised by the Director or by such other employee or employees of the Commission as may be designated from time to time by the Director. The Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Director by this § 45.9(c) shall include:

(1) The authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for the purposes of § 45.9(a).

(2) The authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by SDRs, of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users, or to enable SDRs to comply with § 45.9(a).

(d) The Director shall publish from time to time in the **Federal Register** and on the Web site of the Commission the format, data schema, and electronic data transmission methods and procedures acceptable to the Commission.

§ 45.10 Reporting of errors and omissions in previously reported data.

(a) Each registered entity and swap counterparty required by this Part 45 to report swap data to an SDR or to any other registered entity or swap counterparty shall report any errors and omissions in the data so reported. Corrections of errors or omissions shall be reported as soon as technologically practicable after discovery of any such error or omission.

(b) For interest rate swaps, commodity swaps, and currency swaps, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making appropriate corrections in their next daily report of state data as required by § 45.3(b)(2).

(c) Each counterparty to a swap that is not the reporting counterparty as determined pursuant to § 45.5, and that discovers any error or omission with respect to any swap data reported to an SDR for that swap, shall promptly notify the reporting counterparty of each such error or omission. Upon receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the SDR, as provided in § 45.10(a) and (b).

(d) Unless otherwise approved by the Commission, or by the Director of Market Oversight pursuant to § 45.9(c), each registered entity or swap counterparty reporting corrections to errors or omissions in data previously reported as required by this Section shall report such corrections in the same format as it reported the erroneous or omitted data. Unless otherwise approved by the Commission, or by the Director of Market Oversight pursuant to § 45.9, an SDR shall transmit corrections to errors or omission in data previously transmitted to the Commission in the same format as it transmitted the erroneous or omitted data.

Appendix 1 to Part 45—Tables of Minimum Primary Economic Terms Data and Minimum Valuation Data

MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS

Sample category	Comment
The Unique Swap Identifier for the swap	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party	As defined in § 45.4.
The Unique Product Identifier assigned to the swap	As defined in § 45.4.
An indication of the counterparty purchasing protection and of the counterparty selling protection.	*E.g.* option buyer and option seller; buyer and seller.
Information identifying the reference entity	The entity that is the subject of the protection being purchased and sold in the swap.
An indication of whether or not both counterparties are SDs.	
An indication of whether or not both counterparties are MSPs.	
An indication of whether or not either counterparty is an SD or an MSP.	
The date and time of trade, expressed using Coordinated Universal time ("UTC").	
The venue where the swap was executed.	
The effective date.	
The expiration data.	
The price	*E.g.* strike, initial price, spread, *etc.*
The notional amount, the currency in which the notional amount is expressed, and the equivalent notional amount in U.S. dollars.	
The amount and currency or currencies of any up-front payment	
A description of the payment streams of each counterparty	*E.g.* coupon.
The title of any master agreement incorporated by reference and the date of any such agreement.	*E.g.* annex, credit agreement.
If the transaction involved an existing swap, an indication that the transaction did not involve an opportunity to negotiate a material term of the contract, other than the counterparty.	*E.g.* assignment.
The data elements necessary for a person to determine the market value of the transaction.	
Whether or not the swap will be cleared by a designated clearing organization.	

MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS—Continued

Sample category	Comment
The name of the designated clearing organization that will clear the swap, if any.	
If the swap is not cleared, whether the "End User exception" was invoked.	
If the swap is not cleared, all of the settlement terms, including, without limitation, whether the swap is cash-settled or physically settled, and the method for determining the settlement value.	
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

MINIMUM PRIMARY ECONOMIC TERMS DATA—CURRENCY SWAPS

Sample data fields	Comments
The Unique Swap Identifier for the swap	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party	As defined in § 45.4.
The Unique Product Identifier assigned to the swap	As defined in § 45.4.
Contract type	*E.g.* swap, swaption, forwards, options, basis swap, index swap, basket swap, other.
Execution timestamp	Time and date of execution.
Currency 1	ISO Code.
Currency 2	ISO Code.
Notional amount 1	For currency one.
Notional amount 2	For currency two.
Settlement agent of the reporting counterparty	ID of the settlement agent.
Settlement agent of the non-reporting counterparty	ID of the settlement agent.
Settlement currency	If applicable.
Exchange rate 1	At the moment of trade/agreement.
Exchange rate 2	At the moment of trade/agreement, if applicable.
Swap delivery type	Cash or physical.
Expiration date	Expiration date of the contract.
Timestamp for submission to SDR	Time and date of submission to the SDR.
Futures contract equivalent	As defined in part 150.
Futures contract equivalent unit of measure	As defined in part 150.
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS

Sample data field	Comment
The Unique Swap Identifier for the swap	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty.	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party.	As defined in § 45.4.
The Unique Product Identifier assigned to the swap.	As defined in § 45.4.
Contract type	*E.g.* swap, swaption, option, basis swap, index swap, *etc.*
Trade timestamp	Time and date of execution.
Swap effective date	Effective date of the contract.
Swap end-date	Expiration date of the contract.
Notional amount one	The current active notional in local currency.
Notional currency one	ISO code of the notional currency.
Notional amount two	The second notional amount (*e.g.* receiver leg).
Notional currency two	ISO code of the notional currency.
Timestamp for submission to SDR	Time and date of submission to the SDR.
Payer (fixed rate)	Is the reporting party a fixed rate payer? Yes/No/Not applicable.
Fixed leg payment frequency	How often will the payments on fixed leg be made.
Direction	For swaps—if the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps, it is unspecified. For non-swap instruments and swaptions, the instrument that was bought or sold.
Option type	*E.g.* put, call, straddle.
Fixed rate.	
Fixed rate day count fraction.	
Floating rate payment frequency.	
Floating rate reset frequency.	
Floating rate index name/rate period.	

MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS—Continued

Sample data field	Comment
Leg 1	If two floating legs, report what is paid.
Leg 2	If two floating legs, repot what is received.
Futures contract equivalent	As defined in part 150.
Futures contract equivalent unit of measure	As defined in part 150.
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

Sample data field	Comment
The Unique Swap Identifier for the swap	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party	As defined in § 45.4.
The Unique Product Identifier assigned to the swap	As defined in § 45.4.
Contract type	*E.g.* swap, swaption, option, *etc.*
Execution timestamp	Time and date of execution.
Quantity	The Unit of measure applicable for the quantity on the swap.
Total quantity	The amount of the commodity for the entire term of the swap.
Settlement method	Cash or physical.
Delivery type	For physical delivery.
Start date	Predetermined start date from which payments will be exchanged.
End-date	Predetermined end date from which payments will be exchanged.
Submission to SDR timestamp	Time and date of submission to the SDR.
Averaging method	The type of calendar days used to calculate price on a transaction.
Payment calendar.	
Buyer pay index	The published price as paid by the buyer.
Seller pay index	The published price as paid by the seller.
Buyer	Party purchasing product, *e.g.* payer of the fixed price (for swaps), or payer of the floating price (for put swaption), or payer of the fixed price (for call swaption).
Seller	Party offering product, *e.g.* payer of the floating price (for swaps), payer of the fixed price (for put swaption), or payer of the floating price (for call swaption).
Price	*E.g.* fixed price, the heat rate value, *etc.*
Price unit	The unit of measure applicable for the price on the transaction.
Price currency	*E.g.* ISO code.
Grade	*E.g.* the grade of oil or refined product being delivered.
Futures contract equivalent	As defined in part 150.
Futures contract equivalent unit of measure	As defined in part 150.
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

MINIMUM VALUATION DATA

Sample data fields
Independent amount.
Independent amount currency.
Independent amount payer.
Independent amount receiver.
Initial margin.
Variation margin.
Mark-to-market.

MINIMUM VALUATION DATA—Continued

Sample data fields
Non-cash collateral.
Non-cash collateral valuation.

Appendix 2 to Part 45—Master Reference Generic Data Fields List

This table includes Master Reference Generic Data Fields that the Commission believes could be relevant for standardized swaps in some or all swap asset classes. The Commission requests comment on whether any of the data fields in this Master Reference Generic Data Fields List should be included in one or more of the Tables of Required Minimum Primary Economic Terms Data for specific swap asset classes, or in the Minimum Valuation Data table, that are included in Appendix 1 to Part 45.

Data fields	Description
Potential Initial Data	
Client Name	Name of the customer (client).
Counterparty Origin	Indicator of whether a swap was done on behalf of a customer or house account.
Delivery Type	Deliverable or Non-deliverable.
Effective Date or Start Date	The date a swap becomes effective or starts.
Entity Reporting to SDR	The entity making a data report.
Execution Timestamp	The time and date a swap was executed on a platform.

Data fields	Description
Industrial Sector	Industrial sector.
Intermediary	The entity that brings two parties together for the swap transaction.
Master Agreement Type	The type of master agreement that was executed.
Maturity, Termination, or End Date	The day a swap expires.
Non-Financial Entity	Y/N. Are one or more counterparties to the swap transaction not a financial entity?
Order Entry Timestamp	The time and date when the order was entered.
Parent Counterparty	The parent company of the counterparty.
Parent Originator	The parent company of the originator.
Platform/Deal Source	Name of the platform or system on which the swap was executed.
Registration with the SEC	Y/N. This field indicates whether the exempted counterparties are registered with the SEC.
SDR submission date	The time and date the swap transaction was submitted to the SDR.
Settlement Method	The agreed upon way the swap will settle.
Submission of order entry timestamp	The time and date when the order was sent to the platform to be executed.
Potential Confirmation/Clearance Data	
Board of Directors approval	Y/N. If the exempted counterparties are registered with the SEC did their Board of Directors (or alternative governance body for non-corporate end users) approve the exemption from clearing?
Call, put or cancellation date	Information needed to determine when a call, put, or cancellation may occur with respect to a transaction.
Cleared	An indicator of whether a swap has been cleared.
Clearing Entity	Name of the Clearing Organization where a swap was cleared.
Clearing Exemption	Y/N. Are one or more counterparties to the swap transaction exempted from clearing?
Clearing Timestamp	The time and date a swap was cleared.
Confirmed	An indicator of whether a swap has been confirmed by both parties.
Master Agreement Date	Date of the Master Agreement.
Submission Timestamp for clearing	The time and date when a swap was submitted to a clearing organization.
Potential Position Data	
Exchange Rate/Price Unit	Spot rate or price unit used.
Futures Contract Equivalent	Swap amount divided by the commodity quantity per futures contract to give you the total number of futures contracts.
Futures Contract Equivalent unit of measure	The unit of measure that was used in the future contract equivalent computation.
Notional (U.S.$ Equiv.)	U.S.$ equivalent of the “Notional Amount or Total Quantity.”
Notional Amount/Total Notional Quantity	Total currency amount or total quantity in the unit of measure of an underlying commodity.
Notional Currency/Price Currency	Notional Currency.
Potential Option Instrument Applicable Data	
Lockout Period	Date of first allowable exercise.
Option Expiration Date	Expiration date of the option.
Option Premium	Fixed premium paid by the buyer to the seller.
Option Premium currency	The currency used to compute the premium.
Option Style	American, European, Bermudan, Asian.
Option Type	Call, Put, Straddle, Strangle, Collar, Butterfly, *etc.*
Strike Price (Cap/Floor rate)	The strike price of the option.
Value for Options	This value of the option at the end of every business day.
Potential Margin/Collateral Data	
Collateral on Deposit	The amount of collateral that has been agreed upon by the parties to the swap.
Collateral Type	The type of collateral that has been agreed upon.
Credit Support Indicator	Y/N. Have the exempt counterparties given notice to the CFTC regarding the exemption and executed a CSA or other form of credit support?
Independent Amount	Independent amount.
Independent Amount Currency	Currency of the independent amount.
Independent Amount Payer	The counterparty that will pay the independent amount.
Independent Amount Receiver	The counterparty that will receive the independent amount.
Initial Margin Requirement	The initial margin requirement that has been required by the parties to the swap.
Linked Independent Amount	Linked independent amount.
Linked Independent Amount Currency	Currency of the linked independent amount.
Long Option Value	The long option value contained in the maintenance margin requirement.

Data fields	Description
Maintenance Margin Requirement	The maintenance margin requirement that has been required by the parties to the swap.
Non-Cash Collateral	Non-Cash collateral that is allowed for certain end users.
Short Option Value	The short option value contained in the maintenance margin requirement.
Types of Collateral on Deposit	List of collateral by asset type for the collateral on deposit amount.
Variation Margin	U.S. $ amount that is paid daily in order to mark to market the swap transaction.

Issued in Washington, DC, on November 19, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Swap Data Recordkeeping and Reporting Requirements

I support the proposed rulemaking to establish swap data recordkeeping and reporting requirements for registered entities and counterparties involved in swaps. The proposed rule is intended to ensure that complete, timely and accurate data concerning all swaps is available to the Commission and other regulators. The proposed rule requires that data be consistently maintained and reported to swap data repositories by swap dealers, major swap participants, designated contract markets, swap execution facilities, derivatives clearing organizations and futures commission merchants. As swaps exist over a period of days to sometimes years, the proposal includes requirement for the reporting of data upon the transaction and to continue over the lifecycle of the swap. Another important component of the proposed rulemaking is that there will be required unique identifiers for swaps, counterparties and products. This will enhance operational efficiency for market participants and improve market surveillance for regulators.

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