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FEDERAL REGISTER

Vol. 78 Wednesday,
No. 34 February 20, 2013

Pages 11745–11966

OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, March 12, 2013
9 a.m.–12:30 p.m.

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG46

Small Business Size Regulations, Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program; Correction

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on Thursday, December 27, 2012. The regulations related to size and eligibility for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

DATES: Effective February 20, 2013 and is applicable beginning January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Edsel Brown, Assistant Director, Office of Technology, at (202) 205–7343, or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: On May 15, 2012, at 77 FR 28520 (available at *http://www.gpo.gov/fdsys/pkg/FR-2012-05-15/pdf/2012-11586.pdf*), the U.S. Small Business Administration (SBA or Agency) published a proposed rule to implement provisions in the National Defense Authorization Act for Fiscal Year 2012 (Defense Authorization Act), Pub. L. 112–81, which affected the SBIR and STTR programs, including those relating to size and eligibility.

On December 27, 2012 (77 FR 76215), SBA published a final rule, which amended the eligibility requirements for the SBIR and STTR programs. As published, the final regulations contain two points where the word "small" was inadvertently left out and which need to be clarified.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Loan programs-business, Small businesses.

Accordingly, 13 CFR part 121 is corrected by making the following amendments:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 638, 662, and 694a(9).

§ 121.702 [Amended]

■ 2. In § 121.702, amend paragraphs (a)(1)(i) and (b)(1)(i) by removing the phrase "other business concerns" and adding in its place "other small business concerns".

Dated: February 11, 2013.

Sean Greene,

Associate Administrator for Investment.

[FR Doc. 2013–03772 Filed 2–19–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2012–0103]

RIN 1625–AA01

Anchorages; Lower Mississippi River, Above Head of Passes, Convent, LA and Point Pleasant, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a new anchorage area on the Lower Mississippi River, Above the Head of Passes (AHP), located at the Belmont Light extending from Mile Marker (MM) 152.9 to 154 on the Left Descending Bank (LDB) of the river. The anchorage will double the available anchorage areas in this section of the river, which is necessary to help accommodate increased vessel volume and improve navigational safety for vessels transiting this river section. As discussed below, the Coast Guard decided not to establish a second anchorage at Bayou Goula, as had been proposed.

DATES: This rule is effective March 22, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0103. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Brandon Sullivan, Sector New Orleans, Coast Guard; telephone 504–365–2280, email *Brandon.J.Sullivan@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:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On Thursday, November 8, 2012 the Coast Guard published a Notice of Proposed Rule Making (NPRM) in the **Federal Register** (77 FR 66942). There were 3 comments received. There were no public meetings requested or held as a result of the NPRM; however the anchorage area was the subject of a public Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) meeting in December 2011, prior to the publication of the NPRM. LMRWSAC is a Federal Advisory Committee operating in accordance with 5 U.S.C. App. 2, and the minutes of the December 2011 meeting are available in the docket.

B. Basis and Purpose

The Coast Guard is authorized under section 7 of the Rivers and Harbors Act of 1915 (33 U.S.C. 471) to establish anchorages in the navigable waters of the United States through the regulations found in 33 CFR parts 109 and 110. At its December 2011 meeting, the LMRWSAC recommended the establishment of the anchorage area in the Lower Mississippi River (LMR), AHP. LMRWSAC is responsible for advising, consulting with, and making recommendations to the Secretary of Homeland Security on matters relating to the transit of vessels to and from the ports of New Orleans, Plaquemines, St. Bernard, South Louisiana, and Baton Rouge. Participants at the December 2011 meeting noted that the anchorage is necessary to address navigation safety concerns, in regards to the increased volume of vessels in the proposed area.

C. Discussion of Comments, Changes and the Final Rule

Three issues were raised by comments submitted to the docket. The first comment received was from the National Oceanic and Atmospheric Administration (NOAA) National Ocean Service Office of Coast Survey. The two concerns raised were the encroachment of the anchorage areas on the U.S. Army Corps of Engineers (USACE) revetments and pipeline crossings in the proposed areas.

After collaboration with USACE and the Coast Guard, the NOAA National Ocean Service Office of Coast Survey was able to update its data on the exact locations of the revetments, which alleviated the encroachment concern. This is noted in a second comment submitted by the NOAA National Ocean Service Office of Coast Survey.

Regarding the pipeline crossings noted in the NOAA comments, specifically in the proposed Bayou Goula anchorage area, the Coast Guard has determined the need for further investigation and will not be going forward with that anchorage area as proposed. At this time, the Coast Guard is establishing only the Belmont anchorage area, and not the Bayou Goula anchorage area that had been proposed in the NPRM.

Finally, the last concern was raised in the comment submitted by the Department of Interior regarding the habitat of the Pallid Sturgeon. The focus of the concern revolved around "entrainment issues associated with dredging operations in the Mississippi and Atchafalaya Rivers and through diversion structures off the Mississippi River." The establishment of the Belmont anchorage area will not require dredging and will not create a diversion. After consideration, therefore, the Coast Guard did not modify the proposed Belmont anchorage in response to this comment.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impacts on routine navigation are expected to be minimal because the anchorage area will not unnecessarily restrict traffic as it is located outside of the established navigation channel. Vessels will be able to maneuver in, around, and through the anchorage. Operators who choose to maneuver their vessels around the anchorage area would not be significantly impacted because the total distance to transit around the anchorage perimeter to the other side, does not exceed 1.1 miles.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received 0 comments from the Small Business Administration on this rule. 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 would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Belmont anchorage area.

This anchorage will not have a significant economic impact on a substantial number of small entities for the following reasons. The anchorage will double the anchorage area in this location thus allowing greater vessel volume in order to meet the growing economic needs of facilities along the river, and vessel traffic can pass safely around the anchorage.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing an anchorage area. This rule is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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. In § 110.195, add paragraph (a)(34) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(34) *Belmont Anchorage.* An area 1.1 miles in length along the left descending bank of the river extending from mile 152.9 (Belmont Light) to mile 154.0 above Head of Passes. The width of the anchorage is 300 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

* * * * *

Dated: February 5, 2013.

Roy A. Nash,

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

[FR Doc. 2013–03827 Filed 2–19–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0072]

Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the Chelsea Street Bridge across the Chelsea River, mile 1.2, between Chelsea and East Boston, Massachusetts. The vertical lift needs to be adjusted to correct an out of skew condition. This deviation requires the bridge to remain closed for four hours.

DATES: This deviation is effective from 8 p.m. until midnight on February 21, 2013.

ADDRESSES: The docket for this notice, USCG–2013–0072, is available online at *www.regulations.gov* by typing in the docket number in the "SEARCH" box and clicking "SEARCH." Next, click on the Open Docket Folder on the line associated with this notice. The docket 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 notice, call or email Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, *john.w.mcdonald@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Chelsea Street Bridge, across the Chelsea River, mile 1.2, between Chelsea and East Boston, Massachusetts, has a vertical clearance in the closed position of 7 feet above mean high water and 17 feet above mean low water, and 175 feet above mean high water in the full open position. The bridge opens on signal at all times as required by 33 CFR 117.593.

The waterway is transited predominantly by commercial operators delivering petroleum products to

facilities located upstream from the new bridge.

The lift span at the new bridge is out of skew and must be adjusted to prevent damage to the operating system. The adjustment maintenance requires the bridge to remain in the closed position for four hours.

The upstream oil facilities were all advised regarding the four hour closure. No objections were received.

Under this temporary deviation the bridge may remain in the closed position from 8 p.m. through midnight on February 21, 2013.

In accordance with 33 CFR 117.35(e), the bridge 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: February 11, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–03883 Filed 2–19–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1102; EPA–R05–OAR–2008–0782; FRL–9771–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; PBR and PTIO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As additions to Ohio's State Implementation Plan (SIP) under the Clean Air Act, EPA is approving six Permit-by-Rule (PBR) provisions, a Permit to Install and Operate (PTIO) program, two permanent exemptions from the Permit to Install (PTI) requirement, and a General Permit program. The Ohio Environmental Protection Agency (OEPA) requested these rule revisions to make its air pollution permit program more efficient. Approving these additions will make the PBRs, PTIOs, and general permits Federally enforceable. Because these rule revisions will make Ohio's air permit program more efficient while continuing to protect human health and the environment, EPA approves the revisions.

DATES: This final rule is effective on March 22, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA R05 OAR 2007–1102; EPA–R05–OAR–2008–0782. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 *www.regulations.gov* or in hard copy at the 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 Kaushal Gupta, Environmental Engineer, at (312) 886–6803 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kaushal Gupta, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6803, *gupta.kaushal@epa.gov*.

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 does this document address?

This document addresses requests from Ohio to incorporate the following rules into the Ohio SIP.

1. PBR and Permanent Exemption Provisions

Ohio's Federally approved construction program, Ohio Administrative Code (OAC) 3745–31 ("Permits to Install New Sources of Pollution") provides the authority for OEPA to issue PTIs to new sources of air pollution or modifications to existing sources of air pollution. For attainment areas, the program was conditionally approved into Ohio's SIP on October 10, 2001 (66 FR 51570) and fully approved on January 22, 2003 (68 FR 2909). For nonattainment areas, the program was fully approved on January 10, 2003 (68 FR 1366). Included in this program at OAC 3745–31–03 ("Permit to install exemptions") are exemptions from the requirement to obtain a PTI before constructing or modifying a source of air pollution. The types of exemptions include permanent exemptions, Federal-based exemptions, discretionary exemptions, and PBR exemptions (exempting certain sources from the PTI requirement as long as they comply with the relevant provisions of the PBR rule).

On April 24, 2006, EPA received a request from OEPA to approve the addition of two permanent exemptions and six PBR provisions to the SIP.

2. PTIO and General Permit Programs

Prior to the rulemaking, a minor source (that is, a source not subject to Title V of the Clean Air Act) in Ohio would be issued both a PTI under OAC 3745–31 and a Permit to Operate (PTO) under OAC 3745–35 ("Air Permits to Operate and Variances"). Ohio is now combining both permit programs into a new PTIO program. Under the PTIO program, a minor source would be issued one PTIO instead of a PTI and a PTO.

On June 30, 2008, the state regulations to implement the PTIO program became effective and OAC 3745–35 was rescinded. On July 18, 2008, OEPA submitted to EPA a request to approve the addition of the PTIO program and a General Permit program to the SIP. The changes to Ohio's SIP involve the modification of various parts of OAC 3745–31, the removal of OAC 3745–35, and the addition of OAC 3745–31–29 to enable the issuance of Federally enforceable general PTIs and general PTIOs.

On October 1, 2012, EPA approved the aforementioned PBR, permanent exemption, PTIO, and General Permit program provisions (77 FR 59751) as a revision to Ohio's SIP. However, the provisions included the following terms which EPA had not intended to act on:

- The SIP revision classified municipal incinerators capable of charging more than 250 tons of refuse per day as having a major stationary source emission threshold of 100 tons per year or more. OAC 3745–31–01(LLL)(2)(a)(ix).
- The SIP revision allowed OEPA Director's discretion for complying with the public participation notification requirements for Federal Land Managers. OAC 3745–31–06(H)(2)(d).
- The SIP revision allowed Director's discretion and specific exemptions with regard to preconstruction activities. OAC 3745–31–33.

EPA withdrew its approval on November 23, 2012 (77 FR 70121). This document approves the PBR, permanent exemption, PTIO, and General Permit

program provisions without taking action on the above language. It is a final action based on the proposed approval published on October 1, 2012 (77 FR 59879).

II. What program changes is EPA approving?

1. PBR and Permanent Exemption Provisions

EPA is approving the requested modifications and additions to the permanent exemption and PBR provisions in OAC 3745–31–03. The significant changes are as follows.

The permanent exemption from the requirement to obtain a PTI for organic liquid storage tanks is being expanded to cover larger tanks. Currently, the exemption only applies to tanks with a capacity less than 10,000-gallons; the modification would exempt tanks of less than 19,815-gallon capacity (except for gasoline storage tanks at bulk gasoline plants), tanks between 19,815 and 39,894-gallon capacity with maximum true vapor pressure less than 2.176 pounds per square inch absolute (psia), and tanks of 39,894-gallon or greater capacity with maximum true vapor pressure less than 0.508 psia. Note that permanent exemptions under this rule do not exempt any source from the requirements of the Clean Air Act, including but not limited to, being considered for purposes of determining whether a facility constitutes a major source or being included in a Title V permit application.

PBR exemptions from the requirement to apply for individual PTIs are being added for auto body refinishing facilities, gasoline dispensing facilities with Stage I controls, gasoline dispensing facilities with Stage I and Stage II controls, boilers and heaters, small printing facilities, and mid-size printing facilities that meet certain size, throughput, and process requirements. Each PBR exemption has requirements for emission limitation and/or control, monitoring and/or recordkeeping, reporting, and testing. Furthermore, the PBR exemptions rule now includes general provisions for recordkeeping, record retention, notification, and reporting requirements that apply to all sources utilizing the PBR exemptions. The general provisions clarify that the PBR exemptions do not exempt any source from the requirements of the Clean Air Act, including but not limited to, being considered for purposes of determining whether a facility constitutes a major source or being included in a Title V permit application.

In a December 1, 2008, letter, Ohio provided technical support for the PBR and PTIO provisions to demonstrate that the provisions are protective of the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstrations and visibility, and are not in violation of section 193 of the Clean Air Act, the "General Savings Clause."

In a February 14, 2012, letter, Ohio provided a survey of the estimated emissions from the state's organic liquid storage tanks to demonstrate that the modified permanent exemption for organic liquid storage tanks would have no negative impact on air quality. In a May 24, 2012, email, Ohio clarified that in the context of this exemption, an "organic liquid" is an organic compound at the temperature and pressure experienced inside the storage tank, and that the organic liquid would have to remain a liquid to qualify for the exemption. The email further clarified that the "submerged fill" mentioned in this rule is the same as a "submerged fill pipe" as defined in OAC 3745–21–01(C)(6).

2. PTIO and General Permit Programs

OAC Chapter 3745–35, which contained the rules for PTOs and Federally Enforceable State Operating Permits, is being rescinded in its entirety from the SIP. OAC 3745–31–29 ("General permits-to-install and general PTIO") is being added to the SIP to make Ohio's general PTIs and general PTIOs Federally enforceable. General PTIs and general PTIOs are based on model permits issued by OEPA. Sources may apply for coverage under a model permit rather than apply for individual permits. Only minor sources may qualify for coverage under a general permit.

We are not taking action on OAC 3745–31–33 ("Site preparation activities prior to obtaining a final permit-to-install or PTIO"), which allows Director's discretion and specific exemptions with regard to preconstruction activities. This rule will not be part of the SIP.

Other, previously approved parts of Ohio's SIP are being modified as follows:

a. OAC 3745–15–03 ("Submission of emission information"), is being modified to replace all instances of "Board Director" to "Director."

b. OAC 3745–31–01 ("Definitions"), which provides definitions for the permit program, is being expanded to include definitions for "permits to install and operate," "PTIOs," and "express permit processing." The SIP revision submittal includes changes to the definitions of "Air contaminant source" and "Major stationary source" but, per OEPA's request in its July 18, 2008, submittal, we are not approving these two changes at this time. Furthermore, we are not taking action on 3745–31–01(LLL)(2)(a)(ix) which classifies municipal incinerators capable of charging more than 250 tons of refuse per day as having a major stationary source emission threshold of 100 tons per year or more. This provision will not be part of the SIP.

c. OAC 3745–31–02 ("Requirements") now requires sources to obtain PTIs or PTIOs before installation or modification, whether or not such sources are subject to Title V of the Clean Air Act (administered in Ohio under OAC 3745–77). Existing PTIs and PTOs remain effective until superseded by PTIOs. Note that this rule no longer contains the previously approved rule's provisions applying to solid waste disposal facilities and land application of sludge.

d. OAC 3745–31–04 ("Applications") is being expanded to require PTIO applications.

e. OAC 3745–31–05 ("Criteria for decision by the director") is being expanded to require PTIOs to contain the Best Available Technology (BAT), which is a previously SIP-approved requirement. Certain terms from the rescinded OAC 3745–35, such as conditional permits, are being incorporated into the new PTIO rules. Per Ohio's request in its July 18, 2008, submittal, we are not taking action on the provision that exempts sources with the potential to emit less than 10 tons per year from the BAT requirement. This provision will not be part of the SIP.

f. OAC 3745–31–06 ("Termination") is being rescinded in its entirety and replaced by a new OAC 3745–31–06 ("Completeness determination, processing requirements, public participation, public notice, and issuance"). We are not approving OAC 3745–31–06(H)(2)(d) which allows Director's discretion for complying with the public participation notification requirements for Federal Land Managers.

g. OAC 3745–31–07 ("Revocation") is being expanded to cover termination, expiration, renewal, revision, and transfer.

h. OAC 3745–31–08 ("Procedure for decision by director") is being rescinded in its entirety and replaced by a new OAC 3745–31–08 ("Registration status permit-to-operate") that provides the ongoing requirements for non-Title V sources that received registration status under the rescinded OAC 3745–35.

i. OAC 3745–31–09 ("Air permit-to-install completeness determinations, public participation, and public notice") is being rescinded in its entirety and replaced by a new OAC 3745–31–09 ("Variances on operation") that has the provisions for variances that were in the rescinded 3745–35.

j. OAC 3745–31–10 ("Air stationary source obligations") is undergoing relocation of certain terms to other parts of the SIP.

k. OAC 3745–31–20 is undergoing minor revisions to update rule citations.

l. OAC 3745–31–22 is undergoing removal of two references to pollution control projects, a component of Federally required New Source Review (NSR) Reform regulations that was vacated from the Federal NSR program.

III. What action is EPA taking?

EPA is approving the modification of OAC 3745–31–03 to incorporate PBRs for auto body refinishing facilities, gasoline dispensing facilities with Stage I controls, gasoline dispensing facilities with Stage I and Stage II controls, boilers and heaters, small printing facilities, and mid-size printing facilities. EPA is approving the modification of OAC 3745–31–03 to incorporate permanent exemptions for organic liquid storage tanks of less than 19,815-gallon capacity, between 19,815 and 39,894-gallon capacity, and tanks of 39,894-gallon or greater capacity. EPA is approving the rescission of OAC 3745–35 and the modification of OAC 3745–15–03, 3745–31–01, 3745–31–02, 3745–31–04, 3745–31–05, 3745–31–06, 3745–31–07, 3745–31–08, 3745–31–09, 3745–31–10, 3745–31–20, and 3745–31–22 to accommodate Ohio's PTIO program, reorganize other provisions, and remove vacated NSR Reform provisions. EPA is approving OAC 3745–31–29, the program for General PTIs and General PTIOs, as an addition to the SIP.

IV. Statutory and Executive Order Reviews

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 28, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by revising paragraphs (c)(42), (c)(51), (c)(98)(i), and (c)(119)(i)(A), and by adding paragraph (c)(156) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(42) On February 25, 1980, the State of Ohio submitted the revised Ohio Administrative Code (OAC) Rules 3745–35–01 through 3745–35–04 which set forth requirements for air permits to operate and variances. These rules were adopted on September 28, 1979 and became effective in Ohio on November 7, 1979. Rescinded in 2008; see paragraph (c)(156) of this section.

* * * * *

(51) On October 1, 1982, and February 28, 1983 the State of Ohio submitted revisions to Ohio Administrative Code (OAC) Rules 3745–35–03 which set forth requirements for obtaining

variances. Rescinded in 2008; see paragraph (c)(156) of this section.

* * * * *

(98) * * *

(i) Incorporation by reference. Rule 3745–35–07, adopted November 3, 1994, effective November 18, 1994. Rescinded in 2008; see paragraph (c)(156) of this section.

* * * * *

(119) * * *

(i) * * *

(A) Ohio Administrative Code 3745–35–02, adopted April 4, 1994, effective April 20, 1994. Rescinded in 2008; see paragraph (c)(156) of this section.

* * * * *

(156) On April 24, 2006, Ohio EPA submitted two permanent exemptions from the Permit to Install program and six Permit-by-Rule provisions for approval into its SIP. On July 18, 2008, Ohio EPA submitted provisions for a Permit to Install and Operate (PTIO) program and a general permit program for approval into its SIP. The changes to Ohio's SIP involve the modification of various parts of OAC 3745–31, the removal of OAC 3745–35, and the addition of OAC 3745–31–29 to enable the issuance of federally enforceable general PTIs and general PTIOs. On June 30, 2008, the state regulations to implement the PTIO program became effective and OAC 3745–35 was rescinded.

(i) Incorporation by reference.

(A) Paragraph (A) of Ohio Administrative Code Rule 3745–15–03, "Submission of emission information.", effective June 30, 2008.

(B) Ohio Administrative Code Rule 3745–31–01, "Definitions.", effective December 14, 2007, except for paragraphs (I), (LLL)(2)(a)(ix), (LLL)(2)(a)(xxi), (LLL)(4)(t), and (QQQ)(1)(b).

(C) Ohio Administrative Code Rule 3745–31–02, "Applicability, requirements, and obligations.", effective June 30, 2008.

(D) Ohio Administrative Code Rule 3745–31–03, "Exemptions.", effective June 30, 2008.

(E) Ohio Administrative Code Rule 3745–31–04, "Applications.", effective June 30, 2008.

(F) Ohio Administrative Code Rule 3745–31–05, "Criteria for decision by the director.", effective June 30, 2008, except for paragraph (A)(3)(a)(ii).

(G) Ohio Administrative Code Rule 3745–31–06, "Completeness determinations, processing requirements, public participation, public notice, and issuance.", effective June 30, 2008, except for paragraph (H)(2)(d).

(H) Ohio Administrative Code Rule 3745–31–07, "Termination, revocation, expiration, renewal, revision and transfer.", effective June 30, 2008.

(I) Ohio Administrative Code Rule 3745–31–08, "Registration status permit-to-operate.", effective June 30, 2008.

(J) Ohio Administrative Code Rule 3745–31–09, "Variances on operation.", effective June 30, 2008.

(K) Ohio Administrative Code Rule 3745–31–10, "NSR projects at existing emissions units at a major stationary source.", effective June 30, 2008.

(L) Ohio Administrative Code Rule 3745–31–20, "Attainment provisions—innovative control technology.", effective June 30, 2008.

(M) Ohio Administrative Code Rule 3745–31–22, "Nonattainment provisions—conditions for approval.", effective June 30, 2008.

(N) Ohio Administrative Code Rule 3745–31–29, "General permit-to-install and general PTIO.", effective June 30, 2008.

(O) Ohio Administrative Code Rule 3745–31–32, "Plantwide applicability limit (PAL).", effective June 30, 2008.

(P) June 2, 2008, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio EPA.

[FR Doc. 2013–03761 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0293; FRL–9781–5]

Approval and Promulgation of Implementation Plans; State of Kansas; Idle Reduction of Heavy-Duty Diesel Vehicles and Reduction of Nitrogen Oxides (NO_X) Emissions for the Kansas City Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kansas State Implementation Plan (SIP) submitted by the State of Kansas on July 27, 2010. The revision includes two new rules which implement restrictions on the idling of heavy duty diesel vehicles and reduce nitrogen oxide (NO_X) emissions at stationary sources in the Kansas portion of the Kansas City Maintenance Area for ozone. EPA is approving this revision because the standards and requirements set by the rules will strengthen the Kansas SIP. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective April 22, 2013, without further notice, unless EPA receives adverse comment by March 22, 2013. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0293, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: kemp.lachala@epa.gov.*

3. *Mail or hand delivery:* Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2012–0293. 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 through *http://www.regulations.gov* or email information that you consider to be CBI or otherwise protected. 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 email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551–7214 or by email at *kemp.lachala@epa.gov*.

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

Table of Contents

I. What is the background for today's action?

The *Kansas City Eight-Hour Ozone Maintenance Plan*, which was approved by EPA and became effective on October 9, 2007, contains contingency measures that are triggered upon a violation of the 1997 8-hour ozone national ambient air quality standard. These contingency measures include a heavy-duty diesel idle reduction regulation and a NO_X emissions reduction regulation for Johnson and Wyandotte counties. A violation of the 1997 8-hour ozone standard occurred thereafter, thus triggering the adoption of these rules.

II. What revisions is EPA approving?

On July 27, 2010, Kansas submitted to EPA for approval into the Kansas SIP two new rules for the Kansas portion of the Kansas City Ozone Maintenance Area: Kansas Administrative Regulation (K.A.R.) 28–19–712 and K.A.R. 28–19–713. These rules became effective in Kansas on June 25, 2010. The idle reduction rule at K.A.R. 28–19–712 limits the amount of time a heavy duty diesel vehicle in Johnson and Wyandotte Counties in Kansas will be permitted to idle while parked or while waiting to load or unload. It also places responsibilities on freight load or unload locations to limit the idling of heavy duty diesel vehicles or commercial vehicles while at their location.

Per K.A.R. 28–19–712a, this rule applies to owners or operators of commercial, public or institutional heavy duty diesel vehicles (those having a gross vehicle weight rating (GVWR) of greater than 14,001 pounds) that are designed primarily to transport persons or property on public streets and highways.

K.A.R. 28–19–712b sets a time limit of five minutes idling time (i.e., when a vehicle's engine is operating but not in gear) in any sixty minute period, with some exceptions noted in K.A.R. 28–19–712c and 28–19–712d, as described below. In addition, the regulations restrict idling of heavy-duty diesel vehicles that are also commercial vehicles to thirty minutes in any sixty minute period at load or unload locations. K.A.R. 28–19–712c.

The regulation specifies exemptions to the idling limit for certain vehicle types and situations. These exemptions are listed in K.A.R. 28–19–712d and include: road traffic conditions; operating equipment for safety or emergency uses; police, fire, ambulance, public safety and other law enforcement vehicles; service and repair needs; state or Federal equipment inspections; mechanical work; armored vehicles; bus idling for passenger comfort (no greater than fifteen minutes in any sixty minute period); vehicles idling for purposes of using sleeper berth compartments; mechanical difficulties; agricultural operations in which the vehicle is only incidentally operated or moved upon public roads; and vehicles using auxiliary equipment powered by the engine.

Kansas intends to use financial incentives, compliance assistance and public education as the primary tools to implement the heavy-duty diesel idling rule. It intends to reprioritize its existing contractual agreements with the locally affected governmental agencies to emphasize the need for public outreach, education and compliance assistance to facilitate this implementation. Furthermore, in appropriate cases, Kansas has statutory authority under K.S.A. 65–3018 to seek penalties. Based on this, EPA has determined that this rule meets the applicable criteria for enforceability of SIP requirements.

The NO_X emissions reduction rule at K.A.R. 28–17–713 will apply to owners and operators of stationary sources located in Johnson and Wyandotte counties that emit NO_X in an amount equal to or greater than 1,000 tons per year for the entire facility, based on the average of total emissions for the 2005, 2006 and 2007 calendar years (the three-year period in which the violation of the ozone standard was recorded). No owner or operator of an emission unit subject to the rules may allow or permit NO_X to be emitted in excess of specified emission limits. The Kansas regulations further require owners and operators to install, operate, and maintain such equipment as necessary to achieve the emission limits and to demonstrate compliance using a certified continuous emission monitoring system (CEMS).

Three facilities are affected by this rule. Two of these are the Kansas City Board of Public Utilities (BPU) power generating facilities located in Wyandotte County—the Nearman Creek Power Station and the Quindaro Power Station. The other affected facility is AGC Flat Glass North America located in southern Johnson County.

III. Why is EPA approving Kansas's SIP revision?

These rules will result in reduced emissions of pollutants that contribute to ozone and fine particulate matter concentrations. The pollutants reduced by these regulations are volatile organic compounds, nitrogen oxides, carbon monoxide, and fine particulate matter, although the amount of reductions is not quantified. The approval of this rule will strengthen the Kansas SIP and assist the state in meeting and maintaining compliance with air quality standards, including the standard for ground level ozone.

Kansas's idling rule is generally consistent with EPA's "Model State Idling Law" (EPA420–S–06–001, April 2006). This model rule was developed with input from the states and industry to address idling issues in a consistent and understandable manner from state to state, to aid in compliance.

IV. Have the requirements for approval of a SIP revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. What action is EPA taking?

EPA is taking final action to approve the request to amend the Kansas SIP to include Kansas rules K.A.R. 28–19–712

(Idle Reduction of Heavy Duty Diesel Vehicles) and K.A.R. 28–19–713 (Reduction of Nitrogen Oxides (NO_X) Emissions for the Kansas portion of the Kansas City Ozone Maintenance Area).

These rules were adopted by Kansas in response to a violation of the 8-hour ozone standard in Kansas City, based on 2005 through 2007 monitoring data, under the statutory authority granted by Kansas Statutes Annotated (K.S.A.) 65–3001 through 65–3028. The regulations were effective in Kansas on June 25, 2010.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comments on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Motor carriers, Motor vehicles, Motor vehicle pollution, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Transportation, Volatile organic compounds.

Dated: February 6, 2013.

Karl Brooks,

Regional Administrator, Region 7.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart R—Kansas

■ 2. In § 52.870 the table in paragraph (c) is amended by adding new entries in alpha-numeric order for K.A.R. 28–19–712 and 28–19–713 under a new subheading entitled "Nitrogen Oxide Emissions" to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				

EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Nitrogen Oxide Emissions				
K.A.R. 28–19–712	Definitions	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–712a	Applicability	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
			02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–712b	General requirement for heavy-duty diesel vehicles.	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–712c	General requirement for load and unload locations.	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–712d	Exemptions	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–713	Applicability	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–713a	Emission limitation requirements	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–713b	Alternate emissions limit	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–713c	Control measures and equipment	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
K.A.R. 28–19–713d	Compliance demonstration, monitoring, and reporting requirements.	06/25/10	02–20–13 [*insert* **Federal Register** *page number where the document begins*].	
*	*	*	*	*

* * * * *

[FR Doc. 2013–03749 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0762; FRL–9782–1]

Approval and Promulgation of Implementation Plans; Tennessee: Knox County Supplement Motor Vehicle Emissions Budget Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Tennessee State Implementation Plan (SIP), submitted to EPA on December 13, 2012, by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC). Tennessee's December 13, 2012, SIP revision includes changes to the maintenance plan for the Knox County 1-hour ozone area submitted on August 26, 1992, and approved by EPA on September 27, 1993, and a subsequent SIP revision approved by EPA on August 5, 1997. The Knox County 1-hour ozone area was comprised of Knox County in its entirety. The December 13, 2012 SIP revision proposes to increase the safety margin allocated to motor vehicle emissions budgets (MVEB) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for Knox County to account for changes in the emissions model and vehicle miles traveled (VMT) projection model. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective on April 22, 2013 without further notice, unless EPA receives relevant adverse comment by March 22, 2013. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0762 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4–RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* EPA–R04–OAR–2012–0762, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2013–0762. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality and Transportation Modeling Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Kelly Sheckler may be reached by phone at (404) 562–9222 or by electronic mail address *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Knox County, Tennessee, 1-hour ozone attainment and maintenance area is comprised of only Knox County in its entirety in Tennessee (hereafter referred to as the "Knox County" or "Area"). Knox County was originally designated as marginal nonattainment for the 1-hour ozone national ambient air quality standards (NAAQS) on November 6, 1991 (56 FR 56694).[1] Knox County was redesignated as attainment for the 1-hour ozone NAAQS on September 27, 1993 (58 FR 50271). In this approval, was a 10-year air quality maintenance plan covering the years 1994–2004. A subsequent revision to the Knox County Area maintenance plan was approved by EPA on August 5, 1997, that established MVEB for transportation conformity purposes. That plan satisfied the CAA requirement for a 10-year update of the Knox County 1-hour ozone maintenance plan.

On October 12, 2012, TDEC submitted a draft SIP revision which included changes to the emissions inventory for both on-road and off-road mobile sources using the latest EPA-approved mobile emissions and NONROAD models. New emissions data for both the new base year (attainment year) and the projected years (2004 and 2014) were calculated. The plan updated the 2004 MVEB and provided for a new MVEB for the year 2014.

On December 18, 2012, (77 FR 74820), EPA proposed to approve through parallel processing Tennessee's October 12, 2012, draft SIP revision with changes to the maintenance plan for the Knox County 1-hour ozone area. EPA did not receive any comments, adverse or otherwise, for the December 18, 2012, proposed rulemaking. The MVEB for the Knox County 1-hour ozone area that were published in EPA's proposed rulemaking on December 18, 2012, were not the same as the MVEB provided in Tennessee's December 13, 2012, final SIP revision related to the Knox County 1-hour ozone area. Consequently, EPA is not finalizing its December 13, 2012, proposal but is instead replacing that proposal with today's direct final rulemaking and accompanying proposed rulemaking. EPA is approving the State's implementation plan revision as a direct final action with a parallel proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is discussed below.

II. EPA's Analysis of Tennessee's SIP Revision

As discussed above, on December 13, 2012, the State of Tennessee, through TDEC, submitted a SIP revision to revise the MVEB for the Knox County 1-hour ozone maintenance plan to increase the safety margin as a result of new emissions model, VMT projection models, and other emission model input data. The MVEB (expressed in tons per day (tpd)) that are being updated through today's action were originally approved by EPA on September 27, 1993, updated on August 5, 1997, and February 4, 2004, and are outlined in the table below.

TABLE 1—ORIGINAL MVEB FOR KNOX COUNTY

	2004	2014
NO_x	33.89 tpd	22.49 tpd
VOC	29.24 tpd	22.12 tpd

TDEC is currently allocating portions of the available safety margin[2] to the

[1] Subsequent to designating Knox County nonattainment for the 1-hour ozone NAAQS, EPA has since designated Knox County as part of the larger Knoxville nonattainment area for the 1997 8-hour ozone NAAQS (*see* 69 FR 23857, April 30, 2004) and the 2008 8-hour ozone NAAQS (*see* 77 FR 30160, May 21, 2012). This proposed action relates primarily to the MVEB established for Knox County for the 1-hour ozone NAAQS, and does not relate to the MVEB approved for 1997 8-hour ozone NAAQS for the Knoxville Area, nor does it relate to any pending MVEB that may be contemplated for the Knoxville Area for the 2008 8-hour ozone NAAQS.

[2] A safety margin is the difference between the attainment level of emissions from all source

Continued

MVEB to account for new emissions models, VMT projections models, as well as changes to future vehicle mix assumptions, that influence the emission estimations. TDEC has now decided to allocate a majority of the safety margin available to the MVEB. Specifically, 7.97 tpd of the available VOC safety margin (15.94) is allocated to the 2004 MVEB, and 11.61 tpd for the available 2014 MVEB (23.22). Additionally, 2.79 tpd of the available NO_X safety margin are allocated to the 2004 MVEB and 18.43 tpd for the 2014 MVEB. The remaining safety margin for VOC for 2004 is 7.97 tpd and for 2014 is 11.61 tpd. As a result, there will be no safety margin remaining for NO_X for 2004 and 2014.

The following tables provide the adjusted VOC and NO_X emissions data, for the 2004 base attainment year inventories, as well as the projected VOC and NO_X emissions inventory 2014.

TABLE 2—KNOX COUNTY TOTAL VOLATILE ORGANIC COMPOUNDS EMISSIONS

Year	Area	Non-road	Biogenic	Mobile	Point	Total	Available safety margin
1990	28.82	9.81	32.43	40.84	8.06	119.96	.....
1993	29.25	9.96	32.43	32.35	8.64	112.63	.....
2004	30.90	10.52	32.43	21.27	8.90	104.02	15.94
2010	31.84	10.84	32.43	13.93	9.76	98.80	.....
2014	32.48	11.06	32.43	10.51	10.26	96.74	23.22

TABLE 3—KNOX COUNTY TOTAL NITROGEN OXIDES EMISSIONS

Year	Area	Non-road	Biogenic	Mobile	Point	Total	Safety margin
1990	3.66	9.77	0	37.62	8.96	60.01	.....
1993	3.72	9.92	0	34.85	9.54	58.03	.....
2004	3.92	10.48	0	31.10	11.73	57.23	2.79
2010	4.04	10.79	0	19.99	12.53	47.35	.....
2014	4.13	11.01	0	13.27	13.17	41.58	18.43

TABLE 4—KNOX COUNTY NO_X MVEB

[tpd]

	2004	2014
NO_X Emissions		
Base Emissions	31.10	13.27
Safety Margin Allocated to MVEB	2.79	18.43
NO_X Conformity MVEB	33.89	31.71

TABLE 5—KNOX COUNTY VOC MVEB

[tpd]

	2004	2014
VOC Emissions		
Base Emissions	21.27	10.51
Safety Margin Allocated to MVEB	7.97	11.61
VOC Conformity MVEB	29.24	22.12

Taking into consideration the portion of the safety margin applied to the MVEB, the resulting difference between the attainment level of emissions from all sources and the projected level of emissions from all sources in the maintenance area, the area still attains the NAAQS and meets the maintenance requirements. The new safety margins, are listed below in Table 6.

TABLE 6—NEW SAFETY MARGINS FOR THE KNOX COUNTY

Year	VOC tpd	NO_X tpd
2004	7.97	0
2014	11.61	0

As shown in Tables 2 and 3 above, VOC and NO_X total emissions in Knox County are projected to steadily decrease from 2004 to the maintenance year of 2014. This VOC and NO_X emission decrease demonstrates continued attainment/maintenance of the 1-hour ozone NAAQS for ten years from 2004 (the year the Area was effectively designated attainment for the 1-hour ozone NAAQS) as required by the CAA.

The revised MVEB that Tennessee submitted for the Knox County Area were developed with projected mobile source emissions derived using the MOBILE6 motor vehicle emissions model. This model was the most current model available at the time Tennessee was performing its analysis. However, EPA has now issued an updated motor vehicle emissions model known as Motor Vehicle Emission Simulator or MOVES. In its announcement of this model, EPA established a two-year grace period for continued use of MOBILE6.2 in regional emissions analyses for transportation plan and transportation improvement programs (TIPs) conformity determinations (extending to March 2, 2013),[3] after which states (other than California) must use MOVES in conformity determinations for TIPs. As stated above, MOBILE6.2 was the applicable mobile source emissions model that was available when the original SIP was submitted.

III. Final Action

EPA is taking direct final action to approve Tennessee's December 13, 2012, SIP revision to allocate a portion of the available safety margin to the MVEB for the Knox County 1-hour ozone maintenance Area. This action, will result in higher NO_X and VOC MVEB for transportation conformity purposes for Knox County, and would still be consistent with attainment for the 1-hour ozone NAAQS. EPA is proposing this action because it is consistent with the CAA and the

categories (i.e., point, area, and mobile) and the projected level of emissions from all source categories. The State may choose to allocate some of the safety margin to the MVEB, for transportation conformity purposes, so long as the total level of emissions from all source categories remains equal to or less than the attainment level of emissions.

[3] EPA previously extended the grace period to use MOVES for regional emissions analysis in conformity determinations to March 2, 2013 (77 FR 11394).

transportation conformity requirements at 40 CFR part 93.

On March 12, 2008, EPA issued revised ozone NAAQS. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should an adverse comment be filed. This rule will be effective on March 22, 2013 without further notice unless the Agency receives adverse comment by March 22, 2013. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on April 22, 2013 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: February 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry at the end of the table for the "MVEB Update for the 1-hour Ozone Maintenance Plan for Knox County, Tennessee" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
.	.	.	.	.
MVEB Update for the 1-hour Ozone Maintenance Plan for Knox County, Tennessee.	Knox County, TN	12/13/2012	02/20/13 ..... [Insert citation of publication].	

[FR Doc. 2013–03763 Filed 2–19–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0758; FRL–9781–7]

Approval and Promulgation of Implementation Plans; State of Missouri; Restriction of Emission of Particulate Matter From Industrial Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP) submitted March 17, 2011. This revision will amend the rule restricting emissions of particulate matter from industrial sources by providing an alternative compliance method for wet corn milling drying operations. The revisions to Missouri's rule do not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective April 22, 2013, without further notice, unless EPA receives adverse comment by March 22, 2013. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0758, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: bhesania.amy@epa.gov.*
3. *Mail or Hand Delivery:* Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2012–0758. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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 *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

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

Outline

I. What is being addressed in this document?

EPA is approving revisions to the Missouri SIP submitted to EPA on March 17, 2011. EPA has conducted an analysis of the State's amendments and has concluded that these revisions do not adversely affect the stringency of the SIP. Missouri's revisions include amendments to rule 10 CSR 10–6.400 *Restriction of Emission of Particulate Matter from Industrial Processes*, which add an alternative compliance method allowing an output concentration limit for wet corn milling drying operations, as detailed in the technical support document which is part of this docket.

II. Have the requirements for approval of a SIP revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving the request to amend the Missouri SIP by approving the State's request to amend 10 CSR 10–6.400 *Restriction of Emission of Particulate Matter from Industrial Processes*. EPA has determined that

these changes will not relax the SIP or adversely impact air emissions.

We are processing this action as a direct final action because the revisions do not adversely impact air emissions, and we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 5, 2013.

Karl Brooks,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–6.400 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
.	.	.	.	.
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
* * *	* * *	*	* *	*
10–6.400	*Restriction of Emission of Particulate Matter from Industrial Processes.*	02/28/11	02/20/13 [*insert* FEDERAL REGISTER *page number where the document begins*].	
* * *	* * *	*	* *	*

* * * * *

[FR Doc. 2013–03769 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0065; FRL–9378–1]

3-decen-2-one; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide, 3-decen-2-one, in or on potatoes when applied as a postharvest potato sprout inhibitor and used in accordance with label directions and good agricultural practices. On behalf of AMVAC Chemical Corporation (AMVAC), Technology Sciences Group, Inc. (TSG) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 3-decen-2-one under the FFDCA.

DATES: This regulation is effective February 20, 2013. Objections and requests for hearings must be received on or before April 22, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0065, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Colin G. Walsh, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0298; email address: *walsh.colin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0065 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 22, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0065, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

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

II. Background and Statutory Findings

In the **Federal Register** of March 10, 2010 (75 FR 11171) (FRL–8810–8), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7670) by TSG, 1150 18th Street NW., Suite 1000, Washington, DC 20036, on behalf of AMVAC, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 90660. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of 3-decen-2-one. This notice referenced a summary of the petition prepared by the petitioner, TSG (on behalf of AMVAC), which is available in the docket via *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit VII.C.

During the initial review of the petition, EPA determined that the data and/or information submitted was insufficient to support the use of the active ingredient, 3-decen-2-one, in or on all food commodities. The petitioner submitted additional data and filed a revised petition (PP 9F7670), proposing to establish an exemption from the requirement of a tolerance for residues of 3-decen-2-one in or on stored potatoes only. A Notice of Filing, allowing for a 30-day comment period, was published in the **Federal Register** of March 14, 2012 (77 FR 15012) (FRL–9335–9). No comments were received following this publication.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *" Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview

3-decen-2-one is a naturally occurring biochemical substance, as defined in 40 CFR 158.2000(a)(1), with a history of unremarkable human exposure. 3-decen-2-one functions as a plant growth regulator, affecting plant growth by increasing tuber respiration. Data on file indicate that 3-decen-2-one interferes with membrane integrity, which results in increased oxidative stress, desiccation, and rapid necrosis of the meristems and surrounding sprout tissues. Thus, 3-decen-2-one inhibits sprouting with no observed effects on the potato, potato sweetening, or processing quality. Based on this information, EPA considers the mode of action to be non-toxic (Ref. 1).

3-decen-2-one is approved by the U.S. Food and Drug Administration (FDA) as a synthetic flavoring agent and adjuvant that may be directly added to food (21 CFR 172.515). A report by an independent panel of experts retained by the Flavor and Extract Manufacturer's Association (FEMA) states 3-decen-2-one is considered safe for its intended use when added at an average maximum level of 19 ppm in baked goods, 7.8 ppm in soft candy, 5.8 ppm in frozen dairy products, 4.8 ppm in gelatins and puddings, 4.3 ppm in non-alcoholic beverages, and 4.0 ppm in alcoholic beverages (Oser & Ford, 1978) (Ref. 2).

3-decen-2-one has been well characterized and studied with respect to its metabolism and, more importantly, its natural occurrence in many foods that are common in the human diet including yogurt, skipjack tuna, edible porcini mushrooms and Iberian ham (Ref. 2). Additionally, the Joint FAO/WHO Expert Committee on Food Additives (JECFA) has reported that 3-decen-2-one, a structural class II flavoring agent, is one in a group of compounds that have been identified in fruits, vegetables, spices, cocoa, coffee and tea. JECFA concluded that there are no safety concerns at current intake levels when 3-decen-2-one is used as a flavoring agent (Ref. 2).

As stated previously in this unit, 3-decen-2-one is a substance that exhibits a non-toxic mode of action. In humans, this substance readily metabolizes into innocuous compounds (Ref. 1). Based on information submitted in support of this petition (summarized in Unit III.B.) and the comprehensive risk assessment conducted by the Agency, EPA concludes that there is a reasonable certainty of no harm from aggregate exposures to 3-decen-2-one, including the consumption of potatoes treated with this active ingredient in accordance with label directions and good agricultural practices. EPA has made this determination for the following reasons:

1. Available toxicology data and information indicate that the active ingredient is of low acute toxicity (with the exception that it is an eye and skin irritant) and is not a developmental toxicant, a mutagen, or toxic via repeat oral exposure;

2. Available information from the scientific literature indicate humans are already exposed to 3-decen-2-one in the diet from foods that naturally contain the chemical and from foods to which the chemical has been added as a food additive at levels higher than what will occur from pesticide use;

3. Metabolism data and information on the chemical indicate that it is metabolized into innocuous substances in humans that present no toxicological or dietary concern; and

4. Deterministic exposure analyses suggest that dietary exposure to the chemical as a pesticide is likely to be less than dietary exposure to the chemical as a food additive, thus as a natural constituent in foods, the pesticidal use of 3-decen-2-one is not likely to result in a significant increase in overall dietary exposure (Ref. 2).

B. Toxicity

The following is a summary of EPA's review of the toxicity profile of this biochemical.

1. *Acute toxicity (OCSPP Guideline Nos. 870.1100, 870.1200, 870.1300, 870.2400, 870.2500, and 870.2600; Master Record Identification (MRID) Nos. 47942609, 47942610, 47942611, 47942612, 47942613, and 47942614).* The petitioner submitted acute toxicity studies conducted on the technical grade material to EPA. Results of the acute toxicity testing indicate that 3-decen-2-one is of low acute toxicity with the exception that the substance is an eye and skin irritant. Acute oral toxicity (rat): LD_{50} > 5,000mg/kg; Acute dermal toxicity (rat): LD_{50} > 5,000mg/kg; Acute inhalation toxicity (rat): LC_{50} = 0.52–2.04 mg/L (male) and LC_{50} > 2.04 mg/L (female); Primary eye irritation (rabbit): moderately irritating; Primary dermal irritation (rabbit): Severely irritating; Dermal sensitization (guinea pig): not a dermal sensitizer (Ref. 3).

2. *90-day oral toxicity (OCSPP Guideline No. 870.3100; MRID Nos. 47942617 and 48422301).* A subchronic 90-day oral toxicity study on the technical grade material was not conducted. In lieu of the study, EPA used a weight-of-the-evidence (WOE) approach to estimate the likelihood of potential of toxicity from repeat oral exposure to this substance (Ref. 2). EPA considered the following evidence:

i. Lack of toxicological endpoints;

ii. Metabolic pathways;

iii. Lack of incidents associated with naturally occurring levels of 3-decen-2-one in foods; and

iv. FDA's approval of this biochemical as a direct food additive.

First, using an expert system computer program (DEREK Nexus), EPA identified two potential toxicological endpoints for 3-decen-2-one (potential dermal sensitization and *in vitro* chromosome damage); however, follow-up studies did not support these as toxicological endpoints. Second, the metabolic pathways of 3-decen-2-one have been characterized and demonstrate that the biochemical is metabolized into innocuous compounds that are either excreted or further metabolized in the fatty acid pathway or citric acid cycle. Third, 3-decen-2-one occurs naturally in some foods and has been used as a food additive without specific reports of adverse effects. Finally, as noted in this unit, FDA has approved the use of 3-decen-2-one as a synthetic flavoring agent and adjuvant that may be directly added to food. Based on this evidence, EPA concludes that 3-decen-2-one has relatively low toxicity.

3. *Prenatal developmental toxicity (OCSPP Guideline No. 870.3700; MRID No. 48970303).* An acceptable prenatal developmental toxicity study was submitted. In the study, Crl:CD Sprague-Dawley rats were administered doses of AMV–1018 (99.81% purity 3-decen-2-one) by gavage at 0, 100, 300 or 1,000 mg/kg/day from day 6 to day 19 of gestation. Each treatment group consisted of 24 female rats:

i. The control group which received corn oil and

ii. The test substance vehicle group.

No maternal deaths or clinical signs related to treatment were observed in the study. Salivation was observed in all animals in the intermediate- and high-dose groups during the treatment period. Chin rubbing, which is associated with salivation, was observed in some animals in the high-dose group. These observations were considered to be attributable to the palatability of the test substance and not toxicologically significant. Bodyweight gain in the low- and intermediate-dose groups was not affected by treatment. When compared to the control group, overall mean bodyweight gain in the high-dose group was slightly low during gestation, which was associated with slightly lower food consumption in the high-dose group. The bodyweight gain effect is considered to be attributable to the palatability of the test substance and not toxicologically significant. Food consumption in the low- and intermediate-dose groups was unaffected by treatment. Gravid uterine weights were not affected by treatment in any group. There were no maternal treatment-related macroscopic effects. All females in each test group were pregnant. Mean corpora lutea, implantations, early, late and total resorption counts, live young, sex ratio, pre- and post-implantation loss, litter weight, placental weight, male and female fetal weight and overall fetal weight were all considered to be unaffected by treatment at all doses. In all dose groups, no relationship to treatment was observed in the incidence of major and minor fetal abnormalities and skeletal variants. There was a slight increase in the percentage of incidences of fetuses with 13/14 and 14/14 ribs in all dose groups when compared to the control group, but the incidences were similar to historical control data, and in the absence of other related findings in the study, the observations were not considered to be treatment related. Based on the lack of systemic maternal and fetal toxicity, the no-observed-adverse-effect-level (NOAEL) for maternal and fetal (developmental) toxicity is 1,000 mg/kg/day (Ref. 2).

4. *Mutagenicity (OCSPP Guideline Nos. 870.5100, 870.5300, and 870.5395; MRID Nos. 47942616, 47942615, and 48412402).* Three mutagenicity studies were submitted. In a reverse mutation assay, AMV–1018, containing 98% of the active ingredient 3-decen-2-one, was investigated for its potential to induce gene mutations via a plate incorporation test and a pre-incubation test. Each experiment was conducted with five tester strains of *Salmonella typhimurium*, six different test substance concentrations (0.0316, 0.100, 0.316, 1.0, 2.5 and 5.0 µL/plate, and control scenario), and with and without metabolic activation. According to the results of this study, no biologically relevant increases in revertant colony numbers of any of the five tester strains were observed following treatment with AMV–1018 at any concentration level, neither in the presence or absence of metabolic activation, in either experiment. In the pre-incubation experiments, cytotoxicity was noted in all five tester strains at a dose concentration of 5.0 µL/plate without metabolic activation and in tester strain TA 102 at a dose concentration of 5.0 µL/plate with metabolic activation. The reference mutagens employed in the control scenarios induced a distinct increase in revertant colonies, indicating the validity of the experiments. Therefore, the test substance is considered to be non-mutagenic in this bacterial reverse mutation assay (Ref. 3).

In a mammalian cell gene mutation assay, mouse lymphoma cells cultured *in vitro* were exposed to AMV–1018 (3-decen-2-one; 98.57% active ingredient) in dimethyl sulfoxide (DMSO) at the various concentrations for 4 and 24 hours with and without metabolic activation. The S9 fraction (for metabolic activation) was derived from the livers of male Wistar rats induced with phenobarbital (80 mg/kg bw) and β-Naphthoflavone (100 mg/kg bw). The solvent DMSO served as a negative control in the presence and absence of S9. Benzo(α)pyrene (BP) served as a positive control in the presence of S9. Ethylmethanesulfonate (EMS) and methylmethanesulfonate (MMS) served as positive controls in the absence of S9. Selection of test substance concentrations were based on a pre-experiment for cytotoxicity. No precipitation of the test substance was noted in the experiments. Growth inhibition was noted in all experiments (+/− S9), with marked cytotoxicity seen in several cases (one incident less than 10%, several less than 20%). The pH values for the highest concentrations

tested were within the physiological range. The osmolality for the solvent controls as well as for the highest test concentrations was found to be 465 mosmol/kg. Thus, the osmolality was above the physiological range. Test substance was positive for mutagenicity in the 24 hour exposure without metabolic activation and equivocal results with metabolic activation. The mouse lymphoma results are considered equivocal because it is not clear whether the positive results would translate into an *in vivo* system based on the increased osmotic pressure and marked cytotoxicity noted during the experiment (Ref. 3).

A Tier II *in vivo* mammalian erythrocyte micronucleus test guideline study was submitted due to the equivocal results found in the mouse lymphoma assay. The test substance for the study was AMV–1018, containing 98.0% 3-decen-2-one. The test substance was prepared with cottonseed oil and the volume administered intraperitoneal to the 5 male and 5 female mice was 10 mL/kg bw. A range finding study was performed prior to the experiment to determine the maximum tolerable dose (MTD). The MTD was determined to be 50%/kg bw, which is equivalent to an application of 10 mL/kg bw of 5% v/v test item solution. The three dose levels used in the experiment were 1 MTD, 0.5 MTD, and 0.2 MTD, which is equivalent to 50%/kg bw, 25%/kg bw, and 10%/kg bw, respectively. The animals treated with a dose of 0.2 MTD showed no signs of systemic toxicity after treatment, whereas the animals at 1 MTD and 0.5 MTD showed signs of toxicity including reduction of spontaneous activity, prone position, clonic convulsion, ataxia, constricted abdomen, piloerection, half eyelid closure, diarrhea, cramps, and loss of weight. Peripheral blood samples were taken at 44 and 68 hours after a single application of the test item solution for micronuclei analysis. All mean values of micronuclei were within range or decreased compared to the corresponding negative control in all dose groups. The positive control used cyclophosphamide (40 mg/kg bw), which showed significant increase in micronucleus frequency and was used to validate the assay. A nonparametric Mann-Whitney Test was performed and showed no statistically significant increase ($p<0.05$) of micronuclei cells in any dose group. The test material, AMV–1018 (98% 3-decen-2-one), is considered non-mutagenic with respect to clastogenicity and aneugenicity based on the test item material showing no signs of induction of structural or numerical chromosomal damage in the immature erythrocytes of the mice (Ref. 1).

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

In addition to the natural presence and the deliberate addition of 3-decen-2-one in other foods, people will be exposed 3-decen-2-one through the consumption of treated potatoes. A qualitative risk assessment was conducted for the chemical to assess potential risks (if any) from dietary exposure.

1. *Food.* Dietary exposure to 3-decen-2-one is already occurring, given that this substance is a component of and/or is used as a flavoring agent in many foods that are commonly consumed by humans. When 3-decen-2-one is applied as a potato sprout inhibitor and used in accordance with good agricultural practices and label directions, the aforementioned dietary exposure is not likely to be substantially increased.

A deterministic quantitative evaluation of potential dietary exposure to children (1 to 2 years) from consumption of pesticide-treated potatoes was conducted and compared to estimated dietary exposure to 3-decen-2-one as a natural constituent of food and as a food additive. Based on the results of the analysis, EPA has concluded that dietary exposure to residues of 3-decen-2-one when used as a pesticide will be considerably less than dietary exposure to the chemical as a naturally occurring constituent in food and/or as a food additive. This conclusion is supported by data obtained from the residue study specifically on baked potatoes, which demonstrated that residues of 3-decen-2-one decline over time and are reduced when potatoes are cooked (Ref. 2).

Based on the information in this unit, which includes an estimation of potential dietary exposure to 3-decen-2-one from the consumption of treated potatoes, the Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from dietary exposure to the pesticidal residues of 3-decen-2-one in food.

2. *Drinking water exposure.* Based on the proposed use pattern of the active ingredient as a potato sprout inhibitor used in indoor settings, residues in drinking water are not anticipated if products are used according to good agricultural practices and label instructions. Products containing the active ingredient will be used in indoor commercial settings only; therefore, 3-decen-2-one residues in drinking water are highly unlikely. In the unlikely event that exposure via drinking water does occur, the health risk would be expected to be minimal based on the low acute oral toxicity of 3-decen-2-one.

B. Other Non-Occupational Exposure

Non-occupational exposure is not expected from the postharvest use of 3-decen-2-one on stored potatoes via a closed system. Any exposure is expected to be occupational in nature.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance exemption, EPA consider "available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity."

EPA has not found 3-decen-2-one to share a common mechanism of toxicity with any other substances, and 3-decen-2-one does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 3-decen-2-one does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine chemicals that have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an

additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional or no safety factor when reliable data are available to support a different additional or no safety factor.

Because there are no threshold effects associated with this biochemical, an additional margin of safety for infants and children is not necessary.

EPA has determined that there are no foreseeable dietary risks to the U.S. population, including infants and children, from the use of 3-decen-2-one as a pesticide on stored potatoes when label instructions and good agricultural practices are followed. The available data and information indicate that the chemical:

1. Is of low toxicity and is not a developmental toxicant;
2. Naturally occurs in the human diet;
3. Has been approved by FDA for use in foods as a food additive without limitation; and
4. Is metabolized into innocuous substances.

Additionally, basic exposure analyses that were specifically conducted for children aged 1–2 years suggest that dietary exposure from ingestion of the chemical as a pesticide is likely to be less than dietary exposure from ingestion of the chemical as a food additive and/or as a constituent that naturally occurs in foods (Ref. 2). When compared to the amount of 3-decen-2-one that is likely already consumed in the human diet, dietary exposure from pesticidal use is not anticipated to significantly increase overall dietary exposure of infants and children.

Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of 3-decen-2-one when it is used as labeled and in accordance with good agricultural practices. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because the data and information available on 3-decen-2-one do not demonstrate significant toxic potential to mammals, including infants and children.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons stated in Unit VI. and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for 3-decen-2-one.

C. Response to Comments

In response to a Notice of Filing that published in the **Federal Register** of March 10, 2010, EPA received a comment from Michael J. Keim (Keim Aerosol Technologies) in docket ID number EPA–HQ–OPP–2010–0065. Mr. Keim believes that EPA has not been adequately informed [by the petitioner] with respect to the use of chemicals for the postharvest treatment of stored potatoes and that such use poses a risk to humans and the environment. His conclusion is based on his experience with the use of chlorpropham (CIPC), a conventional chemical that is applied (via thermal fog generator) in the same manner as the proposed product. Mr. Keim states that half of CIPC applied to stored potatoes does not deposit on the potatoes and, therefore, is expelled to the outside environment. As a result of this application method, Mr. Keim contends that EPA has not adequately assessed the risks to non-target organisms and worker/handlers.

EPA notes that the comment from Mr. Keim pertains mainly to the application equipment used on the proposed label, which would be more applicable to the Notice of Receipt (see the **Federal Register** of March 10, 2010 (75 FR 11175) (FRL–8811–6)) for 3-decen-2-one, and to the conventional chemical, CIPC, which, from a toxicological perspective, is quite different from 3-decen-2-one. Nonetheless, EPA will address Mr. Keim's comment in this document.

EPA would first direct the commenter to the documents in the docket for the Registration Review of CIPC (docket ID number EPA–HQ–OPP–2010–0923) as the Agency's Health Effects Division (HED) and Environmental Fate and Effects Division (EFED) have already responded to Mr. Keim's comments regarding the application equipment used for CIPC products and the potential for exposure based on the displacement and degradation of CIPC.

As stated in the EPA memoranda listed in Unit IX., the Agency received and reviewed product chemistry, residue, mammalian toxicity, and non-target organism data and/or information for this new active ingredient, 3-decen-2-one, as outlined in 40 CFR 158.2030, 158.2040, 158.2050, and 158.2060. The data and information submitted to EPA indicate that 3-decen-2-one is of low toxicity (with the exception that it is an eye and dermal irritant), no developmental effects were found at the highest dose tested (NOAEL = 1,000 mg/kg/day), and 3-decen-2-one is not mutagenic. With regard to worker exposure, the thermal fogging application method on the proposed product label used for stored potatoes is an automated system and, as such, EPA considers this method a closed-delivery system and does not expect occupational handler exposure. The only occupational exposure expected is the handling of the product prior to application, which is mitigated by appropriate precautionary statements and personal protective equipment (PPE) requirements listed on the label. EPA has not identified any toxic endpoints for non-target mammals, birds, plants, aquatic, or soil organisms and has no concerns for any non-target organisms exposed to 3-decen-2-one when used in accordance with approved label directions. The petitioner did submit information that estimated the physical and chemical properties for 3-decen-2-one by using QSAR modeling based on the Estimation Programs Interface Model (EPI Suite™ 4.0). Using Henry's Law, which states that the solubility of a gas in a liquid is directly proportional to the partial pressure of the gas above the liquid, 3-decen-2-one is estimated to be 5.4×10^{-1} atm-m^3/mol and indicates that the active ingredient has a potential for volatility from water or moist soil. In soil, the estimated K_{oc} of 165.2–860.9 L/kg

indicates that 3-decen-2-one would have medium to low mobility in soil. In water, an estimated log K_{ow} of 3.28 and an estimated bioconcentration factor (BCF) of 67.41 L/kg wet-wt indicate that bioaccumulation in aquatic organisms is unlikely. In the air, atmospheric oxidation by hydroxyl radicals' reaction is expected to occur with estimated half-lives of 1.9–2.2 hours. The probability of biodegradation of 3-decen-2-one was evaluated using EPI Suite™ 4.0 in the BIOWIN module. Various models in the BIOWIN module predicted rapid biodegradation of 3-decen-2-one. Based on a total air volume in a potato warehouse of 1,910 m^3 and the total applied 3-decen-2-one of 122,475 g calculated by the petitioner, the maximum air concentration of 3-decen-2-one in a potato warehouse was estimated to be 64.14 mg/L of air. With an estimated ventilation rate of 825 m^3 of air/min, the air volume in a potato warehouse will be exchanged within 2.5 minutes when the vents to the outdoors are opened. Thus, the concentration emitted will be rapidly diluted in the outside air, which further demonstrates insignificant exposure to non-target organisms. In summary, given that 3-decen-2-one is applied indoors in a closed system, has low toxicity, is naturally occurring in foods that are common in the human diet, and presents little, if any, risk to non-target organisms, EPA concludes that pesticide products containing this new active ingredient, 3-decen-2-one, are not expected to cause unreasonable adverse effects on the environment (includes consideration of risks to workers/handlers and non-target organisms).

VIII. Conclusion

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of 3-decen-2-one. Therefore, an exemption from the requirement of a tolerance is established for residues of the biochemical pesticide, 3-decen-2-one, in or on potatoes when applied as a postharvest potato sprout inhibitor and used in accordance with label directions and good agricultural practices.

IX. References

The references used in this document are available as "Supporting & Related Material" within docket ID EPA–HQ–OPP–2010–0065 at *www.regulations.gov*.

1. U.S. EPA. 2011. Memorandum from Colin G. Walsh thru Angela L. Gonzales to Linda A. Hollis. Joint Science Review with Health Canada Pest Management Regulatory Agency (PMRA) in Support of the Registration of AMV–1018 Technical (EPA File Symbol No. 5481–LAI), a Manufacturing-Use Product (MP), Containing 98.0% of 3-decen-2-one as its Active Ingredient and Tolerance Exemption Petition Review in Support of 3-decen-2-one. U.S. Environmental Protection Agency, Office of Pesticide Programs. December 20, 2011.
2. U.S. EPA. 2013. Memorandum from Angela L. Gonzales thru Felecia A. Fort to Colin G. Walsh. Joint Science Review with Health Canada Pest Management Regulatory Agency (PMRA) in Support of the Registration of AMV–1018 Technical Containing 98.0% of 3-decen-2-one as its Active Ingredient. U.S. Environmental Protection Agency, Office of Pesticide Programs. January 3, 2013.
3. U.S. EPA. 2010. Memorandum from Gina M. Casciano and Colin G. Walsh thru Russell S. Jones to Driss Benmhend. Revised Hazard Assessment for Tier I Human Health Toxicity in Support of the Registration of AMV–1018 Technical, Containing 3-decen-2-one as its Active Ingredient (Amends EPA Memorandum from Gina M. Casciano and Colin G. Walsh through Russell S. Jones to Driss Benmhend dated June 16, 2010). U.S. Environmental Protection Agency, Office of Pesticide Programs. December 7, 2010.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 5, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In subpart D, add § 180.1318 to read as follows:

§ 180.1318 3-decen-2-one; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide, 3-decen-2-one, in or on potatoes when applied as a potato sprout inhibitor and used in accordance with label directions and good agricultural practices.

[FR Doc. 2013–03758 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2012–0009; 4500030113]

RIN 1018–AY40

Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear Under Section 4(d) of the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of environmental assessment and Finding of No Significant Impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), amends it regulations which implement the Endangered Species Act of 1973, as amended (ESA), to create a special rule under authority of section 4(d) of the ESA that provides measures that are necessary and advisable to provide for the conservation of the polar bear (*Ursus maritimus*), while also including appropriate prohibitions from section 9(a)(1) of the ESA.

DATES: This rule becomes effective on March 22, 2013.

ADDRESSES: *Document Availability:* The final rule, final environmental assessment, and finding of no significant impact are available for viewing on *http://www.regulations.gov* under Docket No. FWS–R7–ES–2012–0009. Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the Marine Mammal Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, Marine Mammals Management Office, U.S. Fish and Wildlife Service, Region 7, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907–786–3309. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Final Rule

The Service was challenged via litigation on our December 16, 2008, final special rule under section 4(d) of the ESA (hereafter referred to as 4(d) special rule) (16 U.S.C. 1531 *et al*), for the polar bear. The District Court for the District of Columbia (Court) found that, although the final 4(d) special rule published December 16, 2008 (73 FR 76249) for the polar bear was consistent with the ESA, the Service violated the National Environmental Policy Act (42 U.S.C. 4321 et seq.) (NEPA) and the Administrative Procedure Act (5 U.S.C. 500 et seq.) by failing to conduct a NEPA analysis when it promulgated the final rule. On November 18, 2011, the Court vacated the final 4(d) special rule and ordered that the May 15, 2008, interim 4(d) special rule take effect until superseded by a new final 4(d) special rule. The Service is therefore promulgating a new final 4(d) special rule with appropriate NEPA analysis. Through the NEPA process, the Service fully considered a suite of alternatives for the special rule.

What is the effect of this rule?

The 2008 listing of the polar bear as a threatened species under the ESA is not affected by this final rule. In addition, nothing in this rule affects requirements applicable to polar bears under any other law such as the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.). On-the-ground conservation management of the polar bear under both the May 15, 2008, interim 4(d) special rule and the December 16, 2008, final 4(d) special rule, were substantively similar; this final 4(d) special rule reinstates the regulatory parameters afforded the polar bear under the December 16, 2008 rule, which was in place until November 18, 2011. Because this rule adopts a regulatory scheme that has governed polar bear management for over 30 years, the requirements placed on individuals, local communities, and industry are not substantively changed.

The Basis for Our Action

Under section 4(d) of the ESA, the Secretary of the Interior (Secretary) has discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(1) of the ESA.

Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.31 and exceptions to those prohibitions in 50 CFR 17.32. But for the polar bear, the Service has determined that a 4(d) special rule is appropriate. This 4(d) special rule adopts the existing conservation regulatory requirements under the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 27 U.S.T. 1087) as the primary regulatory provisions for the polar bear. If an activity is authorized or exempted under the MMPA or CITES, no additional authorization under the ESA regulations is required, although consultation under section 7 of the ESA will also still be required if there is a Federal nexus. But if the activity is not authorized or exempted under the MMPA or CITES, and that activity would result in an act otherwise prohibited under the general ESA regulatory prohibitions for threatened species, then the general prohibitions at 50 CFR 17.31 would apply, and we would require a permit for the activity as specified in our ESA regulations.

Under this rule, incidental take caused by activities within the United States but outside the current polar bear range would not be subject to the takings prohibition under 50 CFR 17.31 as it is for most threatened species, but would remain subject to the taking prohibition in the MMPA and, if there is a Federal nexus, to the consultation requirement of section 7 of the ESA.

Previous Federal Actions

On May 15, 2008, the Service published a final rule listing the polar bear (*Ursus maritimus*) as a threatened species under the ESA (73 FR 28212). At the same time, the Service also published an interim special rule for the polar bear under authority of section 4(d) of the ESA that provided measures necessary and advisable for the conservation of the polar bear and prohibited certain acts covered in section 9(a)(1) of the ESA (73 FR 28306);

this interim 4(d) special rule was slightly modified in response to public comment when the Service published a final 4(d) special rule for the polar bear on December 16, 2008 (73 FR 76249). Lawsuits challenging both the May 15, 2008, listing of the polar bear and the December 16, 2008, final 4(d) special rule for the polar bear were filed in various Federal district courts. These lawsuits were consolidated before the Court. On June 30, 2011, the Court upheld the Service's decision to list the polar bear as a threatened species under the ESA.

On October 17, 2011, the Court upheld all of the provisions of the 4(d) special rule under the applicable standards of the ESA but found the Service violated NEPA and the Administrative Procedure Act (5 U.S.C. Subchapter II) by failing to conduct a NEPA analysis for its December 16, 2008, final 4(d) special rule for the polar bear. The Court ordered that the final 4(d) special rule would be vacated upon resolution of a timetable for NEPA review. On November 18, 2011, the Court approved the schedule for NEPA review and vacated the December 16, 2008, final 4(d) special rule (*In re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation: This Document Relates to Ctr. for Biological Diversity, et al.* v. *Salazar, et al.*, No. 08–2113; *Defenders of Wildlife* v. *U.S. Dep't of the Interior, et al.*, No. 09–153, Misc. No. 08–764 (EGS) MDL Docket No. 1993). In vacating and remanding to the Service the final 4(d) special rule, the Court ordered that, in its place, the interim 4(d) special rule for the polar bear published on May 15, 2008 (73 FR 28306), remain in effect until superseded by the new final 4(d) special rule for the polar bear to be delivered to the **Federal Register** by December 6, 2012, later amended by the Court to February 6, 2013. On January 30, 2012, the Service published a final rule in the **Federal Register** (77 FR 4492) revising the Code of Federal Regulations to reflect the November 18, 2011, court order. On April 19, 2012, the Service published a proposed 4(d) special rule and announced the availability of the draft environmental assessment under NEPA, as well as announcing a 60-day public comment period on the proposed rule and draft environmental assessment (77 FR 23432). On the date specified above in **DATES**, this final rule becomes effective and supersedes the interim 4(d) special rule.

Service Process

The Service conducted a NEPA analysis and prepared an environmental assessment (EA) to address the determinations made by the Court. The NEPA analysis accomplished three goals. These were to (1) determine if the proposed action, or alternatives to the proposed action, would have significant environmental impacts; (2) address any unresolved environmental issues; and (3) provide a basis for a decision on promulgation of a final 4(d) special rule under the ESA for the polar bear.

We received 25 submissions during the public comment period, including literature references. The Service considered all comments and submissions received on both the draft EA and proposed 4(d) special rule before issuing this final 4(d) special rule. Our response to public comments on the April 19, 2012, proposed rule are discussed below (see Summary of and Responses to Comments and Recommendations); our response to public comments on the draft EA is provided in the EA finalized on February 5, 2013. A copy of the final EA may be obtained from *http://www.regulations.gov* at Docket No. FWS–R7–ES–2012–0009 or by contacting the U.S. Fish and Wildlife Service (see **ADDRESSES**).

Applicable Laws

In the United States, the polar bear is protected and managed under three laws: the ESA; the MMPA; and CITES. A brief description of these laws, as they apply to polar bear conservation, is provided below.

The purposes of the ESA are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the ESA. When a species is listed as endangered, certain actions are prohibited under section 9 of the ESA, as specified in 50 CFR 17.21. These include, among others, prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity. Additionally, the consultation process under section 7 of the ESA requires that Federal agencies ensure actions they authorize, fund, permit, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species.

The ESA does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the ESA, the Secretary, as well as the Secretary of Commerce depending on the species, was given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the ESA. Exercising this discretion, the Service has developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the ESA that apply to most threatened species. Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes.

Under section 4(d) of the ESA, the Secretary, who has delegated this authority to the Service, may also develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues a special rule that may include some of the prohibitions and authorizations set out in 50 CFR 17.31 and 17.32 but which also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32.

The MMPA was enacted to protect and conserve marine mammal species and population stocks, so that they continue to be significant functioning elements in their ecosystems. Consistent with this objective, the Service works to maintain or return marine mammals to their optimum sustainable population. The MMPA provides a moratorium on importation and taking of marine mammals and their products, unless exempted or authorized under the MMPA. Prohibitions also restrict:

- Take of marine mammals on the high seas;
- Take of any marine mammal in waters or on lands under the jurisdiction of the United States;
- Use of any port, harbor, or other place under the jurisdiction of the United States to take or import a marine mammal;
- Possession of any marine mammal or product taken in violation of the MMPA;
- Transport, purchase, sale, export, or offer to purchase, sell, or export any marine mammal or product taken in violation of the MMPA or for any purpose other than public display, scientific research, or enhancing the survival of the species or stock; and
- Import of certain types of animals.

Authorizations and exemptions from these prohibitions are available for certain specified purposes. Any marine

mammal listed as an endangered or threatened species under the ESA automatically has depleted status under the MMPA, which triggers further restrictions.

Signed in 1973, CITES protects species at risk from international trade; it is implemented by 177 countries, including the United States. CITES regulates commercial and noncommercial international trade in selected animals and plants, including parts and products made from the species, through a system of permits and certificates. Under CITES, a species is listed at one of three levels of protection, each of which has different document requirements. Appendix I species are threatened with extinction and are or may be affected by trade; CITES directs its most stringent controls at activities involving these species. Appendix II species are not necessarily threatened with extinction now, but may become so if international trade is not regulated. Appendix III species are listed by a range country to obtain international cooperation in regulating and monitoring international trade. Polar bears were listed in Appendix II of CITES on July 7, 1975. Trade in CITES species is prohibited unless exempted or accompanied by the required CITES documents, and for species listed on Appendix I or II, CITES documents cannot be issued until specific biological and legal findings have been made. CITES itself does not regulate take or domestic trade of polar bears; however, it contributes to the conservation of the species by regulating international trade in polar bears and polar bear parts or products.

Provisions of the Special Rule for the Polar Bear

We assessed the conservation needs of the polar bear in light of the extensive protections already provided to the species under the MMPA and CITES. This 4(d) special rule synchronizes the management of the polar bear under the ESA with management provisions under the MMPA and CITES. Because a special rule under section 4(d) of the ESA can only specify ESA prohibitions and available authorizations for this species, all other applicable provisions of the ESA and other statutes, such as the MMPA and CITES, are unaffected by this 4(d) special rule.

Under this 4(d) special rule, if an activity is authorized or exempted under the MMPA or CITES (including incidental take), no additional authorization under 50 CFR 17.32 for that activity will be required. However, if the activity is not authorized or exempted under the MMPA or CITES and the activity would result in an act that would be otherwise prohibited under the ESA regulations at 50 CFR 17.31, those prohibitions would apply, and permits to authorize any take or other prohibited act would be required under 50 CFR 17.32 of our ESA regulations. The special rule further provides that any incidental take of polar bears that results from activities that occur within the United States but outside of the current range of the species is not a prohibited act under the ESA. The special rule does not remove or alter in any way the consultation requirements under section 7 of the ESA.

Alternative Special Rules Considered in the Course of This Rulemaking

In our EA analyzing options under section 4(d) of the ESA for the polar bear, we considered four alternatives. These were:

Alternative 1: "No Action"—No 4(d) special rule. Under the no action alternative, no 4(d) special rule would be promulgated for the polar bear under the ESA. Instead, the general regulations for most threatened wildlife found at 50 CFR 17.31 and 17.32 would apply to the polar bear.

Alternative 2: 4(d) special rule with MMPA and CITES as the primary regulatory framework and with ESA incidental take prohibitions limited to polar bear range (December 16, 2008, final rule and April 19, 2012, proposed rule). This 4(d) special rule would adopt the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear. Nonetheless, if an activity was not authorized or exempted under the MMPA or CITES and would result in an act that would be otherwise prohibited under the general prohibitions for threatened species (50 CFR 17.31), then the prohibitions at 50 CFR 17.31 would apply, and we would require authorization under 50 CFR 17.32.

In addition, this alternative would provide that any incidental take of polar bears resulting from an activity that occurred within the United States but outside the current range of the polar bear was not a prohibited act under the ESA. This alternative would not affect any existing requirements under the MMPA, including incidental take restrictions, or CITES, regardless of whether the activity occurred inside or outside the range of the polar bear. Further, nothing in this alternative would affect the consultation requirements under section 7 of the ESA.

Alternative 3: 4(d) special rule with MMPA and CITES as the primary regulatory framework and with ESA incidental take prohibitions limited to Alaska (May 15, 2008, interim rule). This alternative is similar to Alternative 2 above, in that both versions of the 4(d) special rule would adopt the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear, with 50 CFR 17.31 applicable for any act not authorized or exempted under the MMPA or CITES.

This alternative would provide that any incidental take of polar bears resulting from activities that occurred within the United States but outside Alaska was not a prohibited act under the ESA. Thus, the geographic range of incidental take exemptions under the ESA differs between "outside Alaska" (Alternative 3) and "outside the current range of the polar bear" (Alternative 2). As with Alternative 2, this 4(d) special rule would not affect any existing requirements under the MMPA, including incidental take restrictions, or CITES, regardless of whether the activity occurs inside or outside Alaska. Further, nothing in this 4(d) special rule would affect the consultation requirements under section 7 of the ESA. This interim 4(d) special rule has been in effect since the Court vacated the Service's final 4(d) special rule on November 18, 2011.

Alternative 4: 4(d) special rule with MMPA and CITES as the primary regulatory framework and without a geographic exemption to ESA incidental take prohibitions. This alternative is similar to Alternatives 2 and 3, in that all three versions of the 4(d) special rule would adopt the existing conservation regulatory requirements under the MMPA and CITES as the primary regulatory provisions for the polar bear, with 50 CFR 17.31 applicable for any act not authorized or exempted under the MMPA or CITES.

However, unlike Alternatives 2 and 3, this alternative does not contain a provision to exempt any geographic areas from the prohibitions in 50 CFR 17.31 regarding incidental taking of polar bears.

For reasons discussed below, this final rule adopts Alternative 2.

Comparison of Alternatives

As we explained in our April 19, 2012, proposed rule (77 FR 23432), promulgation of Alternatives 2 or 4, would implement with revisions, while Alternative 3 would continue, our January 30, 2012, final 4(d) special rule at 50 CFR 17.40(q) by adopting the conservation provisions of the MMPA

and CITES as the primary regulatory provisions for this threatened species. These MMPA and CITES provisions regulate incidental take, other types of take including deterrence take (take for self-defense or welfare of the animal), import, export, transport, purchase and sale or offer for sale or purchase, pre-Act specimens, and subsistence handicraft trade and cultural exchanges.

Two of the alternatives, Alternative 2 and Alternative 3, would further provide that any incidental take of polar bears resulting from activities that occurred outside a certain prescribed geographic area was not a prohibited act under the ESA, although those activities would remain subject to the incidental take provisions in the MMPA and the consultation requirements under section 7 of the ESA. Alternative 4 contains no such provision. It leaves in place the ESA prohibition on incidental take regardless of where the activity causing the take occurs.

Alternative 1 would adopt for the polar bear the general regulations for most threatened wildlife found at 50 CFR 17.31 and 17.32. Standard provisions regarding take, including provisions that regulate incidental take, import, export, transport, sale or offer for sale, pre-Act specimens, and subsistence use, would all apply.

Necessary and Advisable Finding and Rational Basis Finding

Similar to the general regulatory requirements for threatened species found at 50 CFR 17.31 and 17.32 and the provisions for endangered species found in sections 9 and 10 of the ESA, the MMPA and CITES generally regulate incidental take, nonincidental take (including take for self-defense or welfare of the animal), import, export, possession of a specimen taken in violation of the law, transport, purchase or sale and offer for purchase or sale, pre-Act specimens, and subsistence use. In the following sections, we provide an explanation of how the various provisions of the ESA, MMPA, and CITES interrelate and how the regulatory provisions of this 4(d) special rule are necessary and advisable to provide for the conservation of the polar bear and include appropriate restrictions from section 9(a)(1) of the ESA.

Definitions of Take

Both the ESA and MMPA prohibit take of protected species over the same geographic area. Nonetheless, the definition of "take" differs somewhat between the two Acts. "Take" is defined in the ESA as meaning to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct" (16 U.S.C. 1532(19)). The MMPA defines "take" as meaning to "harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal" (16 U.S.C. 1362(13)). A number of terms appear in both definitions; however, the terms "harm," "pursue," "shoot," "wound," "trap," and "collect" are included in the ESA definition but not in the MMPA definition. Nonetheless, the ESA prohibitions on "pursue," "shoot," "wound," "trap," and "collect" are within the scope of the MMPA "take" definition. As further discussed below, a person who pursues, shoots, wounds, traps, or collects an animal, or attempts to do any of these acts, has harassed (which includes injury), hunted, captured, or killed—or attempted to harass, hunt, capture, or kill—the animal in violation of the MMPA.

The term "harm" is also included in the ESA definition of "take," but is less obviously related to "take" under the MMPA definition. Under our ESA regulations, "harm" is defined at 50 CFR 17.3 as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." While the term "harm" in the ESA "take" definition encompasses negative effects through habitat modifications, it requires evidence that the habitat modification or degradation will result in specific effects on wildlife: Actual death or injury.

The term "harass" is also defined in the MMPA and our ESA regulations. Under our ESA regulations, "harass" refers to an "intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3). With the exception of the activities mentioned below, "harassment" under the MMPA means "any act of pursuit, torment, or annoyance" that "has the potential to injure a marine mammal or marine mammal stock in the wild" (Level A harassment), or "has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering" (Level B harassment) (16 U.S.C. 1362(18)(A)).

Section 319 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA; Public Law 108–136) revised the definition of "harassment" under section 3(18) of the MMPA as it applies to military readiness or scientific research conducted by or on behalf of the Federal Government. Section 319 defined harassment for these purposes as "(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered" (16 U.S.C. 1362(18)(B)).

In most cases, the definitions of "harassment" under the MMPA encompass more activities than does the term "harass" under the Service's ESA regulations. For example, while the statutory definition of "harassment" under the MMPA that applies to all activities other than military readiness and scientific research conducted by or on behalf of the Federal Government includes any act of pursuit, torment, or annoyance that has the "potential to injure" or the "potential to disturb" marine mammals in the wild by causing disruption of key behavioral patterns, the Service's ESA definition of "harass" applies only to an act or omission that creates the "likelihood of injury" by annoying the wildlife to such an extent as to significantly disrupt key behavioral patterns. Furthermore, even the more narrow definition of "harassment" for military readiness activities or research by or on behalf of the Federal Government includes an act that injures or has "the significant potential to injure" or an act that disturbs or is "likely to disturb," which is a stricter standard than the "likelihood of injury" standard under the ESA definition of "harass." The one area where the ESA definition of "harass" is broader than the MMPA definition of "harassment" is that the ESA definition of "harass" includes acts or omissions whereas the MMPA definition of "harassment" includes only acts. However, we cannot foresee circumstances under which the management of polar bears would differ due to this difference in the two definitions.

In addition, although the ESA "take" definition includes "harm" and the MMPA "take" definition does not, this difference should not result in a difference in management of polar

bears. As discussed earlier, application of the ESA "harm" definition requires evidence of demonstrable injury or death to polar bears. The breadth of the MMPA "harassment" definition requires only potential injury or potential disturbance, or, in the case of military readiness activities, likely disturbance causing disruption of key behavioral patterns. Thus, the evidence required to establish "harm" under the ESA would provide the evidence of potential injury or potential or likely disturbance that causes disruption of key behavioral patterns needed to establish "harassment" under the MMPA.

In summary, the definitions of "take" under the MMPA and ESA differ in terminology; however, they are similar in application. We find the definitions of "take" under the Acts to be comparable, and where they differ, we find that, due to the breadth of the MMPA's definition of "harassment," the MMPA's definition of "take" is, overall, more protective. Therefore, we find that managing take of polar bears under the MMPA adequately provides for the conservation of polar bears. Where a person or entity does not have authorization for an activity that causes "take" under the MMPA, or is not in compliance with their MMPA take authorization, the prohibitions of 50 CFR 17.31 will be applied.

Incidental Take

The take restrictions under the MMPA, and those typically provided for threatened species under the ESA through our regulations at 50 CFR 17.31 or a special rule under section 4(d) of the ESA, apply regardless of whether the action causing take is purposefully directed at the animal or not (i.e., the take is incidental). Incidental take under the ESA refers to the take of a protected species that is incidental to, but not the purpose of, an otherwise lawful activity; under the MMPA, incidental takings are "infrequent, unavoidable, or accidental" but not necessarily unexpected. 50 CFR 18.27(c). Under this final 4(d) special rule, as with any other prohibited act, if incidental take within the United States or the United States' territorial sea or on the high seas is authorized or exempted under the MMPA, no additional authorization under 50 CFR 17.32 is required. However, if the incidental take is not authorized or exempted under the MMPA, the take prohibition of 50 CFR 17.31 would apply unless the activity causing the take occurred within the United States but outside the current polar bear range.

Most activities causing incidental take to polar bears have a Federal nexus; in those cases, the ESA section 7 consultation requirements apply regardless of where the activity likely to cause the incidental take is located. Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Regulations that implement section 7(a)(2) of the ESA (50 CFR part 402) define "jeopardize the continued existence of" as to "engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species."

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (known as the "action agency") must enter into consultation with the Service, subject to the exceptions set out in 50 CFR 402.14(b) and the provisions of § 402.03. It is through the consultation process under section 7 of the ESA that incidental take is identified and, if necessary, Federal agencies receive authorization for incidental take. The section 7 consultation requirements also apply to the Service and require that we consult internally to ensure actions we authorize, fund, or carry out are not likely to result in jeopardy to the species or adverse modification to its critical habitat. This type of consultation, known as intra-Service consultation, would, for example, be applied to the Service's issuance of authorizations under the MMPA and ESA, e.g., a Service-issued scientific research permit. The final 4(d) special rule does not affect the ESA section 7 requirement that a Federal agency consult with the Service to ensure that any action being authorized, funded, or carried out is not likely to jeopardize the continued existence of the polar bear or result in destruction or adverse modification of critical habitat if designated.

We document compliance with the requirements of section 7(a)(2) of the ESA through our issuance of a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat, or issuance of a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat. In those cases where the Service determines an action that is likely to adversely affect polar bears will not likely result in jeopardy but is anticipated to result in incidental take, the biological opinion will describe the amount or extent of incidental take that is reasonably certain to occur. Under section 7(b)(4) of the ESA, incidental take of a marine mammal such as the polar bear cannot be authorized under the ESA until the applicant has received incidental take authorization under the MMPA. If such MMPA authorization is in place, the Service will also issue a statement under the ESA that specifies the amount or extent of such take; any reasonable and prudent measures considered appropriate to minimize such effects; terms and conditions to implement the measures necessary to minimize effects; and procedures for handling any animals actually taken. This final rule does not change the process related to the issuance or contents of the biological opinions for polar bears or the issuance of an incidental take statement.

Some incidental take is caused by activities that do not have a Federal nexus. The general threatened species regulations at 50 CFR 17.32(b) provide a mechanism for non-Federal parties to obtain authorization for the incidental take of threatened wildlife. This process requires that an applicant specify effects to the species and steps to minimize and mitigate such effects. If the Service determines that the mitigation measures will minimize effects of any potential incidental take, and that take will not appreciably reduce the likelihood of survival and recovery of the species, we may permit incidental take under the ESA. This authorization would include terms and conditions deemed necessary or appropriate to insure minimization of take, as well as monitoring and reporting requirements.

Under this final 4(d) special rule, if incidental take has been authorized under section 101(a)(5) of the MMPA for take by commercial fisheries, by the issuance of an incidental harassment authorization (IHA), or through incidental take regulations for all other activities, no additional ESA incidental take authorization is needed because the MMPA restrictions are more protective or as protective as standard ESA requirements. Separate from the provisions of this rule, however, ESA section 7 consultation will still be required for activities where there is a Federal nexus. In those cases, although take is enumerated in the incidental take statement, it is authorized through the MMPA. Where there is no Federal nexus, we will not require an additional incidental take permit under the ESA (50 CFR 17.32(b)), because we have determined that the MMPA restrictions are more protective than or as protective as permits issued under 50 CFR

17.32(b). Any incidental take that has not been authorized under the MMPA, or is not in compliance with the MMPA authorization, would remain prohibited under 50 CFR 17.31 and subject to full penalties under both the ESA and MMPA, so long as the activity causing the take occurred within polar bear range. Any incidental take that has not been authorized under the MMPA, or is not in compliance with the MMPA authorization, would remain prohibited under the MMPA and subject to its penalties, regardless of where the activity causing the take is located. Further, the ESA's citizen suit provision is unaffected by this special rule anywhere within the current range of the species. Any person or entity that is allegedly causing the incidental take of polar bears as a result of activities within the range of the species without appropriate MMPA authorization can be challenged through this provision as that would be a violation of 50 CFR 17.31. The ESA citizen suit provision also remains available for alleged failure to consult under section 7 of the ESA regardless of whether the agency action occurs inside or outside the current range of the polar bear.

Sections 101(a)(5)(A) and (D) of the MMPA give the Service the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region. Incidental take cannot be authorized under the MMPA unless the Service finds that the total of such taking will have no more than a negligible impact on the species or stock, and that such taking will not have an unmitigable adverse impact on the availability of the species or stock for take for subsistence uses of Alaska Natives.

If any take that is likely to occur will be limited to nonlethal harassment of the species, the Service may issue an IHA under section 101(a)(5)(D) of the MMPA. An IHA cannot be issued for a period longer than 1 year. If the taking may result in more than harassment, regulations under section 101(a)(5)(A) of the MMPA must be issued, which may be in place for no longer than 5 years. Once regulations making the required findings are in place, we issue letters of authorization (LOAs) that authorize the incidental take for specific projects that fall under the provisions covered in the regulations. The LOAs typically expire after 1 year and contain activity-specific monitoring and mitigation measures that ensure that any take remains at the negligible level. In either case, the IHA or the regulations must set forth: (1) Permissible methods of taking; (2) means of affecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

While a determination of negligible impact is made at the time the regulations are issued based on the best information available, each request for an LOA is also evaluated to ensure it is consistent with the negligible impact determination. The evaluation consists of the type and scope of the individual project and an analysis of all current species information, including the required monitoring reports from previously issued LOAs, and considers the effects of the individual project when added to all current LOAs in the geographic area. Through these means, the type and level of take of polar bears is continuously evaluated throughout the life of the regulations to ensure that any take remains at the level of negligible impact.

Negligible impact under the MMPA, as defined at 50 CFR 18.27(c), is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." This is a more protective standard than standards for authorizing incidental take under the ESA, which are: (1) For non-Federal actions, that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild (50 CFR 17.32); and (2) for Federal actions, that the activity is not likely to jeopardize the continued existence of the species (ESA section 7).

Incidental take of threatened or endangered marine mammals, such as the polar bear, that results from commercial fishery operations is regulated separately under the MMPA through sections 101(a)(5)(E) and 118. Currently there is minimal overlap between polar bears and commercial fishing and, to date, there are no reports of polar bears having been taken by commercial fisheries, but it is conceivable that, with the prospect of fisheries opening in the Arctic, there will be increased overlap. Section 101(a)(5)(E) requires that, for marine mammals from a species or stock designated as depleted because of its listing as an endangered or threatened species under the ESA, a finding must be made that any incidental mortality or serious injury from commercial fisheries will have a negligible impact on such species or stock. In essence, section 101(a)(5)(E) applies the same "negligible impact" standard to the authorization of incidental take due to commercial fishery activities that is applied to incidental take from other activities. In addition, an ESA recovery plan must be developed, unless otherwise excepted, and all requirements of MMPA section 118 must be met. These authorizations may be in place for no longer than 3 years, when new findings must be made.

The length of the authorizations under the MMPA are limited to 1 year for IHAs, 3 years for commercial fishing authorizations, and 5 years for incidental take regulations, thus ensuring that activities likely to cause incidental take of polar bears are periodically reviewed and mitigation measures updated, if necessary, to ensure that take remains at a negligible level. Incidental take permits and statements under the ESA have no such statutory time limits. Incidental take statements under the ESA remain in effect for the life of the Federal action, unless reinitiation of consultation is triggered. Incidental take permits under the ESA for non-Federal activities can be for various durations (see 50 CFR 17.32(b)(4)), with some permits valid for up to 50 years.

Because of their stricter standards and mandatory periodic reevaluation even in the absence of a reinitiation trigger, the incidental take standards under the MMPA provide a greater level of protection for the polar bear than adoption of the standards under the ESA at 50 CFR 17.31 and 17.32. As such, this final special rule adopts as the primary regulatory scheme the MMPA standards for authorizing Federal and non-Federal incidental take as necessary and advisable to provide for the conservation of the polar bear, while retaining the ESA prohibition on incidental take for any taking by activities within polar bear range that has not been authorized under the MMPA or for situations where the person or entity is not in compliance with their MMPA incidental take authorization.

As stated above, when the Service issues authorizations for otherwise prohibited incidental take under the MMPA, we must determine that those activities will result in no more than a negligible impact on the species or stock, and that such taking will not have an unmitigable adverse impact on the availability of the species or stock for subsistence use take. The distinction of conducting the analysis at the species or stock level may be an important one in some cases. Under the ESA, the "jeopardy" standard, for Federal

incidental take, and the "appreciably reduce the likelihood of survival and recovery" standard, for non-Federal take, are always applied to the listed entity (i.e., the listed species, subspecies, or distinct population segment). The Service is not given the discretion under the ESA to assess "jeopardy" and "appreciably reduce the likelihood of survival and recovery" at a smaller scale (e.g., stock) unless the listed entity is in fact smaller than the entire species or subspecies (e.g., a distinct population segment). Therefore, because avoiding greater than negligible impact to a stock is even tighter than avoiding greater than negligible impact to an entire species, the MMPA may be much more protective than the ESA for activities that occur only within one stock of a listed species. In the case of the polar bear, the species is listed as threatened in its entirety under the ESA, while multiple stocks are recognized under the MMPA. Therefore, a variety of activities that may impact polar bears will be assessed at a finer scale under the MMPA than they would have been otherwise under the ESA.

In addition, during the process of authorizing any MMPA incidental take under section 101(a)(5), we must conduct an intra-Service consultation under section 7(a)(2) of the ESA to ensure that providing an MMPA incidental take authorization to an applicant is an act that is not likely to jeopardize the continued existence of the polar bear, nor adversely modify critical habitat. As the standard for approval under MMPA section 101(a)(5) is no more than "negligible impact" to the affected marine mammal species or stock, we believe that any MMPA-compliant authorization or regulation would ordinarily meet the ESA section 7(a)(2) standards of avoiding jeopardy to the species or adverse modification to critical habitat designated for the species. Under this final 4(d) special rule, any incidental take that could not be authorized under section 101(a)(5) of the MMPA will remain subject to the ESA threatened species regulations at 50 CFR 17.31.

To the extent that any Federal actions are found to comport with the standards for MMPA incidental take authorization, we fully anticipate that any such section 7 consultation under the ESA would result in a finding that the proposed action is not likely to jeopardize the continued existence of the polar bear. In addition, we anticipate that any such proposed actions would augment protection and enhance Service management of the polar bear through the application of site-specific mitigation measures contained in an authorization issued under the MMPA. Therefore, we do not anticipate at this time, in light of the ESA jeopardy standard, the MMPA negligible-impact standard, and the maximum duration of these MMPA authorizations, that there could be a conservation basis for requiring any entity holding incidental take authorization under the MMPA for which ESA consultation has been conducted and in compliance with all measures under that MMPA authorization (e.g., mitigation) to implement further measures under the ESA, as long as the action does not go beyond the scope and duration of the MMPA take authorization.

For example, affiliates of the oil and gas industry have requested, and we have issued regulations since 1991, for incidental take authorization for activities in occupied polar bear habitat. This includes regulations issued for incidental take in the Beaufort Sea from 1993 to the present, and regulations issued for incidental take in the Chukchi Sea for the period 1991–1996 and, more recently, regulations for similar activities and potential incidental take in the Chukchi Sea for the period 2008–2013. A detailed history of our past regulations for the Beaufort and Chukchi Sea regions can be found in the final rules published on August 3, 2011 (76 FR 47010), and June 11, 2008 (73 FR 33212), respectively.

The mitigation measures that we have required for all oil and gas exploration and development projects include a site-specific plan of operation and a site-specific polar bear interaction plan. Site-specific plans outline the steps the applicant will take to minimize effects on polar bears, such as garbage disposal and snow management procedures to reduce the attraction of polar bears, an outlined chain-of-command for responding to any polar bear sighting, and polar bear awareness training for employees. The training program is designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Most often, the appropriate response involves merely monitoring the animal's activities until it moves out of the area. However, personnel may be instructed to leave an area where bears are seen.

Additional mitigation measures are also required on a case-by-case basis, depending on the location, timing, and type of specific activity. For example, we may require trained marine mammal observers for offshore activities; preactivity surveys (e.g., aerial surveys, infrared thermal aerial surveys, or polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity; measures to protect pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs), including incorporation of a 1-mile (1.6-kilometer) buffer surrounding known dens; and enhanced monitoring or flight restrictions. These mitigation measures are implemented to limit human-bear interactions and disturbances to bears, and have ensured that industry effects on polar bears have remained at the negligible level. Data provided by the required monitoring and reporting programs in the Beaufort Sea and in the Chukchi Sea show that mitigation measures successfully minimized effects on polar bears (USFWS unpublished data).

Activities Outside Current Range

This special rule includes a separate provision (paragraph (4)) that addresses take under the ESA that is incidental to an otherwise lawful activity that occurs within the United States but outside the current range of the polar bear. Under paragraph (4), incidental take of polar bears that results from activities that occur within the United States but outside of the current range of the species is not subject to the prohibitions found at 50 CFR 17.31.

Under paragraph (4), any incidental take that results from activities within the current range of the polar bear remains subject to the prohibitions found at 50 CFR 17.31, although, as explained in the previous section, any such incidental take that has already been authorized under the MMPA will not require additional ESA authorization.

Any incidental take of a polar bear caused by an activity that occurs within the United States but outside of the current range of the species, however, would not be a prohibited act under the ESA. But nothing in paragraph (4) modifies the prohibitions against taking, including incidental taking, under the MMPA, which continue to apply regardless of where the activity occurs. If it is shown that a particular activity conducted outside the current range of the species is reasonably likely to cause the incidental taking of a polar bear, whether lethal or nonlethal, any incidental take that occurs is a violation of the MMPA unless authorization for the take under the MMPA has been issued by the Service.

Any incidental take caused by an activity outside the current range of the polar bear and covered by the MMPA would be a violation of that law and subject to the full array of the statute's civil and criminal penalties unless it was authorized. Any person, which

includes businesses, States, and Federal agencies as well as individuals, who violates the MMPA's takings prohibition or any regulation may be assessed a civil penalty of up to $10,000 for each violation. A person or entity that knowingly violates the MMPA's takings prohibition or any regulation will, upon conviction, be fined for each violation, imprisoned for up to 1 year, or both. Please refer to the "Penalties" discussion below for additional discussion of the penalties under the ESA and the MMPA.

Any individual, business, State government, or Federal agency subject to the jurisdiction of the United States that is likely to cause the incidental taking of a polar bear, regardless of the location of their activity, must therefore seek incidental take authorization under the MMPA or risk such civil or criminal penalties. As explained earlier, while the Service will work with any person or entity that seeks incidental take authorization, such authorization can only be granted if any take that is likely to occur will have no more than a negligible impact on the species. If the negligible impact standard cannot be met, the person or entity will have to modify their activities to meet the standard, modify their activities to avoid the taking altogether, or risk civil or criminal penalties.

In addition, nothing in paragraph (4) of this final rule affects section 7 consultation requirements outside the current range of the polar bear. Any Federal agency that intends to engage in an agency action that "may affect" polar bears must comply with 50 CFR part 402, regardless of the location of the agency action. This includes, but is not limited to, intra-Service consultation on any MMPA incidental take authorization proposed for activities located outside the current range. Paragraph (4) does not affect in any way the standards for issuing a biological opinion at the end of that consultation or the contents of the biological opinion, including an assessment of the nature and amount of take that is likely to occur. An incidental take statement would also be issued under any opinion where the Service finds that the agency action and the incidental taking are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of any polar bear critical habitat that may be designated, provided that the incidental taking has already been authorized under the MMPA, as required under section 7(b)(4) of the ESA. The Service will, however, inform the Federal agency and any applicants in the biological opinion and any incidental take statement that the take identified in the biological opinion and the statement is not a prohibited act under the ESA, although any incidental take that actually occurs and that has not been authorized under the MMPA would remain a violation of the MMPA. There is, therefore, no conservation effect on polar bears from paragraph (4).

One difference between the MMPA and the ESA is the applicability of the ESA citizen suit provision. Under section 11 of the ESA, any person may commence a civil suit against a person, business entity, State government, or Federal agency that is allegedly in violation of the ESA. Such lawsuits have been brought by private citizens and citizen groups where it is alleged that a person or entity is taking a listed species in violation of the ESA. The MMPA does not have a similar provision. So while any unauthorized incidental take caused by an activity outside the current range of the polar bear would be a violation of the MMPA, legal action against the person or entity causing the take could only be brought by the United States and not by a private citizen or citizen group. But inability of a citizen group or private citizen to bring a separate action under the ESA does not have a conservation effect on the species when that same take is readily enforceable by the government under the MMPA. In addition, operation of the citizen suit provision remains unaffected for any restricted act other than incidental take, such as non-incidental take, import, export, sale, and transport, regardless of whether the activity occurs outside the current range of the polar bear. Further, the ESA's citizen suit provision is unaffected by this special rule when the activity causing incidental take is anywhere within the current range of the species. Any person or entity that is allegedly causing the incidental take of polar bears as a result of activities within the current range of the species without appropriate MMPA authorization can be challenged through the citizen suit provision as that would be a violation of the ESA implementing regulations at 50 CFR 17.31. The ESA citizen suit provision also remains available for alleged failure to consult under section 7 of the ESA, regardless of whether the agency action occurs inside or outside the current range of the polar bear. Further, any incidental taking caused by an activity outside the current range of the polar bear that is connected, either directly or in certain instances indirectly, to an action by a Federal agency could be pursued under the Administrative Procedure Act of 1946 (5 U.S.C. 706), which allows challenges to final agency actions.

Paragraph (4) of the 2008 4(d) rule applied only to the incidental take of polar bears resulting from activities within the United States but outside the species' current range. The preamble to the rule was clear that this did not affect the obligation in the section 7 process to identify the impacts on polar bears, if any, of such activities outside the species' range. Any incidental take lawsuit brought under the citizen suit provisions of the ESA would need to scale a high burden of scientific proof.

Moreover, such proof would undoubtedly lead to a finding of a take under the MMPA. Thus, as the district court specifically upheld, the Service has concluded that a redundant overlay of ESA permitting procedures and penalties for activities outside the range of the polar bear is unnecessary. This is true regardless of whether a causal connection can be shown today or at some time in the future. Accordingly, the proposed rule's discussion of causation is not repeated at length in this preamble to the final rule.

Import, Export, Direct Take, Transport, Purchase, and Sale or Offer for Sale or Purchase

General MMPA Restrictions

When setting restrictions for threatened species, the Service has generally adopted prohibitions on their import; export; take; transport in interstate or foreign commerce in the course of a commercial activity; sale or offer for sale in interstate or foreign commerce; and possession, sale, delivery, carrying, transportation, or shipping of unlawfully taken species, either through a special rule or through the provisions of 50 CFR 17.31. For the polar bear, these same activities are already strictly regulated under the MMPA. Section 101 of the MMPA provides a moratorium on the taking and importation of marine mammals and their products. Section 102 of the MMPA further prohibits activities unless exempted or authorized under subsequent sections.

Prohibitions in section 102(a) of the MMPA include take of any marine mammal on the high seas; take of any marine mammal in waters or on lands under the jurisdiction of the United States; use of any port, harbor, or other place under the jurisdiction of the United States to take or import a marine mammal; possession of any marine mammal or product from an animal taken in violation of the MMPA; and transport, purchase, sale, export, or offer to purchase, sell, or export any marine

mammal or product from an animal taken in violation of the MMPA or for any purpose other than public display, scientific research, or enhancing the survival of the species or stock. Under sections 102(b) and (c) of the MMPA, it is generally unlawful to import a pregnant or nursing marine mammal; an individual taken from a depleted species or population stock; an individual taken in a manner deemed inhumane; any marine mammal taken in violation of the MMPA or in violation of the law of another country; or any marine mammal product if it was made from any marine mammal taken in violation of the MMPA or in violation of the law of another country, or if it was illegal to sell in the country of origin.

The MMPA then provides specific exceptions to these prohibitions under which certain acts are allowed, but only if all statutory requirements are met. Under section 104 of the MMPA, these otherwise prohibited activities may be authorized for purposes of public display (section 104(c)(2)), scientific research (section 104(c)(3)), enhancing the survival or recovery of the species (section 104(c)(4)), or photography (where there is level B harassment only; section 104(c)(6)). In addition, section 104(c)(8) specifically addresses the possession, sale, purchase, transport, export, or offer for sale of the progeny of any marine mammal taken or imported under section 104, and section 104(c)(9) sets strict standards for the export of any such marine mammal from the United States. In all of these sections of the MMPA, strict criteria have been established to ensure that the impact of an authorized activity if a permit were to be issued, would successfully meet Congress's finding in the MMPA that species, "should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part."

Under the general threatened species regulations at 50 CFR 17.31 and 17.32, authorizations are available for a wider range of activities than under the MMPA, including permits for any special purpose consistent with the ESA. In addition, for those activities that are available under both the MMPA and the general threatened species regulations, the MMPA issuance criteria are often more strict. For example, in order to issue a permit under the general threatened species regulations at 50 CFR 17.32, the Service must consider, among other things:

(1) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife;

(3) Whether the permit would in any way directly or indirectly conflict with any known program intended to enhance the survival probabilities of the population; and

(4) Whether the activities would be likely to reduce the threat of extinction facing the species of wildlife.

These are all "considerations" during the process of evaluating an application, but none sets a standard that requires denial of the permit under any particular set of facts. However, in order to obtain an enhancement permit under the MMPA, the Service must find that any taking or importation: (1) Is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock, and (2) is consistent with any MMPA conservation plan or ESA recovery plan for the species or stock or, if no conservation or ESA recovery plan is in place, with the Service's evaluation of actions required to enhance the survival or recovery of the species or stock in light of factors that would be addressed in a conservation plan or ESA recovery plan. In order to issue a scientific research permit under the MMPA, in addition to meeting the requirements that the taking is required to further a bona fide scientific purpose, any lethal taking cannot be authorized unless a nonlethal method of conducting the research is not feasible. In addition, for depleted species such as the polar bear, permits will not be issued for any lethal taking unless the results of the research will directly benefit the species, or fulfill a critically important research need.

Further, all permits issued under the MMPA must be consistent with the purposes and policies of the Act, which includes maintaining or returning the species to its optimum sustainable population. Also, because polar bears have depleted status under the MMPA, no MMPA permit may be issued for taking or importation for the purpose of public display, whereas our regulations at 50 CFR 17.32 allow issuance of permits for zoological exhibition and educational purposes. As the MMPA does not contain a provision similar to section 4(d) of the ESA, the restrictive statutory requirements of the MMPA apply with no discretion for the Service to alter those requirements.

Additionally, for threatened species like the polar bear which are listed on Appendix II of CITES, the ESA provides broader allowances for noncommercial imports that are not available under the MMPA. For example, under the ESA legally taken polar bear sport-hunted trophies could be imported into the United States. However, because of the stricter provisions of the MMPA, no such imports may occur.

Thus, the existing statutory provisions of the MMPA allow fewer types of activities than does 50 CFR 17.32 for threatened species. In addition, the MMPA's standards are generally stricter for those activities that are allowed than are the standards for comparable activities under 50 CFR 17.32. Because, for polar bears, an applicant must obtain authorization under the MMPA to engage in an act that would otherwise be prohibited, and because both the allowable types of activities and standards for those activities are generally stricter under the MMPA than the general standards under 50 CFR 17.32, we find that the MMPA provisions are necessary and advisable to provide for the conservation of the species and adopt these provisions as appropriate conservation protections under the ESA, while also including appropriate restrictions from section 9(a)(1) of the ESA. Therefore, under this final 4(d) special rule, as long as an activity is authorized or exempted under the MMPA, and the appropriate requirements of the MMPA are met, then the activity will not require any additional authorization under 50 CFR 17.32.

General CITES Restrictions

In addition to the MMPA restrictions on import and export discussed above, the CITES provisions that apply to the polar bear also ensure that import into or export from the United States is carefully regulated. Under CITES, and the U.S. regulations that implement CITES at 50 CFR part 23, the United States is required to regulate and monitor the trade in CITES specimens over an international border. Thus, for example, CITES would apply to tourists driving from Alaska through Canada with polar bear handicrafts to a destination elsewhere in the United States. As an Appendix II species, the export of any polar bear, either live or dead, and any polar bear parts or products, requires an export permit supported by a finding that the specimen was legally acquired under international and domestic laws. Prior to issuance of the permit, the exporting country must also find that export will not be detrimental to the survival of the species. A valid export document issued by the exporting country must be

presented to the officials of the importing country before the polar bear specimen will be cleared for importation.

Some limited exceptions to this permit requirement exist. For example, consistent with CITES, the United States provides an exemption from the permitting requirements for personal and household effects made of dead specimens. Personal and household effects must be personally owned for noncommercial purposes, and the quantity must be necessary or appropriate for the nature of the trip or stay or for household use. Not all of the CITES countries have adopted this exemption, so persons who may cross an international border with a polar bear specimen should check with the Service and the country of transit or destination in advance as to applicable requirements. Because, for polar bears, any person importing or exporting any live or dead animal, part, or product into or from the United States must comply with the strict provisions of CITES as well as the strict import and export provisions under the MMPA, we find that additional authorizations under the ESA to engage in import or export would not be necessary or appropriate. Thus, under this final 4(d) special rule, if an import or export activity is authorized or exempted under the MMPA and the appropriate requirements under CITES have been met, no additional authorization under the ESA is required. But if the import or export is not authorized or exempted under the MMPA and CITES and would be otherwise prohibited under 50 CFR 17.31, then the prohibitions at 50 CFR 17.31 apply. All import and export authorizations issued by the Service under the MMPA and CITES continue to be subject to the consultation requirements under section 7 of the ESA.

Take for Self-Defense or Welfare of the Animal

Both the MMPA and the ESA prohibit take of protected species. However, both statutes provide exceptions when the take is either exempted or can be authorized for self-defense or welfare of the animal.

In the interest of public safety, both the MMPA and the ESA include provisions to allow for take, including lethal take, when this take is necessary for self-defense or to protect another person. Section 101(c) of the MMPA provides that it shall not be a violation to take a marine mammal if such taking is imminently necessary for self-defense or to save the life of another person who is in immediate danger. Any such incident must be reported to the Service within 48 hours of occurrence. Section 11(a)(3) of the ESA similarly provides that no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an otherwise prohibited act based on a good faith belief that he or she was protecting himself or herself, a member of his or her family, or any other individual from bodily harm. Section 11(b)(3) of the ESA provides that it shall be a defense to criminal prosecution if the defendant committed an offense based on a good faith belief that he or she was protecting himself or herself, a member of his or her family, or any other individual from bodily harm. The ESA regulations in 50 CFR 17.21(c)(2), which reiterate that any person may take listed wildlife in defense of life, clarify this exemption. Reporting of the incident is required under 50 CFR 17.21(c)(4). Thus, the self-defense provisions of the ESA and MMPA are comparable. However, under this final 4(d) special rule, where unforeseen differences between these provisions may arise in the future, any activity that is exempted under the MMPA does not require additional authorization under the ESA.

Concerning take for defense of property and for the welfare of the animal, the provisions in the ESA and MMPA are not clearly comparable. The provisions provided under the ESA regulations at 50 CFR 17.21(c)(3) authorize any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service (NMFS), or a State conservation agency, who is designated by the agency for such purposes, to take listed wildlife when acting in the course of official duties if the action is necessary to: (i) Aid a sick, injured, or orphaned specimen; (ii) dispose of a dead specimen; (iii) salvage a dead specimen for scientific study; or (iv) remove a specimen that may constitute a threat to human safety, provided that the taking is humane or, if lethal take or injury is necessary, that there is no other reasonable possibility to eliminate the threat. Further, the ESA regulations at 50 CFR 17.31(b) allow any employee or agent of the Service, of NMFS, or of a State conservation agency that is operating a conservation program under the terms of an ESA section 6 cooperative agreement with the Service to take threatened species to carry out conservation programs.

Provisions for similar activities are found under sections 101(a), 101(d), and 109(h) of the MMPA. Section 101(a)(4)(A) of the MMPA provides that a marine mammal may be deterred from damaging fishing gear or catch (by the owner or an agent or employee of the owner of that gear or catch), other private property (by the owner or an agent or employee of the owner of that property), and, if done by a government employee, public property, so long as the deterrence measures do not result in death or serious injury of the marine mammal. This section also allows for any person to deter a marine mammal from endangering personal safety, again so long as the measures do not result in death or serious injury to the animal. Section 101(a)(4)(D) clarifies that this authority to deter marine mammals applies to depleted stocks, which would include the polar bear. Further, under the authority of section 101(a)(4)(B), the Service finalized "deterrence guidelines" on October 6, 2010 (75 FR 61631), which became effective on November 5, 2010. The deterrence guidelines (50 CFR 18.34) set forth best practices for safely and nonlethally deterring polar bears from damaging private or public property and endangering the public.

The nonlethal deterrence of a polar bear to prevent damage to fishing gear or other property is not a provision that is included under the ESA. But the voluntary deterrence guidelines and the exemptions for taking under the MMPA will not result in death or serious injury to a polar bear or removal of the bear from the population and could, instead, prevent escalation of an incident to the point where the bear is seriously injured or killed in self-defense.

Section 101(d) of the MMPA provides an exemption for any person who takes a marine mammal when the taking is necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris, and care is taken to prevent further injury and ensure safe release. The incident must be reported to the Service within 48 hours of occurrence. If entangled, the safe release of a polar bear from fishing gear or other debris could prevent further injury or death of the animal from drowning. While we do not believe private citizens should attempt to free a large polar bear entangled in fishing gear or debris for obvious safety reasons, there may be certain instances when an abandoned young cub may need aid. Therefore, by adopting this provision of the MMPA, this final rule provides for the conservation of polar bears in the event of entanglement with fishing gear or other debris and could prevent further injury or death of the bear.

The provisions under the ESA at 50 CFR 17.21(c)(3) (incorporated into the general threatened species regulations

through 17.31(a)) provide for similar activities; however, the ESA provision allows taking only by an employee or agent of the Service, another Federal land management agency, NMFS, or a State conservation agency, who is designated by the agency for such purposes. Most of the provisions under both sections 101(a)(4) and 101(d) of the MMPA apply to any individual, including private individuals, thus preventing incidents that could lead to death or serious injury of a bear or allowing aid when no appropriate governmental official is present. Therefore, although the provisions under the MMPA are broader in this case, we find them appropriate for the conservation of the polar bear, and, under this final rule, an activity conducted pursuant to these provisions of the MMPA would not require additional authorization under 50 CFR 17.31 or 17.32.

Further, section 109(h) of the MMPA allows the humane taking of a marine mammal by specific categories of people (i.e., Federal, State, or local government officials or employees or persons designated under section 112(c) of the MMPA) in the course of their official duties provided that one of three criteria is met—the taking is for: (1) The protection or welfare of the mammal; (2) the protection of the public health and welfare; or (3) the nonlethal removal of nuisance animals. The MMPA regulations at 50 CFR 18.22 provide the specific requirements of the exception for government officials and employees. Section 112(c) of the MMPA allows the Service to enter into cooperative agreements with other Federal or State agencies and public or private entities or other persons to carry out the purposes of section 109(h) of the MMPA. The ability to designate non-Federal, non-State "cooperators," as allowed under sections 112(c) and 109(h) of the MMPA but not expressly provided for under the ESA, has allowed the Service to work with private groups to retrieve carcasses, respond to injured animals, and to provide care and maintenance for stranded or orphaned animals. This has provided benefits by drawing on the expertise of, and allowing the use of, facilities of non-Federal and non-State scientists, aquaria, veterinarians, and other private entities.

The Service also issues take authorizations for hazing of polar bears to non-Federal, non-State entities under sections 109(h) and 112(c) of the MMPA, which allow people to take polar bears by harassment (nonlethal, noninjurious deterrence activities) for the protection of both human life and polar bears while conducting activities in polar bear habitat. Prior to issuance of these take authorizations, the Service reviews interaction plans and training activities required for oil and gas industry and polar bear patrol programs in Alaskan Native villages under section 112(c) agreements. By working with these cooperators, the Service provides guidance and training regarding the appropriate harassment response so that individuals who may be tasked with hazing polar bears: (1) Understand the level of deterrence that is appropriate to the particular situation; (2) are knowledgeable of bear behaviors; and (3) are familiar with hazing techniques, so that the risk to both humans and bears is minimized. This training ensures that the lowest level of harassment necessary to safely deter polar bears away from human environs is used. This authority allows for the early detection and appropriate response to polar bears that may be encountered and minimizes the potential for injury or lethal take of bears in defense of human life. Deterrent strategies may include use of tools such as vehicles, vehicle horns, vehicle sirens, vehicle lights, spot lights, or, if necessary, pyrotechnics (e.g., cracker shells).

These take authorizations have been issued to the oil and gas industry, the mining industry, local North Slope communities, scientific researchers, and the military. Over the past 10 years (2002–2011) Service trainers have conducted over 160 training events in Alaska Native communities and for industry personnel. Our analysis of oil and gas industry human-bear interactions, show that of the more than 1,500 encounters reported to the Service in that time, 390 required active deterrence actions taken by trained personnel to deter polar bears away from local communities or industry worksites; of these, only 1 incident has resulted in a bear fatality. In that incident, the responsible party was charged with violating the MMPA because it did not conduct the deterrence activity in a manner consistent with its authorization and was assessed a fine of $10,000.00.

These take provisions have been a crucial component of reducing human-bear confrontations in both Alaska Native villages and the oil and gas development areas on the North Slope of Alaska. The provisions have provided for the conservation of the polar bear by allowing nonlethal, noninjurious techniques to deter polar bears from property and away from people before situations escalate, thereby preventing unnecessary injury or death of a polar bear. These provisions also contribute to conservation of the species by allowing people to respond to injured or entangled animals and provide care and maintenance for stranded or orphaned polar bears. Therefore, under this rule, deterrence and assistance activities that are authorized or exempted under the MMPA do not require any additional authorization under 50 CFR 17.31 or 17.32. However, if a person conducting any of these activities is not authorized or exempted under the MMPA (or acts outside the scope of their authorization or exemption), the take prohibition of 50 CFR 17.31 still applies.

Further, reduction of human-bear conflict is becoming even more important with increasing numbers of polar bears using coastal habitat during the fall open water season. (See 73 FR 28212). In anticipation of increased human-bear interactions in Western Alaska, an area typically not utilized by polar bears when sea ice is available, the Service has initiated polar bear conservation efforts, including deterrence training and establishment of polar bear patrols, in partnership with the Alaska Nanuuq Commission and the North Slope Borough, in the Alaska Native Villages of Wales, Kivalina, Shishmaref, Little Diomede, Nome/King Island, Brevig Mission, Kotzebue, Gambell, and Savoonga.

Finally, the Service, in partnership with the Alaska Native community and our colleagues in the Russian Federation, is also working across the Bering/Chukchi Seas to ensure that all management options are realized to minimize human-polar bear interactions that might otherwise escalate into lethal take situations. Under the auspices of the "*Agreement between the United States and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population,*" the United States and the Russian Federation are required to manage and conserve polar bears based on reliable science and to meet the needs of Native peoples. The United States and the Russian Federation have both recognized that the removal of a polar bear, whether it is taken for subsistence purposes, incidentally, or because it poses a threat to human safety, should be considered a reduction to the overall population, and therefore, both countries are working across the region to reduce potential takes from human-bear interactions. The flexibility provided by the MMPA to deter curious or hungry bears before they become a threat to human life is key to this management and conservation effort.

Pre-Act Specimens

The ESA, MMPA, and CITES all have provisions for the regulation of specimens, both live and dead, that were acquired or removed from the wild prior to application of the law or the listing of the species, but the laws treat these specimens somewhat differently. Section 9(b)(1) of the ESA provides that threatened wildlife that were held in captivity or in a controlled environment prior to enactment of the ESA or the date of publication of ESA listing are exempt from regulations that the Service may issue for that species under the authority of the ESA (which would include any rule under section 4(d) of the ESA), provided that the wildlife's holding and any subsequent holding or use is not in the course of a commercial activity. Additionally, section 10(h) of the ESA provides an exemption for certain antique articles. Polar bears held in captivity prior to the listing of the polar bear as a threatened species under the ESA and not held or subsequently held or used in the course of a commercial activity, and all items containing polar bear parts that qualify as antiques under the ESA, would qualify for these exemptions.

Section 102(c) of the MMPA contains a pre-MMPA exemption that provides that none of the restrictions shall apply to any marine mammal or marine mammal product composed from an animal taken prior to December 21, 1972. In addition, Article VII(2) of CITES provides a pre-Convention exception that exempts a pre-Convention specimen from standard permitting requirements in Articles III, IV, and V of CITES when the exporting or reexporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect (see 50 CFR 23.45). This final 4(d) special rule does not affect requirements under CITES; therefore, these specimens continue to require this pre-Convention certificate for any import or export. Pre-Convention certificates required by CITES and pre-MMPA affidavits and supporting documentation required under the Service's regulations at 50 CFR 18.14 ensure that trade in pre-MMPA and pre-Convention specimens meet the requirements of the exemptions.

This final 4(d) special rule adopts the pre-Act and pre-Convention provisions of the MMPA and CITES. The MMPA has been in force since 1972, and polar bears have been listed in Appendix II of CITES since 1975. In that time, there has never been a conservation problem identified regarding pre-Act or pre-Convention polar bear specimens. Polar bear specimens that were obtained prior to the date that the MMPA went into effect (December 21, 1972) will not be subject to the same restrictions as other threatened species under the general regulations at 50 CFR 17.31 and 17.32, but the number of specimens and the nature of the activities to which these restrictions would apply is limited. To our knowledge, there are no live polar bears, held in captivity within the United States or elsewhere, that would qualify as "pre-Act" under the MMPA. Therefore, the standard MMPA restrictions apply to all live polar bears. Of the dead specimens that would qualify as "pre-Act" under the MMPA, very few of these specimens would likely be subject to otherwise prohibited activities due to the age and probable poor physical quality of these specimens. Furthermore, under CITES, these specimens would continue to require documentation for any international trade, which would verify that the specimen was acquired before CITES went into effect in 1975 for polar bears. While the general ESA regulations would provide some additional restrictions, such activities have not been identified as a threat in any way to the polar bear. Thus, CITES and the MMPA provide appropriate protections that are necessary and advisable to provide for the conservation of the polar bear in this regard, and additional restrictions under the ESA are not necessary.

Subsistence, Handicraft Trade, and Cultural Exchanges

Section 10(e) of the ESA provides an exemption for Alaska Natives for the taking and importation of listed species if such taking is primarily for subsistence purposes. Nonedible byproducts of species taken in accordance with the exemption, when made into authentic native articles of handicraft and clothing, may be transported, exchanged, or sold in interstate commerce. These exemptions remain in place and are not affected by this final 4(d) special rule. Specifically, this final 4(d) special rule does not regulate the taking or importation of polar bears or the sale in interstate commerce of authentic native articles of handicrafts and clothing by qualifying Alaska Natives; these have already been exempted by the ESA. This final 4(d) special rule addresses only activities relating to cultural exchange and limited types of travel, and to the creation and shipment of authentic native handicrafts and clothing currently allowed under section 101(b) of the MMPA that are not already clearly exempted under section 10(e) of the ESA.

The ESA defines authentic native articles of handicraft and clothing as items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices (section 10(e)(3)(ii)). That definition also provides that traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. Further details on what qualifies as authentic native articles of handicrafts and clothing are provided at 50 CFR 17.3. This exemption is similar to one in section 101(b) of the MMPA, which provides an exemption from the moratorium on take for subsistence harvest and the creation and sale of authentic native articles of handicrafts or clothing by Alaska Natives. The definition of authentic native articles of handicrafts and clothing in the MMPA is identical to the ESA definition, and the MMPA definition in our regulations at 50 CFR 18.3 is identical to the ESA definition at 50 CFR 17.3. Both statutes require that the taking may not be accomplished in a wasteful manner.

Under this final 4(d) special rule, any exempt activities under the MMPA associated with handicrafts or clothing or cultural exchange using subsistence-taken polar bears will not require additional authorization under the ESA, including the limited, noncommercial import and export of authentic native articles of handicrafts and clothing that are created from polar bears taken by Alaska Natives or Native people of Canada, Greenland, and the Russian Federation. All such imports and exports involving polar bear parts and products need to conform to what is currently allowed under the MMPA, comply with our import/export and CITES regulations found at 50 CFR parts 14 and 23, and be noncommercial in nature. The ESA regulations at 50 CFR 14.4 define commercial as related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to the quantity or weight.

Another activity covered by this final 4(d) special rule is cultural exchange between Alaska Natives and Native inhabitants of the Russian Federation, Canada, and Greenland, with whom Alaska Natives share a common heritage. The MMPA allows the import

and export of marine mammal parts and products that are components of a cultural exchange, which is defined under the MMPA as the sharing or exchange of ideas, information, gifts, clothing, or handicrafts. There is no comparable language in the ESA that would allow Alaska Natives to travel to Canada, Russia, or Greenland with cultural exchange items, or native people from Canada, Russia, or Greenland to bring items for cultural exchange into the United States. Cultural exchange has been an important exemption for Alaska Natives under the MMPA, and this final 4(d) special rule ensures that such exchanges would not be interrupted.

This final 4(d) special rule also adopts the registered agent and tannery process from the current MMPA regulations. In order to assist Alaska Natives in the creation of authentic native articles of handicrafts and clothing, the Service's MMPA implementing regulations at 50 CFR 18.23(b) and (d) allow persons who are not Alaska Natives to register as an agent or tannery. Once registered, agents are authorized to receive or acquire marine mammal parts or products from Alaskan Natives or other registered agents. They are also authorized to transfer (not sell) hides to registered tanners for further processing. A registered tannery may receive untanned hides from Alaska Natives or registered agents for tanning and return. The tanned skins may then be made into authentic articles of clothing or handicrafts. Registered agents and tanneries must maintain strict inventory control and accounting methods for any marine mammal part, including skins; they provide accountings of such activities and inventories to the Service. These restrictions and requirements for agents and tanners allow the Service to monitor the processing of such items while ensuring that Alaska Natives can exercise their rights under the exemption. Adopting the registered agent and tannery process aligns ESA provisions relating to the creation of handicrafts and clothing by Alaska Natives with the current process under the MMPA, and allows Alaska Natives to engage in the subsistence practices provided under the ESA's section 10(e) exemptions.

Nonetheless, the provisions of this final 4(d) special rule, regarding creation, shipment, and sale of authentic native articles of handicrafts and clothing apply only to items to which the subsistence harvest exemption applies under the MMPA. The exemption in section 10(e)(1) of the ESA applies to "any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska" but also applies to "any nonnative permanent resident of an Alaskan native village." However, the exemption under section 101(b) of the MMPA is limited to an "Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean." Because the MMPA is more restrictive, only a person who qualifies under the MMPA Alaska Native exemption may legally take polar bears for subsistence purposes, as a take by non-native permanent residents of Alaska native villages under the broader ESA exemption is not allowed under the MMPA. Therefore, all persons, including those who qualify under the Alaska Native exemption of the ESA, should consult the MMPA and our regulations at 50 CFR part 18 before engaging in any activity that may result in a prohibited act to ensure that their activities will be consistent with both laws.

Although a few of these MMPA provisions related to subsistence use and cultural exchange may be less strict than comparable ESA provisions, we have determined that these provisions are the appropriate regulatory mechanisms for the conservation of the polar bear. Both the ESA and the MMPA recognize the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives play in the conservation of marine mammals. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (section 119 of the MMPA). Through these cooperative agreements, the Service has worked with Alaska Native organizations to better understand the status and trends of polar bears throughout Alaska. For example, Alaska Natives collect and contribute biological specimens from subsistence-harvested animals for biological analysis. Analysis of these samples allows the Service to monitor the health and status of polar bear stocks.

Further, as discussed in our proposed and final rules to list the polar bear as a threatened species (72 FR 1064; January 9, 2007, and 73 FR 28212; May 15, 2008), the Service cooperates with the Alaska Nanuuq Commission, an Alaska Native organization that represents interests of Alaska Native villages whose members engage in the subsistence hunting of polar bears, to address polar bear subsistence harvest issues. In addition, for the Southern Beaufort Sea polar bear population, subsistence hunting is regulated voluntarily and effectively through the "*Inuvialuit-Inupiat Polar Bear Management Agreement in the Southern Beaufort Sea*" between the Inuvialuit of Canada and the Inupiat of Alaska (implemented by the North Slope Borough), as well as being monitored by the Service's marking, tagging, and reporting program. In the Chukchi Sea, the Service is working with Alaska Natives through the recently implemented *Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population* (Bilateral Agreement), under which one of the two U.S. commissioners represents the Native people of Alaska for whom polar bears are an integral part of their culture. The Bilateral Agreement allows for unified, on-the-ground conservation programs for the shared population of polar bears, including binding sustainable harvest limits. These cooperative management regimes for the subsistence harvest of polar bears are key to both providing for the long-term viability of the population as well as addressing the social, cultural, and subsistence interests of Alaska Natives and the native people of Chukotka and Canada.

The Service recognizes the significant conservation benefits that Alaska Natives have already made to polar bears through the measures that they have voluntarily taken to self-regulate harvest that is otherwise exempt under the MMPA and the ESA, and through their support of measures for regulation of harvest. This contribution has provided significant benefit to polar bears throughout Alaska, and will continue by maintaining and encouraging the involvement of the Alaska Native community in the conservation of the species. This final 4(d) special rule provides for the conservation of polar bears and includes appropriate prohibitions from section 9(a)(1) of the ESA, while at the same time accommodating the subsistence, cultural, and economic interests of Alaska Natives, which are interests recognized by both the ESA and MMPA. Therefore, the Service finds that aligning provisions under the ESA relating to the creation, shipment, and sale of authentic native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA, contributes to a regulation that is necessary and advisable to provide for the conservation of polar bears.

In our final rule to list the polar bear as a threatened species (73 FR 28212; May 15, 2008), while we found that polar bear mortality from harvest and negative human–bear interactions may be approaching unsustainable levels for some populations, especially those experiencing nutritional stress or declining population numbers as a consequence of habitat change, subsistence take by Alaska Natives does not currently threaten the polar bear throughout all or any significant portion of its range. Rangewide, continued harvest and increased mortality from human–bear encounters or other reasons are likely to become more significant threats in the future. The Polar Bear Specialist Group (Aars et al. 2006, p. 57), through resolution, urged that a precautionary approach be instituted when setting harvest limits in a warming Arctic environment, and that continued efforts are necessary to ensure that harvest or other forms of removal do not exceed sustainable levels. However, the Service has found that standards for subsistence harvest in the United States under the MMPA and the voluntary measures taken by Alaska Natives to manage subsistence harvest in the United States have been effective, and that, rangewide, the lawful subsistence harvest of polar bears and the associated creation, sale, and shipment of authentic handicrafts and clothing currently do not threaten the polar bear throughout all or a significant portion of its range.

National Defense Activities

Section 319 of the National Defense Appropriations Act of 2004 (Pub. L. 108–136, November 24, 2003) amended section 101 of the MMPA to provide a mechanism for the Department of Defense (DOD) to exempt actions or a category of actions necessary for national defense from requirements of the MMPA provided that DOD has conferred, for polar bears, with the Service. Such an exemption may be issued for no more than 2 years. The ESA contains no similar exemption. This final 4(d) special rule provides that an exemption invoked as necessary for national defense under the MMPA requires no separate authorization under the ESA. Although this provision would allow some activities that would otherwise have to be authorized under the ESA, the MMPA exemption requires DOD to confer with the Service, the exemptions are of limited duration and scope (only those actions "necessary for national defense"), and no actions by the DOD have been identified as a threat to the polar bear throughout all or any significant portion of its range. In the 9 years since this provision was enacted, the DOD has not approached the Service with a proposal to invoke the exemption.

Penalties

The MMPA provides substantial civil and criminal penalties for violations of the law. These penalties remain in place and are not affected by this final 4(d) special rule. Because CITES is implemented through the ESA, any import or export of polar bears or polar bear parts or products contrary to CITES and possession of any polar bear specimen that was imported or exported contrary to the requirements of CITES is a violation of the ESA and remains subject to its penalties.

Under this final 4(d) special rule, certain acts not related to CITES violations also remain subject to the penalties of the ESA. Under paragraph (1) in combination with paragraph (2) of this final 4(d) special rule, any act prohibited under the MMPA that would also be prohibited under the ESA regulations at 50 CFR 17.31 where the activity has not been authorized or exempted under the MMPA, would be a violation of the ESA as well as the MMPA. In addition, any act prohibited under the ESA regulations at 50 CFR 17.31, where the act is not also prohibited under the MMPA or CITES and therefore where the activity has not been authorized or exempted under the MMPA or CITES, would be a violation of the ESA unless authorized under 50 CFR 17.32. Also, even if an activity is authorized or exempt under the MMPA, failure to comply with all applicable terms and conditions of the statute, the MMPA implementing regulations, or an MMPA permit or authorization issued by the Service would likewise constitute a violation of the ESA. Under paragraph (4) of this rule, the ESA penalties also remain applicable to any incidental take of polar bears that is caused by activities within the current range of the species, if that incidental take has not been authorized under the MMPA consistent with paragraph (2) of this rule. While ESA penalties would not apply to any incidental take caused by activities outside the current range, as explained above, all MMPA penalties remain in place in these areas. A civil penalty of $12,000 to $25,000 is available for a knowing violation (or any violation by a person engaged in business as an importer or exporter) of certain provisions of the ESA, the regulations, or permits, while civil penalties of up to $500 may be assessed for any other violation. Criminal penalties and imprisonment for up to 1 year, or both, are also assessed for certain violations of the ESA. In addition, all fish and wildlife taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of the ESA or any ESA regulation or permit or certificate issued under the ESA are subject to forfeiture to the United States. There are also provisions for the forfeiture of vessels, vehicles, and other equipment used in committing unlawful acts under the ESA upon conviction of a criminal violation.

Under the MMPA, penalties against unlawful activities are also substantial. A civil penalty of up to $10,000 for each violation may be assessed against any person, which includes businesses, States, Federal agencies, and other entities as well as private individuals, who violates the MMPA or any MMPA permit, authorization, or regulation. Any person or entity that knowingly violates any provision of the statute or any MMPA permit, authorization, or regulation may, upon conviction, be fined up to $20,000 for each violation, be imprisoned for up to 1 year, or both. The MMPA also provides for the seizure and forfeiture of the cargo (or monetary value of the cargo) from any vessel that is employed in the unlawful taking of a polar bear, and additional penalties of up to $25,000 can be assessed against a vessel causing the unlawful taking of a polar bear. Finally, any polar bear or polar bear parts and products themselves can be seized and forfeited upon assessment of a civil penalty or a criminal conviction.

While there are differences between the penalty amounts in the ESA and the MMPA, the penalty amounts are comparable or stricter under the MMPA. The Alternative Fines Act (18 U.S.C. 3571) has removed the differences between the ESA and the MMPA for criminal penalties. Under this Act, unless a Federal statute has been exempted, any individual found guilty of a Class A misdemeanor may be fined up to $100,000. Any organization found guilty of a Class A misdemeanor may be fined up to $200,000. The criminal provisions of the ESA and the MMPA are both Class A misdemeanors, and neither the ESA nor the MMPA are exempted from the Alternative Fines Act. Therefore, the maximum penalty amounts for a criminal violation under both statutes is the same: $100,000 for an individual and $200,000 for an organization.

While the maximum civil penalty amounts under the ESA are for the most part higher than the maximum civil penalty amounts under the MMPA, other elements in the penalty provisions

mean that, on its face, the MMPA provides greater deterrence. Other than for a commercial importer or exporter of wildlife or plants, the highest civil penalty amounts under the ESA require a showing that the person "knowingly" violated the law. The penalty for other than a knowing violation is limited to $500. The MMPA civil penalty provision does not contain this requirement. Under section 105(a) of the MMPA, any person "who violates" any provision of the MMPA or any permit or regulation issued thereunder, with one exception for commercial fisheries, may be assessed a civil penalty of up to $10,000 for each violation.

Determination

Section 4(d) of the ESA states that the "Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation" of species listed as threatened. In *Webster* v. *Doe*, 486 U.S. 592 (1988), the U.S. Supreme Court noted that similar "necessary or advisable" language "fairly exudes deference" to the agency. Conservation is defined in the ESA to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary." Additionally, section 4(d) states that the Secretary "may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)."

Thus, regulations promulgated under section 4(d) of the ESA provide the Secretary with wide latitude of discretion to select appropriate provisions, including prohibitions and exemptions, for threatened species. In such cases, some of the ESA prohibitions and authorizations from section 9(a)(1) of the ESA and from 50 CFR 17.31 and 17.32 may be appropriate for the species and be incorporated into a 4(d) special rule, but the 4(d) special rule may also include other provisions tailored to the specific conservation needs of the listed species, which may be more or less restrictive than the general provisions.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the species. For example, the Secretary may find that it is appropriate not to include a taking prohibition, or to include a limited taking prohibition. (See *Alsea Valley Alliance* v. *Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). In addition, as affirmed in *State of Louisiana* v. *Verity*, 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the ESA was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species," as long as the measures will "serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

This final 4(d) special rule includes appropriate provisions such that the rule is necessary and advisable to provide for the conservation of the species, while also including appropriate prohibitions from section 9(a)(1) of the ESA. Many provisions provided under the MMPA and CITES are comparable to or stricter than similar provisions under the ESA, including the definitions of take, penalties for violations, and allowed uses of marine mammals. As an example, concerning the definitions of harm under the ESA and harassment under the MMPA, while the terminology of the definitions is not identical, we cannot foresee circumstances under which the management for polar bears under the two definitions would differ. In addition, the existing statutory exceptions that allow use of marine mammals under the MMPA (e.g., research, enhancement) allow fewer types of activities than does the ESA regulation at 50 CFR 17.32 for threatened species, and the MMPA's standards are generally stricter for those activities that are allowed than those standards for comparable activities under the ESA regulations at 50 CFR 17.32.

Additionally, the process for authorization of incidental take under the MMPA is more restrictive than the process under the ESA. The standard for issuing incidental take under the MMPA is "negligible impact." Negligible impact under the MMPA, as defined at 50 CFR 18.27(c), is an impact that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Additionally, under section 101(a)(5)(A) and (D) of the MMPA, incidental take may only be authorized for "small numbers" of marine mammals. Overall, this is a more protective standard than standards for issuing incidental take under the ESA, which are, for non-Federal actions, that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild and, for Federal actions, that the activity is not likely to jeopardize the continued existence of the species. A proposed Federal action being independently evaluated under the MMPA and the ESA would have more than a negligible impact before, and in some cases well before, a jeopardy determination would be made.

Where the provisions of the MMPA and CITES are comparable to, or even more strict than, the provisions under the ESA, we find that the polar bear continues to be appropriately managed under the provisions of the MMPA and CITES. As such, these mechanisms have a demonstrated record as being appropriate management provisions. Further, the Service has concluded that, in this instance, for the Service to require people to obtain an ESA authorization (including paying application fees) for activities authorized under the MMPA or CITES, where protective measures for polar bears under the ESA authorization would be equivalent to or less restrictive than the MMPA or CITES requirements, it would not contribute to the conservation of the polar bear and would be inappropriate.

There are a few activities for which the provisions under the MMPA are less restrictive than provisions for similar activities under the ESA, including use of pre-Act specimens, subsistence use, military readiness activities, and take for defense of property or welfare of the animal. Concerning use of pre-Act specimens and military readiness activities, the general ESA threatened species regulations would provide some additional restrictions beyond those provided by the MMPA; however, such activities have not been identified as a threat in any way to the polar bear. Therefore, the additional restrictions under the ESA would not contribute to the conservation of the species. Concerning subsistence use and take for defense of property or welfare of the animal, the MMPA allows a greater breadth of activities than would be allowed under the general ESA threatened species regulations, and in the case of take for defense of life or property or the welfare of the animal, use by a broader range of persons; however, these additional activities clearly provide for the conservation of the polar bear by fostering cooperative relationships with Alaska Natives who participate with us in conservation

programs for the benefit of the species, limiting lethal or injurious bear–human interactions, and providing immediate benefits for the welfare of individual animals.

We find that for activities within the current range of the polar bear, overlay of the incidental take prohibitions under 50 CFR 17.31 is an important component of polar bear management because of the timing and proximity of potential take of polar bears. Within the range of the polar bear there are currently ongoing lawful activities that result in the incidental take of the species such as those associated with oil and gas exploration and development. Any incidental take from these activities is currently authorized under the MMPA. However, we recognize that there may be future development or activities that may cause incidental take of the species. Because of this, we find that it is important to have the overlay of ESA incidental take prohibitions in place for several reasons. In the event that a person or entity was causing the incidental take of polar bears that has not been authorized under the MMPA, or they are not in compliance with the terms and conditions of their MMPA incidental take authorization, the overlay will provide that the person or entity is in violation of the ESA as well as the MMPA. In such circumstances, the person can alter his or her activities to eliminate the possibility of incidental take, seek or come into compliance with their MMPA authorization, or be subject to the penalties of the ESA as well as the MMPA. In this situation, the citizen suit provision of section 11 of the ESA would allow any citizen or citizen group to pursue an incidental take that has not been authorized under the MMPA. As such, we have determined that the overlay of the ESA incidental take prohibitions at 50 CFR 17.31 in the current range of the polar bear is appropriate for the species.

However, we find that for activities outside the current range of the polar bear, overlay of the incidental take prohibitions under 50 CFR 17.31 is not necessary for polar bear management and conservation. Even though incidental take of polar bears from activities outside the current range of the species is not prohibited by the ESA under this special rule, the consultation requirements under section 7 of the ESA remain fully in effect. As part of the consultation process, any incidental take (as long as a causal connection could be established) will have already been identified in a section 7 incidental take statement and authorized under the MMPA (since under section 7(b)(4)(C) no incidental take statement can be issued for an endangered or threatened marine mammal until the person has obtained their MMPA incidental take authorization). Any incidental take not authorized would be a violation of the MMPA, which the Federal Government would pursue as a violation of the law and all MMPA penalties would apply. In addition, the citizen suit provision under section 11 of the ESA would remain fully operational for challenges that a Federal agency had failed to consult with the Service or to challenge the adequacy of any consultation. As such, we have determined that not having the additional overlay of incidental take prohibitions under 50 CFR 17.31 resulting from activities outside the current range of the polar bear does not have a conservation effect on the species.

Our 37-plus-year history of implementing the MMPA and CITES, and our comparative analysis of these laws with the applicable provisions of the ESA, demonstrate that the MMPA and CITES provide effective regulatory protection to polar bears for activities that are and can reasonably be regulated under these laws. In addition, the threat that has been identified in the final ESA listing rule—loss of habitat and related effects—would not be alleviated by the full application of ESA provisions in the general threatened species regulations at 50 CFR 17.31 and 17.32.

This final 4(d) special rule adopts existing conservation regulatory requirements under the MMPA and CITES as the primary regulatory provisions for this threatened species. If an activity is authorized or exempted under the MMPA or CITES, no additional authorization is required under 50 CFR 17.31 or 17.32. But if an activity is not authorized or exempted under the MMPA or CITES, or a person or entity is not in compliance with all terms and conditions of the authorization or exemption, and the activity would result in an act that would be otherwise prohibited under 50 CFR 17.31, the provisions of the general ESA threatened species regulations apply. In such circumstances, the prohibitions of 50 CFR 17.31 would be in effect, and authorization under 50 CFR 17.32 would be required, unless the activity involves incidental take caused by an activity located within the United States but outside the current range of the polar bear. The application of provisions at 50 CFR 17.31 and 17.32 provides an additional overlay for the species. ESA civil and criminal penalties will continue to apply to any applicable situation where a person (i) has not obtained MMPA or CITES authorizations, (ii) is conducting their activities under an MMPA or CITES authorization or exemption but has failed to comply with all terms and conditions of the authorization or exemption, or (iii) was required to obtain a permit under 50 CFR 17.32 and failed to do so.

In addition, nothing in this final 4(d) special rule affects in any way other provisions of the ESA such as the recovery planning provisions of section 4(f) and consultation requirements under section 7, including consideration of adverse effects posed to any critical habitat. It also does not affect the ability of the Service to enter into domestic and international partnerships for the management and protection of the polar bear.

We find that this 4(d) special rule is necessary and advisable to provide for the conservation of the polar bear because the MMPA and CITES have proven effective in managing certain impacts on polar bears for more than 30 years, and as discussed in our response to comments below, provide the flexibility we need to respond to human-bear conflict, which is likely to increase with decreasing summer sea ice. This final 4(d) special rule also adopts appropriate prohibitions from section 9(a)(1) of the ESA. The comparable or stricter provisions of the MMPA and CITES, along with the overlay of the ESA regulations at 50 CFR 17.31 and 17.32 for any activity that has not been authorized or exempted under the MMPA or CITES, or for which a person or entity is not in compliance with the terms and conditions of any MMPA or CITES authorization or exemption, address those negative effects on polar bears that can foreseeably be addressed under the ESA. It would not contribute to the conservation of the polar bear to require an unnecessary overlay of redundant authorization processes that would otherwise be required under the general ESA threatened species regulations at 50 CFR 17.31 and 17.32. Additionally, the Secretary has the discretion to decide whether to prohibit by regulation with respect to polar bears any act prohibited in section 9(a)(1) of the ESA.

Summary of Changes From the Proposed 4(d) Special Rule

In preparing this final special rule for the polar bear, we reviewed and considered comments and information from the public on our proposed special rule published in the **Federal Register** on April 19, 2012 (77 FR 23432), as well as comments we received in response to our special rule making for the polar bear in 2008, and the Court determinations regarding that 2008

special rule. We also considered the analysis in our Environmental Assessment. Based on those considerations we are finalizing this special rule for the polar bear as proposed on April 19, 2012.

In this final rule, we have clarified that there is no conservation effect, either positive or negative, from the inclusion of paragraph (4) in section 17.40(q). See response to comment 7.

Summary of and Responses to Comments and Recommendations

During the public comment period, we requested written comments from the public on the proposed rule as well as the draft EA. Specifically we requested comment on the: (1) Suitability of the proposed rule for the conservation, recovery, and management of the polar bear; and (2) additional provisions the Service may wish to consider to conserve, recover, and manage the polar bear.

The comment period on the proposed 4(d) special rule for the polar bear opened on April 19, 2012 (76 FR 23432), and closed on June 18, 2012. During that time, we received 25 submissions from the public; these included comments on the proposed rule as well as a number of publications and other documents submitted in support of those comments. The Marine Mammal Commission submitted its comments on August 3, 2012.

In addition to the Marine Mammal Commission, the Service received comments from the State of Alaska, the Arctic Slope Regional Corporation, trade and environmental organizations, and the general public. We reviewed all comments received for substantive issues, new information, and recommendations regarding the 4(d) special rule and the EA. The comments on the proposed special rule, aggregated by subject matter, summarized and addressed below, are incorporated into the final rule as appropriate. Where commenters incorporated by reference their comments on the May 2008 interim rule, we refer them to our responses provided on those comments in the December 2008 final rule. The Service has summarized and responded to comments pertaining to the draft EA in our final EA.

Response to Comments

1. *Comment:* Commenters disagreed on the appropriate standard for issuance of the 4(d) special rule. Some argued that the 4(d) special rule must provide measures that are "necessary and advisable for conservation of the species," while others asserted that the Secretary has broad discretion to issue a rule under section 4(d) of the ESA and did not need to meet the "necessary and advisable" standard.

Response: This issue was addressed by the District Court in its Memorandum Opinion issued on October 17, 2011 (*In Re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation. This Document Relates to: Ctr. for Biological Diversity, et al.* v. *Salazar, et al.*, No. 08–2113; *Defenders of Wildlife* v. *U.S. Dep't of the Interior, et al.*, No. 09–153, 818 F. Supp. 2d 214 (D.D.C. 2011)). There, the court noted Circuit Court precedent that the Secretary was afforded broad discretion under the ESA "to apply any or all of the [Section 9] prohibitions to threatened species without obliging it to support such actions with findings of necessity" (quoting *Sweet Home Chapter of Communities for a Great Oregon* v. *Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), modified on other grounds on reh'g, 17 F.3d 1463 (D.C. Cir. 1994), rev'd on other grounds, 515 U.S. 687 (1995)). Despite having that discretion, the court found that the Service had "premised its Special Rule on a finding that the rule is necessary and advisable to provide for the conservation of the polar bear." (818 F. Supp. 2d at 228–229). As a result, the Court reviewed the 4(d) special rule pursuant to the "necessary and advisable" standard, and found that it met that standard. We agree that the first two sentences of section 4(d) of the ESA provide separate authorities for regulations for threatened species. As such the Service finds that provisions in this 4(d) special rule are necessary and advisable to provide for the conservation of the polar bear and has also included appropriate prohibitions from section 9(a)(1) of the ESA. In other words, the final special rule for polar bears meets both rule-making standards under section 4(d).

2. *Comment:* The Service fails to establish that the proposed rule provides a conservation benefit to the polar bear; it instead relies on reasons that are unrelated to polar bear conservation.

Response: We disagree. A primary component of the Service's efforts to conserve the polar bear is to minimize death and injuries to polar bears caused by human-bear conflict. The flexibility provided by the MMPA to deter curious or hungry bears before they become a threat to human life or property is key to this conservation effort. In the preamble to this final rule, we have added information that even more strongly demonstrates the importance of such deterrence measures to polar bear conservation. See the section of the preamble on the Necessary and Advisable Finding and Rational Basis Finding for a complete explanation of how this and other provisions of the rule are necessary and advisable to provide for the conservation of the polar bear, while also including appropriate prohibitions from section 9(a)(1) of the statute.

3. *Comment:* Because the proposed rule does not address the primary threat to a listed species, in this case greenhouse gas (GHG) emissions that are driving climate change and the loss of sea ice habitat, the rule (particularly paragraph 4) fails to meet the "necessary and advisable" standard.

Response: We disagree. While we recognize the primary threat to the continued existence of the polar bear is loss of sea ice habitat due to climate change, we find that promulgation of this rule is "necessary and advisable" for the conservation of the polar bear, while also including appropriate prohibitions from section 9(a)(1) of the statute. Further, the District Court of the District of Columbia has reviewed an identical 4(d) special rule. In the case *In re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation: Ctr. for Biological Diversity, et al.* v. *Salazar, et al.*, No. 08–2113; *Defenders of Wildlife* v. *U.S. Dep't of the Interior, et al.*, No. 09–153, Misc. No. 08–764, MDL Docket No. 1993, the Court held that the Service's explanation for the rule met the "necessary and advisable" standard, essentially rejecting the same argument raised in the comment.

4. *Comment:* The rule's exemption from ESA section 9 take prohibitions for all activities authorized under the MMPA is unlawful because the MMPA is less protective than the ESA.

Response: We disagree. While we recognize there are slight differences between the statutory language of the MMPA and ESA, as discussed in the preamble, we find the definitions of "take" under the ESA and the MMPA to be comparable and, where they differ, we find that, due to the breadth of the MMPA's definition of "harassment," the MMPA's definition of "take" is, overall, more protective. Thus, we have determined that applying the provisions on take of a polar bear as defined under the MMPA is appropriate for the species.

Further, and as also discussed in this final rule, for any activity which is not authorized or exempted under the MMPA or that has not been conducted in compliance with all terms and conditions that apply to an MMPA authorization or exemption for the activity and that would result in a taking that would be otherwise prohibited under the ESA regulations at

50 CFR 17.31, the prohibitions of 50 CFR 17.31 would apply, and permits are required under 50 CFR 17.32 of our ESA regulations. Thus, in the absence of MMPA compliance or the appropriate threatened species permit, a person would be in violation of the ESA prohibitions.

Ultimately, while Congress laid out the prohibitions and authorizations that are appropriate for endangered species, it expressly did not do so for threatened species. Instead it left it to the discretion of the agency to determine what measures would be necessary and advisable for the conservation of the species and which section 9(a)(1) prohibitions should be applied. There is no indication that Congress intended that prohibitions for threatened species be identical to prohibitions for endangered species. In fact, by stating that regulations for a threatened species ''may'' prohibit any act prohibited for endangered species under section 9 of the ESA, Congress made clear that it may not be appropriate to include section 9 prohibitions for some threatened species. Finally, as discussed above, the District Court for the District of Columbia specifically considered whether a rule identical to this final rule met the regulatory standards of the ESA and held that it did.

5. *Comment:* In practice, the MMPA is not more protective than the ESA because the Service has not implemented the MMPA to protect habitat.

Response: We disagree. While the prohibitions of the MMPA, like the ESA, apply to activities affecting the animals themselves, the MMPA also includes consideration of habitat and ecosystem protection. The terms ''conservation'' and ''management'' in the MMPA are specifically defined to include habitat acquisition and improvement. Protection of essential habitats, including rookeries, mating grounds, and areas of similar significance, is addressed in incidental take authorizations. Specifically, the Service must consider potential impacts to the polar bear's habitat prior to issuing incidental take authorizations under section 101(a)(5)(A) of the MMPA. In its incidental take regulations for the Beaufort and Chukchi Seas, for example, the Service has required industry to maintain a 1-mile buffer to minimize disturbance to the bear; that buffer also protects access to and use of important denning habitat.

In addition, because nothing in the 4(d) special rule affects section 7 consultation standards, cumulative effects to the species and its habitat are evaluated during the intra-Service ESA section 7 consultation required for the issuance of incidental take authorizations under section 101(a)(5) of the MMPA. Further, as explained in the preamble, this final rule does not change the requirement that all Federal agencies consult with the Service to ensure that any Federal action is not likely to result in the destruction or adverse modification of designated critical habitat. That consultation process for critical habitat supplements the existing habitat protections of the MMPA.

6. *Comment:* Because of the process by which MMPA direct and incidental take is authorized, there is no administrative burden to also require that same take to be authorized under the ESA.

Response: We disagree. As discussed above, much of the Service's efforts to conserve and manage the polar bear are currently focused on the reduction of human-bear conflict. The Service works with Federal agencies, State authorities, local governments, private researchers, industry, and private citizens, under both the general exemptions as well as authorizations contained in the MMPA to ensure that actions to deter polar bears may be conducted responsive to the varying conditions encountered. Without this 4(d) special rule, private individuals, industry, Alaska Native Organizations, and local communities would all need to obtain permits from the Service under the provisions of 50 CFR 17.32 for all activities that were reasonably likely to result in the prohibited taking of a polar bear under the ESA. Allowing these entities to react appropriately without having to obtain an additional permit under the ESA is a cornerstone of our conservation and management program for the species in Alaska.

While permitting requirements under 50 CFR 17.32 contribute to conservation of threatened species generally, in the case of the polar bear we have determined that relief from ESA permitting requirements is appropriate for polar bear conservation in remote areas of Alaska. The MMPA provisions that afford individuals the ability to haze potentially problem animals away from villages or remote camps come with both flexibility and responsibility. It is this combination that contributes to conserving polar bears in Alaska.

Under certain MMPA exemptions, individuals have the flexibility to determine when and what action is needed for a bear that is endangering personal safety or property without obtaining advance authorization from the Service. An individual's response may include taking appropriate action to deter a bear as a situation necessitates; in doing so, he or she must ensure that the deterrence action does not seriously injure or kill the animal. (An individual is authorized to kill a bear—under both the MMPA and the ESA—only when the action is imminently necessary in self-defense or to save the life of another person.) Areas in Alaska occupied by polar bears are also utilized by Alaska Natives for subsistence hunting and fishing activities. If ESA permitting requirements also applied, an Alaska Native subsistence user, for example, would need to obtain a permit to legally haze bears. In order to obtain such a permit, the hunter would have to first consider all possible hazing actions they might take, then complete a permit application and submit it for review to the Service's permitting office. Rather than requiring this impractical and potentially dangerous system for both people and bears, this rule relies on the protective, but flexible, authority provided by the MMPA.

7. *Comment:* The Service fails to rationally support its exemption of non-GHG pollutants emitted outside polar bear range, despite evidence that those pollutants clearly harm the polar bear.

Response: For the reasons explained in the preamble, neither the ESA prohibition on incidental take—nor the absence of such prohibition—conveys a conservation benefit from either GHG emissions or non-GHG pollutants. Sufficient science to demonstrate a causal connection between a particular facility and ESA incidental take of one or more bears, would also prove an MMPA incidental take violation because the burden of proof for an ESA incidental take violation is the same as that for an MMPA incidental take violation. And, if there was a Federal nexus, the ESA incidental take would trigger the section 7 consultation process. Therefore, as discussed earlier, any ESA incidental take prohibition would be simply additive to the existing MMPA incidental take prohibition, authorization process, and penalties (which are stricter than those under the ESA and would be pursued by the Federal government via appropriate enforcement actions). Therefore, because incidental take of polar bears is already fully prohibited under another statute with effective penalties, there is no conservation effect on the species from not prohibiting incidental take under the ESA in some geographic areas. Rather, the difference boils down to who has the ability to bring lawsuits for alleged incidental take violations, with the ESA citizen's suit provision being available for incidental take

allegedly caused by U.S. activities inside the current range of the polar bear but not available for incidental take allegedly caused by U.S. activities outside the current range of the polar bear.

The Director of the Service has therefore made a reasonable policy decision that, where it is not a conservation issue for the species, the potential burden of baseless incidental takings lawsuits to industry and others most likely to be subject to such lawsuits under the citizen suit provision argues in favor of paragraph (4) as an appropriate provision of the rule. Any benefit of allowing citizen suits for ESA incidental take violations outside polar bear range is outweighed by these considerations.

For a complete explanation of how paragraph (4) and other provisions of the rule are necessary and advisable to provide for the conservation of the polar bear, while also including appropriate prohibitions from section 9(a)(1) of the statute, see Necessary and Advisable Finding and Rational Basis Finding.

8. *Comment:* On the topic of citizen suits, some commenters agreed, while others disagreed, with the Service's statements regarding the likelihood of suits being filed, the potential for success, and the potential drain on Service resources. One commenter also challenged paragraph (4) of the proposed rule as a violation of the separation of powers doctrine.

Response: In the proposed rule, the Service found that paragraph (4), which limited the ESA prohibition on incidental take to activities within the range of the polar bear, was advantageous because: (1) The potential for citizen suits alleging take resulting from activities outside of the range of the polar bear [was] significant; (2) the likelihood of such suits prevailing in establishing take of polar bears [was] remote; and (3) defending against such suits [would] divert available staff and funding away from productive polar bear conservation efforts. Many of the commenters addressed these statements in their submissions.

With regard to the potential volume of citizen suits, the Service now concludes that it overestimated the number of suits that are likely to be initiated in the absence of paragraph (4) of the regulation. The standard for triggering ESA section 7 consultation is a relatively low bar, namely that a federal action "may affect" a listed species. That standard has been applied both within and outside polar bear range since the species was listed in 2008, yet no suits have been filed alleging a violation of section 7.

The Service has not changed its position on the likelihood of success. Although GHG emissions have been linked to the threat of sea ice loss (a primary trigger for the Service's listing of the polar bear), the burden of proof for an ESA incidental takings case is high and any ESA incidental takings lawsuit that might otherwise have been brought under the citizen suit provision would need to meet that burden.

Related to the issue of likelihood of success of ESA citizen suits, one commenter asserted that the proposed rule adopted new standards or misstates existing standards under the ESA. This commenter posited that population, not individual, level impacts are sufficient to establish harm, and that rather than considering whether emissions from a single facility cause take, the appropriate standard was whether the facility's emissions contribute to take. With these broader legal standards in mind, the commenter concluded that the current state of the science would allow a plaintiff to show a causal connection between GHG emissions and harm to polar bears. The Service has not changed its position on any legal standard, including under the definition of ESA "harm." Changes have been made to the preamble to clarify this point. For the Service's position on the meaning of harm, see the 1981 final rule defining that term (46 FR 54748). Further, in the absence of judicial confirmation of these novel legal arguments, the Service stands by its position that the burden of proof is high. Also suggesting that the likelihood of success is low was the observation by one commenter that all the tort suits that have been brought against GHG emitters had been dismissed.

Because it is not a conservation issue for the species, the potential burden of baseless incidental takings lawsuits (even if likely to be relatively infrequent) to industry and others most likely to be subject to such lawsuits under the citizen suit provision, supports paragraph (4) as an appropriate provision of the rule. Any benefit of allowing citizen suits for ESA incidental take violations outside polar bear range is outweighed by these considerations.

Finally, including this provision is not a violation of the separation of powers doctrine. As we have explained, in section 4(d) of the ESA, Congress specifically left it to the discretion of the Service (as delegated by the Secretary) to develop threatened species rules that are necessary and advisable to provide for the conservation of the species, and to include—or not include—prohibitions from section 9(a)(1) of the ESA as appropriate. There is no legal requirement to include all, or any particular, prohibitions from section 9(a)(1) of the ESA. The ability to bring a citizen suit against parties other than the Service flows from showing that a person or entity has violated a provision of the ESA or any regulation issued thereunder. Thus, the ability to bring such citizen suits for threatened species flows largely from those prohibitions that the Service has decided to include within a 4(d) special rule, not an independent right to sue under the ESA. And the decision on which provisions should be included within a special rule under section 4(d) of the ESA is driven by the conservation needs of the species and appropriate section 9(a)(1) prohibitions, not the interests in certain groups in bringing lawsuits.

9. *Comment:* The Service should reaffirm its previous determinations that a causal link—one that would trigger ESA section 7, ESA section 9, or MMPA consequences—cannot be established between GHG emissions from a particular source and a specific effect on polar bears or their habitat.

Response: The same causation standard applies to take prohibitions under the MMPA and the ESA as well as identifying take under ESA section 7. Therefore consideration of the ESA section 7 process applies to these other statutory provisions as well. For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action may affect a listed species, the responsible Federal action agency must enter into consultation with us. The prohibitions on take that appear in 50 CFR 17.31 and MMPA section 102 similarly require a causal link be established between an action and the consequence of a take; a discussion of section 7 consultation is illustrative on this point.

For ESA section 7, the determination of whether consultation is triggered is narrow; that is, the focus of the effects analysis is on the discrete effect of the proposed agency action. This is not to say that other factors affecting listed species are ignored. A Federal agency evaluates whether consultation is necessary by analyzing what will happen to listed species "with and without" the proposed action. This analysis considers direct effects and indirect effects, including the direct and indirect effects that are caused by interrelated and interdependent activities, to determine if the proposed action "may affect" listed species. For those effects beyond the direct effects of the action, our regulations at 50 CFR

402.02 require that they both be "caused by the action under consultation" and "reasonably certain to occur." That is, the consultation requirement is triggered only if there is a causal connection between the proposed action and a discernible effect to the species or critical habitat that is reasonably certain to occur. One must be able to "connect the dots" between an effect of proposed action and an impact to the species and there must be a reasonable certainty that the effect will occur.

While there is no case law directly on point, in *Arizona Cattlegrowers' Association* v. *U.S. Fish and Wildlife Service*, 273 F.3d 1229 (9th Cir. 2001), the 9th Circuit ruled that in section 7 consultations the Service must demonstrate the connection between the action under consultation and the actual resulting take of the listed species, which is one form of effect. In that case, the court reviewed grazing allotments and found several incidental take statements to be arbitrary and capricious because the Service did not connect the action under consultation (grazing) with an effect on (take of) specific individuals of the listed species. The court held that the Service had to demonstrate a causal link between the action under consultation (issuance of grazing permits with cattle actually grazing in certain areas) and the effect (take of listed fish in streams), which had to be reasonably certain to occur. The court noted that "speculation" with regard to take "is not a sufficient rational connection to survive judicial review."

In this case a federal agency would have to specifically consider whether a Federal action that produces GHG emissions is a "may affect" action that requires consultation under section 7 of the ESA with regard to any and all species that may be impacted by climate change. As described above, the regulatory analysis of indirect effects of the proposed action requires the determination that a causal linkage exists between the proposed action, the effect in question (climate change), and listed species. There must be a traceable connection (i.e., "but for causation") from one to the next and the effect must be "reasonably certain to occur." This causation linkage narrows ESA section 7 consultation requirements to listed species in the "action area" rather than to all listed species. Without the requirement of a causal connection between the action under consultation and effects to species, literally every agency action that contributes GHG emissions to the atmosphere would arguably result in consultation with respect to every listed species that may be affected by climate change.

The Service acknowledges that climate science is an active area of current research, and our understanding of the causes, timing and scope of environmental impacts related to climate change is rapidly evolving. In the process of evaluating alternatives for the environmental assessment, we determined that an exhaustive analysis of all the current scientific literature regarding climate change and sea ice habitat would not change the analysis fundamental to our decision about the 4(d) special rule. Rather than turn on whether future scientific information might be capable of establishing a causal linkage between specific emissions and incidental take of particular polar bears, our analysis focuses on the regulatory consequences of either scenario—whether causal linkage is established or not in the future. In either case, we found that the MMPA provides sufficient regulatory and enforcement protection.

10. *Comment:* The Service should continue the well-founded and consistent legal and policy determination that the ESA cannot and should not be used to regulate GHG emissions.

Response: As with many other species listed because of threats to habitat, the ESA by itself does not provide authority to the Service to regulate the underlying causes of that habitat loss. Instead, where there is a Federal nexus, the ESA requires that a Federal agency consult with the Service when the best available science indicates that an action "may affect" a species or its critical habitat.

The Service recognizes that the biggest long-term threat to polar bears is the loss of sea ice habitat from climate change. While GHG emissions are clearly contributing to that climate change, comprehensive authority to regulate those emissions is not found in the ESA. The challenge posed by climate change and its ultimate solution is much broader. Rising to that challenge, Federal and State governments, industry, and nonprofit organizations are exploring ways to collectively reduce GHG emissions as we continue to meet our nation's energy needs.

The Service is working in other arenas to address the effects of climate change on polar bears. For example, the Service's recently released "Rising to the Urgent Challenge: Strategic Plan for Responding to Accelerating Climate Change" (*http://www.fws.gov/home/climatechange/pdf/CCStrategicPlan.pdf*) acknowledges that no single organization or agency can address an environmental challenge of such global proportions without allying itself with others in partnerships across the nation and around the world. Specifically, this Strategic Plan Service commits the Service to (1) lay out our vision for accomplishing our mission to "work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people" in the face of accelerating climate change; and (2) provide direction for our own organization and its employees, defining our role within the context of the Department of the Interior and the larger conservation community.

11. *Comment:* The Service should alter paragraph (4) of the regulation so that the exemption applies to all activities regardless of whether they occur outside or within polar bear range.

Response: The Service disagrees. Because there are other legal avenues that prohibit incidental take from activities undertaken outside or within polar bear range, the authority to bring a citizen suit alleging a violation of the ESA prohibition on incidental take is not a conservation issue for the species. Instead, other considerations come into play and the Director has weighed those factors in adopting the language of paragraph 4.

For activities outside polar bear range but within the United States, the Director has made a reasonable policy decision that the potential burden of baseless incidental takings lawsuits to industry and others under the citizen suit provision outweighs the tangential litigation benefit of allowing citizen suits for ESA incidental take violations under section 9.

For activities within polar bear range, the balance tips towards including ESA incidental take coverage. Within the species' range, there is a greater likelihood that a plaintiff will be able to establish a causal link between sources of incidental take other than GHG emissions and incidental take of bears because of proximity. For example, incidental take caused by noise, lights, visual disturbance, and emissions of toxins like mercury can all occur within polar bear range and could have a more direct causal linkage. While it is possible that similar effects could occur from an activity located outside the species' range and then spread or transmit to an area within the species' range, this is less likely and becomes increasingly unlikely the farther the activity is located from the species' range.

As with incidental take caused by activities outside the range, any ESA

incidental take proven to be caused by an activity within the species' range would be a violation of the MMPA takings prohibition. Therefore, this aspect of the rule likewise does not have a conservation effect on the species. But here the Director of the Service has made the policy decision that, even though there is no conservation benefit, an ESA incidental take prohibition should be included in the rule. In reaching this decision, the Director considered the potential burden to industry and others most likely to be subject to citizen suits but found that because such lawsuits are less likely to be baseless (for the reasons noted above), the balance tipped in favor of maintaining the citizen's suit provision within polar bear range.

12. *Comment:* The Service should reaffirm its prior assertion that GHG emissions from oil and gas development activities within the range of the polar bear should not result in "indirect impacts" that would require consultation under ESA section 7.

Response: We explain the Service's position on GHG emissions in our response to Comment 9 and reiterate in Comment response 11 the reasons for the geographic boundary in paragraph (4).

13. *Comment:* The Service failed to consider how the geographic exemption in paragraph (4) of the regulation might impact potential polar bear conservation associated with GHG emitters who choose to pursue regulatory options under the ESA section 10 permit program.

Response: Incidental take of polar bears has been prohibited since passage of the MMPA in 1972; neither the ESA listing nor publication of the 4(d) special rule changed that. Entities who are concerned that their activities might incidentally take a polar bear have several options, including seeking authorization for incidental take under the MMPA via incidental take regulations or an incidental harassment authorization. Under the terms of this final rule, if they receive incidental take authorization under the MMPA, and conduct their activities consistent with the conditions of that authorization, they would not need additional authorization under section 10 of the ESA. The reverse is not necessarily true. Regardless of paragraph (4), an entity who obtained an ESA section 10 permit for activities that caused incidental take would still need authorization under the MMPA. Alternatively, an entity may adjust their activities to avoid the incidental taking of polar bears. All of these avenues would contribute to polar bear conservation.

14. *Comment:* The Service should include information to make clear the polar bear population is not in decline.

Response: Issues related to the current status of polar bear populations are outside the scope of this 4(d) special rule. Please see the final listing rule (73 FR 28212; May 15, 2008) for discussion of these topics. As noted in that rule, the polar bear species is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

As required by section 4(c)(2) of the ESA, the Service anticipates initiating a 5-year status review of the polar bear in 2013. The 5-year review assesses: (1) Whether new information suggests that the species is increasing, declining, or stable; (2) whether existing threats are increasing, unchanged, reduced, or eliminated; (3) if there are any new threats; and (4) if any new information or analysis calls into question any of the conclusions in the original listing determination as to the species' classification.

The 5-year review provides a recommendation, with supporting information, on whether a species' classification should be changed; it does not change the species' classification. A species' classification cannot be changed until a rulemaking process is completed, including a public review and comment period.

15. *Comment:* One commenter raised concerns regarding a possible up-listing of the polar bear from CITES Appendix II to CITES Appendix I.

Response: Consideration of this issue is beyond the scope of this final rule but the comment was forwarded to Service Headquarters, which is considering this comment as it deliberates potential recommendations to bring to the next meeting of the Conference of the Parties to CITES.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA), in the Office of Management and Budget, will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Based on the information that is available to us at this time, we are certifying that this final 4(d) special rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121.201 (also found at *http://www.sba.gov/size/*), which the RFA requires all Federal agencies to follow. To determine if potential economic impacts to these small entities would be significant, we considered the types of activities that might trigger regulatory impacts. However, this final 4(d) special rule for the polar bear would allow for maintenance of the regulatory status quo

regarding activities that had previously been authorized or exempted under the MMPA or CITES. Therefore, we anticipate no significant economic impact on a substantial number of small entities from this rule. Therefore, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This final 4(d) special rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

(b) Because this final 4(d) special rule for the polar bear would allow for the maintenance of the regulatory status quo regarding activities that had previously been authorized or exempted under the MMPA or CITES, we do not believe that this rule would significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this final rule would not have significant takings implications. We have determined that this final rule has no potential takings of private property implications as defined by this Executive Order because this 4(d) special rule would, with limited exceptions, maintain the regulatory status quo regarding activities currently allowed under the MMPA or CITES. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A federalism summary impact statement is not required. This final rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final 4(d) special rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This final 4(d) special rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The rule does not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have prepared an environmental assessment in conjunction with this final 4(d) special rule. Subsequent to closure of the comment period, we determined that this final 4(d) special rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the NEPA of 1969. For a copy of the environmental assessment, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–ES–2012–0009 or contact the individual identified above in FOR FURTHER INFORMATION CONTACT.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)], Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), Department of the Interior Secretarial Order 3317 of December 1, 2011 (Tribal Consultation and Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Alaska native culture, and to make information available to Tribes.

On January 18, 2012, we contacted the 52 Alaska Native Tribes (ANTs) and Alaska Native Corporations (ANCs) that are, or may be, affected by the listing of the polar bear as well as the development of any special rule under section 4(d) of the ESA. Our January 18, 2012, correspondence explained the nature of the Federal Court's remand and the Service's intent to consult with affected ANTs and ANCs. Our correspondence further informed the ANTs and ANCs that we intended to hold two initial consultation opportunities: One on January 30, 2012, and one on February 6, 2012, during which we would answer any questions about our intention to propose a 4(d) special rule for the polar bear, as well as take any comments, suggestions, or recommendations participants may wish to offer. Subsequently, during the week of January 23, 2012, we contacted ANTs and ANCs by telephone to further inform them of the upcoming opportunities for consultation.

During the consultation opportunities held on January 30, 2012, and February 6, 2012, the Service received one recommendation from ANTs and ANCs regarding the development of a

proposed 4(d) special rule for the polar bear; that recommendation urged the Service to continue to provide information on the development of any proposed rule to the affected public. Consistent with this request from the Alaska Native community, on May 2, 2012, the Service again wrote to Alaska Native tribal governments and Corporations informing them of the publication of the proposed rule and draft EA and further seeking their input as the Service considered its options in finalizing this rule. The Service received one comment from an Alaska Native Corporation in response to this further request. On June 18, 2012, the Arctic Slope Regional Corporation wrote to the Service expressing their support for the proposed special rule. In their correspondence, the Arctic Slope Regional Corporation noted their belief that: (1) The [proposed] Special Rule reflects the appropriate finding that the extensive conservation provisions in the MMPA and CITES are the necessary and advisable measures for the conservation of the polar bear; (2) the current management provisions and protections will adequately protect both the polar bear and the continued ability of Alaska Natives to maintain their current lifestyle and cultural heritage; and (3) cultural exchange activities involving import and export of marine mammals parts and products, including from the polar bear, are a critically important component of Alaska Natives' lifestyle and cultural heritage, and preserving the ability of Alaska Natives to continue to participate in these activities "uninterrupted"—as envisioned in the proposed 4(d) special rule—is both necessary and appropriate.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. For reasons discussed in the responses to comments for this final 4(d) special rule, we believe that the rule would not have any effect on energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Service's Marine Mammals Management Office (see **ADDRESSES**).

Authors

The primary authors of this document are staff from the Service's Alaska Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.40 by revising paragraph (q) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(q) Polar bear (*Ursus maritimus*).

(1) Except as noted in paragraphs (q)(2) and (4) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the polar bear.

(2) None of the prohibitions in § 17.31 of this part apply to any activity that is authorized or exempted under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), or both, provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

(3) All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(4) None of the prohibitions in § 17.31of this part apply to any taking of polar bears that is incidental to, but not the purpose of, carrying out an otherwise lawful activity within the United States, except for any incidental taking caused by activities in areas subject to the jurisdiction or sovereign rights of the United States within the current range of the polar bear.

Dated: February 5, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–03136 Filed 2–19–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154–2241–02]

RIN 0648–XC506

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for large medium and giant Atlantic bluefin tuna (BFT) until the General category reopens on June 1, 2013. This action is being taken to prevent overharvest of the General category January BFT subquota.

DATES: Effective 11:30 p.m., local time, February 15, through May 31, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, consistent with the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemaking.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The current General category baseline quota is 435.1 mt, with 23.1 mt allocated for the January time period. On November 30, 2011, NMFS published a final rule to address adjustments to the General and Harpoon category regulations. Among other actions, this final rule allowed the General category BFT season to remain open until the "January subquota" amount is reached or March 31 (whichever happens first).

Based on the best available BFT landings information for the General category BFT fishery (i.e., 20.4 mt of the available 23.1 mt landed as of February 12, 2013), NMFS has determined that the General category January subquota will be reached by February 15, 2013. Therefore, through May 31, 2013, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic tunas General and HMS Charter/Headboat categories (while fishing commercially) must cease at 11:30 p.m. local time on February 15, 2013. The General category will reopen automatically on June 1, 2013, for the June through August subperiod. This action is taken consistent with the regulations at §§ 635.27(a)(1)(iii) and 635.28(a)(1). The intent of this closure is to prevent overharvest of the General category January BFT subquota.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and the tag-and-release programs at § 635.26. Fishermen are also reminded that all BFT that are released must be handled in a manner that will maximize survivability, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the "Careful Catch and Release" brochure available at *www.nmfs.noaa.gov/sfa/hms/*.

If needed, subsequent General category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.noaa.gov*, for updates.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the General category January BFT fishery is necessary to prevent overharvest of the General category January BFT subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *www.hmspermits.noaa.gov*.

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the General category. NMFS must close the General category January BFT fishery before landings of large medium and giant BFT exceed the available subquota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(1)(iii) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 14, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–03847 Filed 2–14–13; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC505

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2013, through 1200 hrs, A.l.t., March 10, 2013.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2013 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 5,998 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012) and inseason adjustment (78 FR 267, January 3, 2013).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2013 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,698 mt and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it

would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 12, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 13, 2013.

Kara Meckley,

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

[FR Doc. 2013–03771 Filed 2–13–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC502

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 Pacific cod total allowable catch apportioned to CVs using trawl gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 14, 2013, through 1200 hours, A.l.t., September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2013 Pacific cod total allowable catch (TAC) apportioned to CVs using trawl gear in the Western Regulatory Area of the GOA is 5,728 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012) and inseason adjustment to the final 2013 harvest specifications for Pacific cod (78 FR 267, January 3, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2013 Pacific cod TAC apportioned to CVs using trawl gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,428 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by CVs using trawl gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for CVs using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 12, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 13, 2013.

Kara Meckley,

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

[FR Doc. 2013–03767 Filed 2–13–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 34
Wednesday, February 20, 2013

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. FDA–2009–P–0147]

Flavored Milk; Petition to Amend the Standard of Identity for Milk and 17 Additional Dairy Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments, data, and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the International Dairy Foods Association (IDFA) and the National Milk Producers Federation (NMPF) have filed a petition requesting that the Agency amend the standard of identity for milk and 17 other dairy products to provide for the use of any safe and suitable sweetener as an optional ingredient. FDA is issuing this notice to request comments, data, and information about the issues presented in the petition.

DATES: Submit either written or electronic comments by May 21, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–P–0147 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:

Mail/Hand delivery/Courier (for paper 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 number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Y. Reese, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. IDFA and NMPF Petition

The IDFA and NMPF jointly submitted a citizen petition (Ref. 1) on March 16, 2009, requesting that FDA amend the standard of identity in part 131 (21 CFR part 131) for milk (§ 131.110). Specifically, the petition requests that FDA amend § 131.110(c)(2) to allow the use of "any safe and suitable" sweetener in optional characterizing flavoring ingredients used in milk.[1] The petition also requests that FDA similarly amend the standards of identity for 17 other milk and cream products. Those standards (hereinafter referred to as the "additional dairy standards") are as follows: Acidified milk (§ 131.111), cultured milk (§ 131.112), sweetened condensed milk (§ 131.120), nonfat dry milk (§ 131.125), nonfat dry milk fortified with vitamins A and D (§ 131.127), evaporated milk (§ 131.130), dry cream (§ 131.149), heavy cream (§ 131.150), light cream (§ 131.155), light whipping cream (§ 131.157), sour cream (§ 131.160), acidified sour cream (§ 131.162), eggnog (§ 131.170), half-and-half (§ 131.180), yogurt (§ 131.200), lowfat yogurt (§ 131.203), and nonfat yogurt (§ 131.206). The petition asks that the standards of identity for these products be amended to provide for the use of any safe and suitable sweetener in the optional ingredients.[2]

IDFA and NMPF request their proposed amendments to the milk standard of identity to allow optional characterizing flavoring ingredients used in milk (e.g., chocolate flavoring added to milk) to be sweetened with any safe and suitable sweetener—including non-nutritive sweeteners such as aspartame. IDFA and NMPF state that the proposed amendments would promote more healthful eating practices and reduce childhood obesity by providing for lower-calorie flavored milk products. They state that lower-calorie flavored milk would particularly benefit school children who, according to IDFA and NMPF, are more inclined to drink flavored milk than unflavored milk at school. As further support for the petition, IDFA and NMPF state that the proposed amendments would assist in meeting several initiatives aimed at improving the nutrition and health profile of food served in the nation's schools. Those initiatives include state-level programs designed to limit the quantity of sugar served to children during the school day. Finally, IDFA and NMPF argue that the proposed amendments to the milk standard of identity would promote honesty and fair dealing in the marketplace and are therefore appropriate under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The petition acknowledges that the use of non-nutritive sweeteners in optional characterizing flavoring

[1] Section 131.110(c)(2) currently allows the use of "nutritive sweetener" in optional characterizing flavoring ingredients used in milk.

[2] The National Yogurt Association (NYA) submitted a citizen petition on February 18, 2000 (Docket No. FDA–2000–P–0126) that requested that FDA make similar changes to the standards of identity for yogurt and cultured milk. Among other requested changes, the NYA petition asked that FDA amend the standards of identity for yogurt and cultured milk to permit the use of all safe and suitable sweeteners, while also revoking the standards of identity for lowfat and nonfat yogurt. In 2009, FDA proposed to grant the petition in part, and to deny it in part. *See* "Milk and Cream Products and Yogurt Products; Proposal to Revoke the Standards for Lowfat and Nonfat Yogurt and to Amend the Standard for Yogurt" (74 FR 2443, January 15, 2009). Thus, FDA has already requested comments on issues that are similar to the issues IDFA and NMPF raise with respect to yogurt, lowfat yogurt, nonfat yogurt, and cultured milk, and is addressing those issues through the rulemaking initiated in response to NYA's petition. Therefore, FDA is not currently requesting comments on IDFA and NMPF's suggested amendments to the yogurt, lowfat yogurt, nonfat yogurt, and cultured milk standards.

ingredients in milk is allowed under the existing regulatory scheme, with certain additional requirements. The regulatory framework governing the naming of standardized foods that do not fully comply with the relevant standards of identity changed with the passage of the Nutrition Labeling and Education Act of 1990 and FDA's rulemaking establishing the Agency's requirements for foods named by use of a nutrient content claim and a standardized term (§ 130.10 (21 CFR 130.10)). Section 130.10(d) allows the addition of safe and suitable ingredients to a food named by use of a nutrient content claim and a standardized term when these ingredients are used to, among other things, add sweetness to ensure that the modified food is not inferior in performance characteristic to the standardized food even if such ingredients are not specifically provided for by the relevant food standard. Therefore, while the milk standard of identity in § 131.110 only provides for the use of "nutritive sweetener" in an optional characterizing flavor, milk may contain a characterizing flavor that is sweetened with a non-nutritive sweetener if the food's label bears a nutrient content claim (e.g., "reduced calorie") and the non-nutritive sweetener is used to add sweetness to the product so that it is not inferior in its sweetness property compared to its standardized counterpart. However, IDFA and NMPF argue that nutrient content claims such as "reduced calorie" are not attractive to children, and maintain that consumers can more easily identify the overall nutritional value of milk products that are flavored with non-nutritive sweeteners if the labels do not include such claims. Further, the petitioners assert that consumers do not recognize milk—including flavored milk—as necessarily containing sugar. Accordingly, the petitioners state that milk flavored with non-nutritive sweeteners should be labeled as milk without further claims so that consumers can "more easily identify its overall nutritional value."

As to the additional dairy standards, IDFA and NMPF state that administrative efficiency counsels in favor of similar changes. As long as FDA is dedicating resources to amending the standard of identity for milk, they argue, the Agency should also amend the standards for these products at the same time. They state that it is most efficient to consider all of the proposals together. According to the petition, the requested changes to the additional dairy standards present the same issues as the milk standard, and it is therefore appropriate to consider all of the requested changes together.

II. Request for Comments

FDA requests that interested persons submit comments, data, and information concerning the need for, and the appropriateness of, amending the standard of identity for milk and the additional dairy standards. FDA specifically requests comment and supporting data, as appropriate, on the following matters:

1. The petition states that amending the standard of identity for milk (§ 131.100) to allow the use of "any safe and suitable" sweetener in optional characterizing flavoring ingredients would promote honesty and fair dealing in the interest of consumers by creating consistency in the naming of flavored milk products because flavored milk could contain a non-nutritive sweetener without bearing a nutrient content claim (e.g., "reduced sugar") as part of its name. Would the proposed amendments promote honesty and fair dealing in the interest of consumers?

2. If the standard of identity for milk is amended as requested by petitioners, milk manufacturers could use non-nutritive sweeteners in flavored milk without a nutrient content claim in its labeling. Will the inclusion of the non-nutritive sweeteners in the ingredient statement provide consumers with sufficient information to ensure that consumers are not misled regarding the characteristics of the milk they are purchasing?

3. The petition states that flavored milk labels that bear nutrient content claims such as "reduced calorie" are unattractive to children. What, if any, data are available on children's purchase habits with regard to flavored milks labeled as "reduced calorie flavored milk," "no sugar added," "less sugar," etc?

4. The petition states that if FDA dedicates resources to amending the standard of identity for milk, for purposes of administrative efficiency the Agency should also amend the Additional Dairy Standards because the issues presented are the same with respect to the use of non-nutritive sweeteners. Would amending the Additional Dairy Standards as requested promote honesty and fair dealing in the interest of consumers? If the labels of these products do not bear nutrient content claims, would the inclusion of non-nutritive sweeteners in the ingredient statements provide consumers with sufficient information to distinguish between the two types of products (i.e., sweetened with nutritive versus non-nutritive sweeteners) so that consumers are not misled?[3]

5. The petition notes that ice cream is permitted to contain either a nutritive or non-nutritive sweetener without the label bearing a nutrient content claim or otherwise distinguishing the two types of products from one another. Are the considerations underlying FDA amendments to the standard of identity for ice cream[4] applicable to the requested amendments to the standard of identity for milk or the Additional Dairy Standards?

6. If the standard of identity for milk and the Additional Dairy Standards are amended in the manner requested by the petition, what will be the effect on search costs[5] for consumers who would like to determine whether a product contains a nutritive or non-nutritive sweetener?

After reviewing the comments received, FDA will further evaluate the need for, and appropriateness of, the amendments requested by IDFA and NMPF and will decide what further actions are appropriate. For a copy of the petition filed by IDFA and NMPF please go to: *http://www.regulations.gov* and insert "Docket No. FDA–2009–P–0147" into the "Search" box.

(*Authority:* 21 U.S.C. 321 *et seq.*)

III. References

FDA has placed the following references on display. To view the references, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box. The references may also be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

1. International Dairy Foods Association and the National Milk Producers Federation, Citizen Petition, March 16, 2009.

[3] Although FDA requests comments relevant to the IDFA and NMPF petition, FDA does not seek comments regarding the requested amendments to the standards of identity for yogurt, lowfat yogurt, nonfat yogurt, and cultured milk. FDA has already sought and collected comments regarding similar amendments to those standards in a proposed rulemaking. *See* 74 FR 2443.

[4] FDA amended the standard of identity for ice cream to allow for "any safe and suitable sweetener" to be used in ice cream. *See* "Frozen Desserts: Removal of Standards of Identity for Ice Milk and Goat's Milk Ice Milk; Amendment of Standards of Identity for Ice Cream and Frozen Custard and Goat's Milk Ice Cream" (59 FR 47072, September 14, 1994) (Rel 2). Before FDA's amendment, the standard provided only for "nutritive carbohydrate sweeteners."

[5] Search costs include the time and energy it would take an average consumer to read a label and determine whether the product contained the nutritive sweetener or the artificial sweetener.

2. "Frozen Desserts: Removal of Standards of Identity for Ice Milk and Goat's Milk Ice Milk; Amendment of Standards of Identity for Ice Cream and Frozen Custard and Goat's Milk Ice Cream" (59 FR 47072, September 14, 1994).

Dated: February 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03845 Filed 2–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 543

RIN 3141–AA27

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC) proposes to amend its minimum internal control standards for Class II gaming under the Indian Gaming Regulatory Act to add standards for the drop and count and surveillance of kiosks.

DATES: Submit comments on or before April 22, 2013.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to: reg.review@nigc.gov.*
- *Mail comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.

FOR FURTHER INFORMATION CONTACT: National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7009; email: *reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission ("NIGC" or "Commission") and sets out a comprehensive framework for the regulation of gaming on Indian lands. On January 5, 1999, the NIGC published a final rule in the **Federal Register** called *Minimum Internal Control Standards*, 64 FR 590. The rule added a new part to the Commission's regulations establishing Minimum Internal Control Standards (MICS) to reduce the risk of loss because of customer or employee access to cash and cash equivalents within a casino. The rule contains standards and procedures that govern cash handling, documentation, game integrity, auditing, surveillance, and variances, as well as other areas.

The Commission recognized from their inception that the MICS would require periodic review and updates to keep pace with technology, and has amended them numerous times, most recently on September 21, 2012, 77 FR 58708.

III. Development of the Proposed Rule

On September 21, 2012, the Commission concluded nearly two years of consultation with the publication of comprehensive amendments, additions, and updates to Part 543, the minimum internal control standards (MICS) for Class II gaming operations. The regulations require tribes to establish controls and implement procedures at least as stringent as those described in this part to maintain the integrity of the gaming operation and minimize the risk of theft.

One of the 2012 additions was the inclusion of kiosks, devices capable of redeeming vouchers or and/or wagering credits or initiating transfers from a patron deposit account. The regulation provided general standards for kiosks, but upon further review, additional standards are needed for the drop and count and surveillance of kiosks to adequately protect against risk of loss.

Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 3141–0009. The OMB control number expires on October 31, 2015.

Text of the Proposed Rules

List of Subjects in 25 CFR Part 543

Gambling, Indian—Indian lands, Indian—tribal government.

For the reasons discussed in the Preamble, the Commission proposes the text of its regulations at 25 CFR part 543 to be amended as follows:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

■ 1. The authority citation for part 543 continues to read as follows:

Authority: 25 U.S.C. §§ 2702(2), 2706(b)(1–4), 2706(b)(10).

■ 2. Amend § 543.2 by adding a definition for *currency cassette* in alphabetical order to read as follows:

§ 543.2 What are the definitions for this part?

* * * * *

Currency cassette. A locked compartment that contains a specified denomination of currency. Currency cassettes are inserted into kiosks, allowing them to dispense currency.

* * * * *

■ 3. Amend § 543.17 by revising paragraphs (h) and (i) and adding paragraphs (j) and (k) to read as follows:

§ 543.17 What are the minimum internal control standards for drop and count?

* * * * *

(h) Kiosk drop, count, and fill standards. Controls must be established and procedures implemented to ensure security of the kiosk drop and count processes. Such controls must include the following:

(1) Surveillance must be notified when the drop process is to begin so that surveillance may monitor the activities.

(2) At least three agents must be involved in the drop process and at least one agent should be independent of kiosk accountability.

(3) Currency cassettes and financial instrument storage components must be dropped and secured in a manner that restricts access to only authorized agents.

(4) Any time the financial instrument storage components or currency cassettes are accessed, and prior to any transactions being processed through the kiosk, an agent independent of the count must run a kiosk report.

(i) The report must reflect the following:

(A) Date and time;

(B) Unique asset identification number of the kiosk;

(C) Unique identification number for each financial instrument storage component in the kiosk;

(D) Total amount of currency dispensed;

(E) Total number of bills dispensed by denomination;

(F) Total dollar amount of vouchers accepted;

(G) Total number of vouchers accepted.

(ii) The report may not be viewed by any member of the count team and must be immediately forwarded to accounting or placed in a secure storage area where it is not accessible by the count team.

(5) Redeemed vouchers and pulltabs (if applicable) collected from the drop must be secured and delivered to the appropriate department (cage or accounting) for reconciliation.

(6) After completing a fill and prior to the first transaction, the team must test the machine to verify that currency cassettes contain the correct denominations and have been properly installed.

(i) Kiosk count standards.

(1) Access to stored full kiosk financial instrument storage components and currency cassettes must be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) In an emergency, authorized persons for the resolution of a problem.

(2) The kiosk count must be performed in a count room or other equivalently secure area with comparable controls.

(3) Access to the count room during the count must be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers and kiosks occur simultaneously in the count room, procedures must be in effect that prevent the commingling of funds from the kiosks with any revenue centers.

(5) The count team must not have access to the reconciliation report amounts until after the count is completed and the drop proceeds are accepted into the cage/vault accountability.

(6) Count equipment and systems must be tested, and the results documented, before the first count begins, to ensure the accuracy of the equipment.

(7) If a currency counter interface is used:

(i) It must be adequately restricted to prevent unauthorized access; and

(ii) The currency drop figures must be transferred via direct communications line or computer storage media to the accounting department.

(8) The kiosk financial instrument storage components and currency cassettes must be individually emptied and counted so as to prevent the commingling of funds between kiosks until the count of the kiosk contents has been recorded.

(i) The count of each kiosk must be recorded in ink or other permanent form of recordation.

(ii) Coupons or other promotional items not included in gross revenue (if any) may be recorded on a supplemental document by the count team members or accounting personnel. All single-use coupons must be cancelled daily by an authorized agent to prevent improper recirculation.

(9) If currency counters are utilized, a count team member must observe the loading and unloading of all currency at the currency counter, including rejected currency.

(10) Two counts of the currency rejected by the currency counter must be recorded per kiosk as well as in total. Rejected currency must be posted to the kiosk from which it was collected.

(11) Financial instrument storage components and currency cassettes, when empty, must be shown to another member of the count team, to another agent who is observing the count, or to surveillance, provided that the count is monitored in its entirety by an agent independent of the count.

(12) Procedures must be implemented to ensure that any corrections to the count documentation are permanent, identifiable, and the original, corrected information remains legible. Corrections must be verified by two count team agents.

(13) The count sheet must be reconciled to the total drop by a count team member who may not function as the sole recorder, and variances must be reconciled and documented.

(14) All count team agents must sign the report attesting to their participation in the count.

(15) A final verification of the total drop proceeds, before transfer to cage/vault, must be performed by at least two agents, one of whom is a supervisory count team member and the other a count team agent.

(j) Final verification must include a comparison of currency counted totals against the currency counter/system report (not the report generated by the kiosk), if a counter/system is used.

(ii) Any unresolved variances must be documented and the documentation must remain a part of the final count record forwarded to accounting.

(iii) This verification does not require a complete recount of the drop proceeds but does require a review sufficient to verify the total drop proceeds being transferred.

(iv) The two agents must sign the report attesting to the accuracy of the total drop proceeds verified.

(v) All drop proceeds and cash equivalents that were counted must be turned over to the cage or vault cashier (who must be independent of the count team) or to an agent independent of the revenue generation and the count process for verification. Such cashier or agent must certify, by signature, the amount of the drop proceeds delivered and received. Any unresolved variances must be reconciled, documented, and/or investigated by accounting/revenue audit.

(16) After certification by the agent receiving the funds, the drop proceeds must be transferred to the cage/vault.

(i) The count documentation and records must not be transferred to the cage/vault with the drop proceeds.

(ii) The cage/vault agent must not have knowledge or record of the drop proceeds total before it is verified.

(iii) All count records must be forwarded to accounting secured and accessible only by accounting agents.

(iv) The cage/vault agent receiving the transferred drop proceeds must sign the count sheet attesting to the verification of the total received, and thereby assuming accountability of the drop proceeds, and ending the count.

(v) Any unresolved variances between total drop proceeds recorded on the count room report and the cage/vault final verification during transfer must be documented and investigated.

(17) The count sheet, with all supporting documents, must be delivered to the accounting department by a count team member or agent independent of the cashiers department. Alternatively, it may be adequately secured and accessible only by accounting department.

(j) Controlled keys. Controls must be established and procedures implemented to safeguard the use, access, and security of keys in accordance with the following:

(1) Each of the following requires a separate and unique key lock or alternative secure access method:

(i) Drop or player interface cabinet;

(ii) Drop box or financial instrument storage component release;

(iii) Drop box or financial instrument storage component contents; and

(iv) Storage racks and carts.

(v) Kiosk currency cassettes

(k) Variances. The operation must establish, as approved by the TGRA, the threshold level at which a variance must be reviewed to determine the cause. Any such review must be documented.

■ 4. Amend § 543.21 by adding paragraph(c)(6) to read as follows:

§ 543.21 What are the minimum internal control standards for surveillance?

* * * * *

(c) * * *

(6) Kiosks: The surveillance system must monitor and record a general overview of activities occurring at each kiosk with sufficient clarity to identify the activity and the individuals performing it, including maintenance, drops or fills, and redemption of wagering vouchers or credits.

* * * * *

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2013–03669 Filed 2–19–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR part 547

RIN 3141–AA27

Minimum Technical Standards for Class II Gaming Systems and Equipment

AGENCY: National Indian Gaming Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On September 21, 2012, the National Indian Gaming Commission ("NIGC") published a final rule amending its technical standards for Class II gaming systems and equipment, and the rule became effective on October 22, 2012. This document proposes an amendment to the regulatory text of the final rule to harmonize the charitable gaming exemptions in the Technical Standards and the Class II Minimum Internal Control Standards of NIGC regulations.

DATES: Submit comments on or before April 8, 2013.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- Email comments to: *reg.review@nigc.gov.*
- *Mail comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, Senior Attorney, National Indian Gaming Commission, 1441 L Street NW, Suite 9100 Washington, DC 20005. Telephone: 202–632–7009; email: *reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this Notice of Proposed Rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. On September 21, 2012, the NIGC published a final rule in the **Federal Register** called *Minimum Technical Standards for Class II Gaming Systems and Equipment*, 77 FR 58473. The standards are designed to assist tribal gaming regulatory authorities and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provide guidance to equipment manufacturers and distributors of Class II gaming systems.

On November 18, 2010, the NIGC issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC has endeavored to conduct a comprehensive review of its regulations and requesting public comment on which were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680. On April 4, 2011, after consulting with tribes and reviewing all comments, the NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. Part 547 was included in the third regulatory group reviewed pursuant to the NRR.

Section 547.5(e)(5) of the final rule states that the Part does not apply to a charitable gaming operation provided that, among other things, the amount of

gross gaming revenue of the charitable gaming operation does not exceed $1,000,000. This Notice of Proposed Rulemaking proposes to amend § 547.5(e)(5) to change that amount from $1,000,000 to $3,000,000.

At the same time the NIGC published the Minimum Technical Standards, it published Minimum Internal Control Standards for Class II Gaming (MICS). 77 FR 58707. Like the Technical Standards, the MICS exempt charitable gaming operations that earn less than a set threshold amount. The Commission increased that amount in the MICS from $1,000,000 to $3,000,000.

The Commission proposes to amend § 547.5(e)(5) of the Technical Standards to harmonize the charitable gaming exemptions in the Technical Standards and MICS and ensure that the exemption for a "charitable gaming operation" is consistent throughout the NIGC's regulations.

III. Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act. Small Business Regulatory Enforcement Fairness Act The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of § 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in 25 CFR part 547 were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 et seq. and assigned OMB Control Number 3141–0007.

List of Subjects in 25 CFR Part 547

Gambling; Indian—Indian lands; Indian—tribal government.

For the reasons set forth in the preamble, the Commission proposes to revise 25 CFR part 547 as follows:

PART 547—MINIMUM TECHNICAL STANDARDS FOR CLASS II GAMING SYSTEMS AND EQUIPMENT

■ 1. The authority citation for part 547 continues to read as follows:

Authority: 25 U.S.C. 2706(b).

■ 2. In § 547.5 paragraph (e)(5) is revised to read as follows:

§ 547.5 How does a tribal government, TGRA, or tribal gaming operation comply with this part?

* * * * *

(e) * * *

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed $3,000,000.

* * * * *

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2013–03670 Filed 2–19–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SPATS No.: KY–256–FOR] [Docket ID: OSM–2012–0014]

Kentucky Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Kentucky regulatory program ("the Kentucky program") for surface coal mining and reclamation operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky has revised its bonding regulations to satisfy, in part, the concerns included in a letter from OSM dated May 1, 2012, regarding bonding inadequacies. On May 4, 2012, Kentucky adopted the revisions as emergency regulations to avoid possible loss of its authority to enforce the part of the Kentucky program that pertains to establishment of reclamation bond amounts. Also on May 4, 2012, identical proposed revisions started the normal review process in Kentucky for changes to administrative regulations. On September 28, 2012, the Department for Natural Resources (DNR), which is a part of Kentucky's Energy and Environment Cabinet (EEC), submitted to OSM the administrative bonding regulations as proposed amendments to its approved permanent regulatory program.

DATES: We will accept electronic or written comments on the proposed rules until 4:00 p.m., Eastern Time March 22, 2013. If requested, we will hold a public hearing on March 18, 2013. We will accept requests to speak until 4:00 p.m., local time on March 7, 2013.

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

- *Federal eRulemaking Portal: www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2012–0014. Please follow the online instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Mr. Robert S. Evans, Acting Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Please

include the rule identifiers (SPATS No. KY–256–FOR and Docket ID OSM–2012–0014) with your comments.

You may receive one free copy of the amendment by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. You also may review the amendment at the following addresses during normal business hours:

Mr. Robert S. Evans, Acting Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–3900. Email: *bevans@osmre.gov*.

Steve Hohmann, Commissioner, Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Evans, Telephone: (859) 260–3900, Email: *bevans@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

On May 1, 2012, in accordance with 30 CFR 733.12(b), we notified Kentucky's Energy and Environment Cabinet (EEC) that we had reason to believe that Kentucky is not implementing, administering, enforcing, and maintaining the reclamation bond provisions of its approved program in a manner that ensured that the amount of the performance bond for each surface coal mining and reclamation operation is "sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture," as required by section 509(a) of SMCRA.

In response, EEC, which functions as the SMCRA regulatory authority in Kentucky, filed two emergency regulations and modifications to two existing Kentucky administrative regulations regarding Kentucky's bonding program with the Kentucky Legislative Research Commission on May 4, 2012. Under Kentucky law, the emergency regulations took effect on that date and remained in effect for 180 days. During that time, proposed revisions, that are identical to the emergency regulations, began the normal review process in Kentucky for changes to their administrative regulations. On September 28, 2012, the DNR submitted these proposed regulations to OSM that would revise their bonding administrative regulations in their approved permanent regulatory program.

The September 28, 2012, submittal is the subject of this rulemaking and includes both the emergency regulation and three revised administrative regulations that propose revisions to the Kentucky bonding rules that the EEC originally submitted to us on May 7, 2012 (Docket ID OSM–2012–0014).

The first emergency regulation, 405 KAR 10:011E, repeals the existing bonding regulations in 405 KAR 10:010 and 405 KAR 10:020. The second administrative regulation, 405 KAR 10:015 replaces the regulations repealed by 405 KAR 10:011E. This administrative regulation contains the provisions formerly located in 405 KAR 10:010 (except for Section 4), 405 KAR 10:020, and 405 KAR 10:030 Sections 2 and 3. In addition, 405 KAR 10:015 contain the following significant revisions to the previous regulations:

- Section 6(2) allows the cabinet to use the reclamation costs submitted in the permit application to establish the bond amount required, if those costs are higher than the reclamation costs calculated by the cabinet.
- Section 6(3) requires the cabinet to review bond amounts established in the regulations at a minimum of every two years to determine if those amounts are adequate after consideration of the impacts of inflation and increases in reclamation costs.
- Section 7 increases minimum bond amounts to $75,000 for the entire surface area under one permit, $75,000 per increment for incrementally bonded permits, $50,000 for a permit or increment operating on previously mined areas, and $10,000 for underground mines that have only underground operations (no surface facilities).
- Section 8 establishes new, increased bond amounts as follows:
  - —$2,500 per acre and each fraction thereof for coal haul roads, other mine access roads, and mine management areas.
  - —$7,500 per acre and each fraction thereof for refuse disposal areas.
  - —$10,000 per acre and each fraction thereof for an embankment sediment control pond. Each pond must be measured separately if the pond is located off-bench downstream of the proposed mining or storage area. The cabinet also may apply this rate to partial embankment structures as deemed necessary to meet the requirements of Section 6(1) of 405 KAR 10:015.
  - —$3,500 per acre and each fraction thereof for coal preparation plants. In addition, the bond amount must include the costs associated with demolition and disposal of concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.
  - —$2,000 per acre and each fraction thereof for operations on previously mined areas.
  - —$3,500 per acre and each fraction thereof for all areas not otherwise addressed in 405 KAR 10:015 Section 8.
  - —For permits with substandard drainage that require long-term treatment, the cabinet must calculate and the permittee must post an additional bond amount based on the annual treatment cost provided by the permittee, multiplied by twenty years. In lieu of posting this additional bond amount, the permittee may submit a satisfactory reclamation and remediation plan for the areas producing the substandard drainage.

This administrative regulation also moves the supplemental assurance requirements previously located at 405 KAR 16:020 Section 6 to 405 KAR 10:015 Section 11 and increases the supplemental assurance amount from $50,000 to $150,000.

The proposed amendment also includes several proposed rule reorganizations. These changes include the transfer of 405 KAR 10:010 Section 4 to 405 KAR 10:030 Section 1, the transfer of 405 KAR 10:030 Section 4 to 405 KAR 10:030 Section 2, and the transfer of 405 KAR 10:010 Section 5 to 405 KAR 10:030 Section 3. Lastly, the Legislative Research Commission made suggested amendments which are not intended to change the meaning of the administrative regulations but rather clarify content or are made simply to make the regulation comply with KRS 13A drafting requirements.

III. Public Comment Procedures

As discussed above, the proposed amendment that Kentucky submitted on

May 4, 2012, includes both emergency and non-emergency proposed regulations that revise their bonding regulations. We invite you to comment on both the emergency and non-emergency provisions of this proposed amendment. Specifically, under 30 CFR 732.17(h), we seek your comments on whether the provisions of this amendment meet the applicable regulatory program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

Send your written comments to OSM using one of the methods described under **ADDRESSES**. Please include the Docket ID "OSM–2012–0014" at the beginning of all comments. Your comments should be specific, pertain only to the Kentucky amendment discussed in this rulemaking, and include explanations in support of your recommendations. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than the Federal eRulemaking Portal or the OSM location listed in **ADDRESSES** will be included in the docket for this rulemaking or considered in the development of a final rule.

Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., Eastern Time), on March 7, 2013. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak have been heard.

Public Meeting or Teleconference

If there is only limited interest in participating in a public hearing, we may hold a public meeting, in person or by teleconference, in place of a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All meetings will be open to the public and, if possible, we will post notice of meetings at the locations listed under **ADDRESSES**. We will include a written summary of each meeting in the administrative record.

IV. Procedural Matters and Required Determinations.

Executive Order 12866—Regulatory Planning and Review

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

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 11, 2013.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2013–03779 Filed 2–19–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1084]

RIN 1625–AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend and establish regulations requiring safety zones for firework events that take place annually within the Captain of the Port Zone Buffalo. This proposed rule is intended to amend and establish restrictions on vessel access to designated areas on U.S. navigable waterways during certain fireworks displays. The safety zones amended and established by this proposed rule are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before March 22, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2012–1084 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone (716) 843–9573, email *SectorBuffaloMarineSafety@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager,

Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, 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 at *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, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2012–1084] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–1084) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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**.

B. Regulatory History and Information

On June 18, 2008, the Coast Guard put 33 CFR 165.939 into effect, which established several permanent safety zones within U.S. navigable waters under the jurisdiction of the Captain of the Port Buffalo (73 FR 28704). Specifically, twenty-six permanent safety zones were established then. These safety zones were put in place to protect the boating public from hazards associated with annually recurring fireworks displays that take place over U.S. navigable waterways. Since those twenty-six safety zones were established in June of 2008, the Coast Guard has not amended 33 CFR 165.939. This NPRM was not preceded by an Advance Notice of Proposed Rulemaking (ANPRM), and thus no public comments have yet to be received.

C. Basis and Purpose

As stated above, 33 CFR 165.939 currently lists twenty-six permanent safety zones within the Captain of the Port Zone Buffalo. Each of these twenty-six safety zones corresponds to an annually recurring fireworks display. During a recent review of 33 CFR 165.939, it was determined that event details for seventeen recurring fireworks displays have changed, seven additional recurring fireworks displays now require that permanent safety zones be implemented, and four permanent safety zones require disestablishment because the corresponding fireworks displays have not occurred for an extended time. In addition, it was noted that the coordinates for the safety zones corresponding with the Browns Football Half time Fireworks and the Lorain Port Fest Fireworks are formatted differently than the other safety zones. Finally, it was noted that the radius of the safety zone associated with the Lorain Port Fest Fireworks is in yards as opposed to feet. With the above findings in mind, the Coast Guard proposes to amend 33 CFR 165.939 to disestablish four safety zones; to revise the enforcement period, the size, and the location of seventeen other safety zones; and to establish seven new safety zones. Likewise, this proposed rule will amend the Browns Football Half time and the Lorain Port Fest safety zones, to include changing the format of the coordinates and the radius size from yards to feet. The Captain of the Port Buffalo has determined that this proposed amendment is necessary to protect spectators and participants from the hazards associated with maritime fireworks displays.

D. Discussion of Proposed Rule

For all of the above reasons, the Captain of the Port Buffalo proposes to amend 33 CFR 165.939. Specifically, this proposed rule will revise § 165.939 in its entirety. This revision will include modifications made to the size, location, and enforcement period for seventeen safety zones, the disestablishment of four safety zones, two technical amendments, and the establishment of seven additional safety zones. In total, after this proposed rule goes into effect, 33 CFR 165.939 will contain a total of twenty-nine permanent safety zones. Although this proposed rule will remain in effect year round, the safety zones within it will be enforced only immediately before, during, and after each corresponding event.

The Captain of the Port Buffalo will use all appropriate means to notify the public when the zones in this proposal will be enforced. Consistent with 33 CFR 164.7(a), such means may include, among other things, publication in the **Federal Register** and Broadcast Notice to Mariners notifying the public when

enforcement of a safety zone in this section is cancelled.

Entry into, transiting, or anchoring within the proposed safety zones is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones contained in this proposed rule will be relatively small and enforced for relatively short time. Also, the safety zones are designed to minimize their impact on navigable waters. Furthermore, the safety zones have been designed to allow vessels to transit around them. Thus, restrictions on vessel movement within the particular areas are expected to be minimal. Under certain conditions, moreover, vessels may still transit through a safety zone when permitted by the Captain of the Port Buffalo.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in any one of the below safety zones while the safety zone is being enforced. The below safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: each safety zone in this proposed rule will be in effect for only a few hours within any given 24 hour period. Each of the safety zones will be in effect only once per year. Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port Buffalo, or his or her designated representative.

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.

3. 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. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. 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.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

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

6. 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.

7. 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.

8. 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.

9. Protection of Children from Environmental Health Risks

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.

10. 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.

11. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment and disestablishment of safety zones and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a preliminary Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.939 to read as follows:

§ 165.939 Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone.

(a) *Safety Zones.* The following are designated as safety zones:

(1) Boldt Castle 4th of July Fireworks, Heart Island, NY

(i) *Location.* All U.S. waters of the Saint Lawrence River within a 1,120 foot radius of land position 44° 20′38.5″ N, 075° 55′19.1″ W (NAD 83) at Heart Island, NY.

(ii) *Enforcement Date and Time.* From 8:30 p.m. to 10:30 p.m. on July 4 of each year.

(2) Clayton Chamber of Commerce Fireworks, Calumet Island, NY

(i) *Location.* All U.S. waters of the Saint Lawrence River within an 840 foot radius of land position 44° 15′04″ N, 076° 05′40″ W (NAD 83) at Calumet Island, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 11:30 p.m. on July 3 of each year.

(3) French Festival Fireworks, Cape Vincent, NY

(i) *Location.* All U.S. waters of the Saint Lawrence River within an 840 foot radius of land position 44° 07′54.6″ N, 076° 20′01.3″ W (NAD 83) in Cape Vincent, NY.

(ii) *Enforcement Date and Time.* From 9:15 p.m. to 11:00 p.m. on the second weekend of July each year.

(4) Lynne Community Days, Chaumont, NY

(i) *Location.* All U.S. waters of Chaumont Bay within a 560 foot radius of position 44° 04′06.3″ N, 076° 08′56.8″ W (NAD 83) in Chaumont, NY.

(ii) *Enforcement Date and Time.* From 8:30 p.m. to 11:00 p.m. on the fourth weekend of July each year.

(5) Village Fireworks, Sackets Harbor, NY

(i) *Location.* All U.S. waters of Black River Bay within an 840 foot radius of position 43° 56′51.9″ N, 076° 07′46.9″ W (NAD 83) in Sackets Harbor, NY.

(ii) *Enforcement Date and Time.* From 8:30 p.m. to 10:30 p.m. on July 4 each year.

(6) Can-Am Festival, Sackets Harbor, NY

(i) *Location.* All U.S. waters of Black River Bay within a 1,120 foot radius of position 43° 57′15.9″ N, 076° 06′39.2″ W (NAD 83) in Sackets Harbor, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:45 p.m. on the third weekend of July each year.

(7) Oswego Harborfest, Oswego, NY

(i) *Location.* All U.S. waters of Lake Ontario within a 1,000 foot radius of position 43° 28′10″ N, 076° 31′04″ W (NAD 83) in Oswego, NY.

(ii) *Enforcement Date and Time.* From 9:00 to 10:30 p.m. on the last Saturday of July each year.

(8) Brewerton Fireworks, Brewerton, NY

(i) *Location.* All U.S. waters of Lake Oneida within an 840 foot radius of barge position 43° 14′16.4″ N, 076° 08′03.6″ W (NAD 83) in Brewerton, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:30 p.m. on July 3 of each year.

(9) Celebrate Baldwinsville Fireworks, Baldwinsville, NY

(i) *Location.* All U.S. waters of the Seneca River within a 700 foot radius of land position 43°09′24.9″ N, 076° 20′18.9″ W (NAD 83) in Baldwinsville, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 11:00 p.m. on the first weekend of July each year.

(10) Island Festival Fireworks, Baldwinsville, NY

(i) *Location.* All U.S. waters of the Seneca River within a 1,120 foot radius of land position 43° 09′22″ N, 076° 20′15″ W (NAD 83) in Baldwinsville, NY.

(ii) *Enforcement Date and Time.* From 9:30 p.m. to 11:00 p.m. on the first weekend of July each year.

(11) Seneca River Days, Baldwinsville, NY

(i) *Location.* All U.S. waters of the Seneca River within an 840 foot radius of land position 43° 09′25″ N, 076° 20′21″ W (NAD 83) in Baldwinsville, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:30 p.m. on the second weekend of July each year.

(12) City of Syracuse Fireworks Celebration, Syracuse, NY

(i) *Location.* All U.S. waters of Onondaga Lake within a 350 foot radius of land position 43° 03′37″ N, 076° 09′59″ W (NAD 83) in Syracuse, NY.

(ii) *Enforcement Date and Time.* From 9:30 p.m. to 10:30 p.m. on the last weekend of June each year.

(13) Tom Graves Memorial Fireworks, Port Bay, NY

(i) *Location.* All U.S. waters of Port Bay within an 840 foot radius of barge position 43° 18′14.8″ N, 076° 50′17.3″ W (NAD 83) in Port Bay, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:30 p.m. on July 3 of each year.

(14) Village Fireworks, Sodus Point, NY

(i) *Location.* All U.S. waters of Sodus Bay within a 1,120 foot radius of land position 43° 16′28.7″ N, 076° 58′27.5″ W (NAD 83) in Sodus Point, NY.

(ii) *Enforcement Date and Time.* From 9:30 p.m. to 10:30 p.m. on July 3 of each year.

(15) Rochester Harbor and Carousel Festival, Rochester, NY

(i) *Location.* All U.S. waters of Lake Ontario within a 1,120 foot radius of land position 43° 15′40.2″ N, 077° 36′05.1″ W (NAD 83) in Rochester, NY.

(ii) *Enforcement Date and Time.* From 8:00 p.m. to 10:00 p.m. on the fourth Monday of each year.

(16) A Salute to our Heroes, Hamlin Beach State Park, NY

(i) *Location.* All U.S. waters of Lake Ontario within a 560 foot radius of land position 43° 21′51.9″ N, 077° 56′59.6″ W (NAD 83) in Hamlin, NY.

(ii) *Enforcement Date and Time.* From 9:45 p.m. to 11:30 p.m. on the first weekend of July each year.

(17) Olcott Fireworks, Olcott, NY

(i) *Location.* All U.S. waters of Lake Ontario within a 1,120 foot radius of

land position 43°20′23.6″ N, 078°43′09.5″ W (NAD 83) in Olcott, NY.

(ii) *Enforcement Date and Time.* From 9:30 p.m. to 11:00 p.m. on July 3 of each year.

(18) North Tonawanda Fireworks, North Tonawanda, NY

(i) *Location.* All U.S. waters of the East Niagara River within a 1,400 foot radius of land position 43°01′39.6″ N, 078°53′07.5″ W (NAD 83) in North Tonawanda, NY.

(ii) *Enforcement Date and Time.* From 8:45 p.m. to 10:15 p.m. on July 4 of each year.

(19) Tonawanda's Canal Fest Fireworks, Tonawanda, NY

(i) *Location.* All U.S. waters of the East Niagara River within a 210 foot radius of land position 43°01′17.8″ N, 078°52′40.9″ W (NAD 83) in Tonawanda, NY.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:30 p.m. on the fourth Sunday of July each year.

(20) Celebrate Erie Fireworks, Erie, PA

(i) *Location.* All U.S. waters of Presque Isle Bay within an 800 foot radius of land position 42°08′19″ N, 080°05′29″ W (NAD 83) in Erie, PA.

(ii) *Enforcement Date and Time.* From 9:45 p.m. to 10:30 p.m. on the third weekend of August each year.

(21) Conneaut Fourth of July Fireworks, Conneaut, OH

(i) *Location.* All U.S. waters of Lake Erie within an 840 foot radius of position 41°58′01.3″ N, 080°33′39.5″ W (NAD 83) in Erie, PA.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 11:30 p.m. on the first Sunday of July each year.

(22) Fairport Harbor Mardi Gras, Fairport, OH

(i) *Location.* All U.S. waters of Lake Erie within a 350 foot radius of land position 41°45′30″ N, 081°16′18″ W (NAD 83) east of the harbor entrance at Fairport Harbor Beach, OH.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:30 p.m. at the beginning of the second week of July each year.

(23) Mentor Harbor Yacht Club Fireworks, Mentor Harbor, OH

(i) *Location.* All U.S. waters of Lake Erie and Mentor Harbor within a 700 foot radius of land position 41°43′36″ N, 081°21′09″ W (NAD 83) in Mentor Harbor, OH.

(ii) *Enforcement Date and Time.* From 9:00 p.m. to 10:30 p.m. on July 3 of each year.

(24) Browns Football Halftime Fireworks, Cleveland, OH

(i) *Location.* All U.S. waters of Cleveland Harbor and Lake Erie beginning in approximate land position 41°30′49.4″ N, 081°41′37.2″ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31′10.6″ N, 081°41′53.0″ W; then southwest to 41°30′48.6″ N, 081°42′30.9″ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30′49.4″ N, 081°41′37.2″ W (NAD 83).

(ii) *Enforcement Date and Time.* On a Sunday during the second or third Cleveland Browns home game each year.

(25) *City of Cleveland 4th of July, Cleveland, OH*

(i) *Location.* All U.S. waters of Lake Erie and Cleveland Harbor within a 1,000 foot radius of land position 41°30′10″ N, 081°42′36″ W (NAD 83) at Dock 20 in Cleveland, OH.

(ii) *Enforcement Date and Time.* From 9:30 p.m. to 11:00 p.m. on July 4 of each year.

(26) *Cleveland Yachting Club Fireworks Display, Rocky River, OH*

(i) *Location.* All U.S. waters of the Rocky River and Lake Erie within a 560 foot radius of land position 41°29′25.7″ N, 081°50′18.5″ W (NAD 83), at Sunset Point on the western side of the mouth of the Rocky River in Cleveland, OH.

(ii) *Enforcement Date and Time.* From 9:15 p.m. to 11:00 p.m. on the second Thursday of July each year.

(27) *Sheffield Lake Fireworks, Sheffield Lake, OH*

(i) *Location.* All U.S. waters of Lake Erie within a 700 foot radius of land position 41°29′26.2″ N, 082°06′47.7″ W (NAD 83), at the lake front area in Sheffield Lake, OH.

(ii) *Enforcement Date and Time.* From 9:30 p.m. to 11:00 p.m. on the second Friday of July each year.

(28) *Lorain 4th of July Celebration Fireworks, Lorain, OH*

(i) *Location.* All U.S. waters of Lorain Harbor within a 1,400 foot radius of land position 41°28′35.5″ N, 082°10′51.3″ W (NAD 83), east of the harbor entrance on the end of the break wall near Spitzer's Marina.

(ii) *Enforcement Date and Time.* From 9:15 p.m. to 11:00 p.m. on July 4 of each year.

(29) *Lorain Port Fest Fireworks Display, Lorain, OH*

(i) *Location.* All U.S. waters of Lorain Harbor within a 750 foot radius of land position 41°28′02.4″ N, 082°10′21.9″ W (NAD 83) in Lorain, OH.

(ii) *Enforcement Date and Time.* From 9:45 p.m. to 11:00 p.m. on the third weekend of July each year.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) *Public vessels* means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within any of the safety zones contained in this section during a period of enforcement is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2)(i) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port or his designated representative.

(ii) All persons and vessels must comply with the instructions of the Captain of the Port Buffalo or his designated representative.

(iii) Upon being hailed by the Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3)(i) All vessels must obtain permission from the Captain of the Port or his designated representative to enter or move within any safety zone established in this section when the safety zone is enforced.

(ii) Vessels and persons granted permission to enter a safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative.

(iii) While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(d) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(e) *Waiver.* Upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section for any vessel.

(f) *Notification.* The Captain of the Port Buffalo will notify the public when the zones in this section will be enforced by all appropriate means. In keeping with 33 CFR 165.7(a), such means of notification may include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners and publication of Notices of Enforcement in the **Federal Register**. The Captain of the Port will issue a

Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

Dated: January 11, 2013.

S.M. Wischmann,

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

[FR Doc. 2013–03826 Filed 2–19–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Waiver and Extension of the Project Period for the National Dropout Prevention Center for Students With Disabilities

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.326W.]

AGENCY: Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Proposed waiver and extension of the project period.

SUMMARY: The Secretary proposes to waive the requirements in 34 CFR 75.250 and 75.261(a) and (c)(2) of the Education Department General Administrative Regulations that, respectively, generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The proposed waiver and extension of the project period would enable the currently funded National Dropout Prevention Center for Students with Disabilities to receive funding from October 1, 2013, through September 30, 2014.

DATES: We must receive your comments on or before March 22, 2013.

ADDRESSES: Address all comments about this proposed waiver and extension of the project period to Selete Avoke, U.S. Department of Education, 400 Maryland Avenue SW., room 4158, Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you prefer to send your comments by email, use the following address: *selete.avoke@ed.gov*. You must include the phrase "Proposed waiver and extension of the project period" in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Selete Avoke. Telephone: (202) 245–7260 or by email: *selete.avoke@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this proposed waiver and extension. During and after the comment period, you may inspect all public comments about this proposed waiver and extension of the project period in room 4158, PCP, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice of proposed waiver and extension of the project period. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

On June 23, 2008, the Department published a notice in the **Federal Register** (73 FR 35376) inviting applications for new awards for fiscal year (FY) 2008 for a National Dropout Prevention Center for Students with Disabilities (Center). The establishment and operation of the Center was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA). Its purpose is to provide States and local educational agencies (LEAs) with technical assistance (TA) on (1) implementing and evaluating effective comprehensive dropout prevention, reentry, and school completion models and practices for students with disabilities; (2) developing and improving data collection systems to track students at risk of dropping out; and (3) designing training for policymakers, administrators, and practitioners that will help them support efforts to improve dropout prevention, reentry, and school completion for students with disabilities.

Based on the selection criteria published in the 2008 notice inviting applications, the Department made one award for a period of 60 months to Clemson University to establish the Center, which is currently known as the National Dropout Prevention Center for Students with Disabilities. The Center has the following four interrelated goals that reflect its overarching purpose:

- Goal 1: Increase the awareness of policymakers, administrators, and practitioners about dropout prevention, reentry, and school completion.
- Goal 2: Increase the number of States that set and meet reasonable and rigorous performance targets for State Performance Plan Indicators 1 [1] and 2.[2]
- Goal 3: Help State educational agencies (SEAs) and

LEAs develop and improve data systems to track students at risk of dropping out.

- Goal 4: Help SEAs and LEAs implement and evaluate effective, comprehensive school-completion models, practices, and systems for students with disabilities.

The Center works to accomplish these goals through a combination of activities in the following areas: (1) Knowledge development activities to synthesize what is currently known about dropout prevention for students with disabilities, and to develop a series of high-quality products that can be used by States in designing and developing effective dropout prevention programs; (2) TA to SEAs, LEAs, and organizations to increase their capacity to design and implement effective dropout prevention, reentry, and school completion models and practices; (3) collaboration with a variety of organizations that provide direct program services and TA to education agencies that provide educational programs and services to students with disabilities in order to prepare and disseminate information and materials that will increase the awareness and use of research-validated practices by a variety of audiences; and (4) dissemination of knowledge and information about effective dropout prevention programs, policies, and resources to SEAs and LEAs.

The Center's current project period is scheduled to end on September 30, 2013. We do not believe that it would be in the public interest to run a competition for a new Center this year because the Department is planning to change the organization of its TA activities to better meet the needs of States and LEAs for TA relating to transition to college and the workforce, including dropout prevention, for students with disabilities. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of TA services currently

[1] Indicator 1: Percent of youth with individualized education programs (IEPs) graduating from high school with a regular diploma (20 U.S.C. 1416 (a)(3)(A)).

[2] Indicator 2: Percent of youth with IEPs dropping out of high school (20 U.S.C. 1416 (a)(3)(A)).

provided by the Center pending the changes to the organization of the Department's TA activities. For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and waive the requirements in 34 CFR 75.261(a) and (c)(2), which limit the extension of a project period if the extension involves the obligation of additional Federal funds. The waiver would allow the Department to issue a continuation award in the amount of $665,000 to Clemson University for an additional 12-month period, which should ensure that the Center's TA, training, and dissemination of information to families, SEAs, LEAs, and other State agencies will not be interrupted.

Any activities to be carried out during the year of the continuation award would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the 2008 National Dropout Prevention Center for Students with Disabilities competition.

If the proposed waiver and extension of the project period are announced in a final notice in the **Federal Register**, the requirements applicable to continuation awards for this competition, set forth in the June 23, 2008, notice inviting applications, and the requirements in 34 CFR 75.253 would apply to any continuation awards sought by the current National Dropout Prevention Center for Students with Disabilities grantee. If we announce the waiver and extension as final, we will base our decisions regarding a continuation award on the program narrative, budget, budget narrative, and program performance report submitted by the current grantee, and the requirements in 34 CFR 75.253.

Regulatory Flexibility Act Certification

The Department certifies that the proposed waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities.

The only entity that would be affected by the proposed waiver and extension of the project period is the current grantee.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on this entity because the extension of an existing project imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of the project period does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: February 13, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–03870 Filed 2–19–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0293; FRL–9781–4]

Approval and Promulgation of Implementation Plans; State of Kansas; Idle Reduction of Heavy-Duty Diesel Vehicles and Reduction of Nitrogen Oxides (NO_X) Emissions for the Kansas City Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submitted by the State of Kansas on July 27, 2010, to add two new rules which implement restrictions on the idling of heavy duty diesel vehicles and reduce nitrogen oxide (NO_X) emissions at stationary sources in the Kansas portion of the Kansas City Maintenance Area for ozone. EPA is approving this revision because the standards and requirements set by the rules will strengthen the Kansas SIP. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments should be received on or before March 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0293, by mail to Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, at (913) 551–7214 or by email at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments

are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 6, 2013.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2013–03757 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0814; FRL–9782–6]

Approval and Promulgation of Implementation Plans; Region 4 States; 110(a)(2)(D)(i)(II) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee for inclusion into each state's implementation plan. This proposal pertains to the infrastructure state implementation plans (SIPs) for these States as they relate to certain Clean Air Act (CAA or Act) requirements for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. These plans are commonly referred to as an "infrastructure" SIPs. Specifically, EPA is proposing to approve the submissions for Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee that relate to the infrastructure SIP requirement to protect visibility in another state. All other applicable infrastructure requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS associated with these States are being addressed in separate rulemakings.

DATES: Written comments must be received on or before March 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0814, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* "EPA–R04–OAR–2012–0814," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0814. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

Table of Contents

I. Background

On July 18, 1997 (62 FR 38652), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (µg/

m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 $\mu g/m^3$. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, and no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's infrastructure submissions were received by EPA on July 25, 2008, July 23, 2008, August 26, 2008, December 7, 2007, April 1, 2008, March 14, 2008, and December 14, 2007, respectively, for the 1997 annual $PM_{2.5}$ NAAQS; and on September 23, 2009, October 21, 2009, July 17, 2012,[1] October 6, 2009, September 21, 2009, September 18, 2009, and October 19, 2009, respectively, for the 2006 24-hour $PM_{2.5}$ NAAQS. Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee were among other states that did not receive findings of failure to submit because they had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

The rulemaking proposed through today's action only addresses section 110(a)(2)(D)(i)(II) visibility requirements.

II. What are States required to address under sections 110(a)(2)(D)?

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1), and interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (prong 3), or to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

EPA has previously taken action to address Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's SIP submissions related to prongs 1 through 3 of section 110(a)(2)(D)(i) and the requirements of section 110(a)(2)(D)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Today's proposed rulemaking relates only to requirements of section 110(a)(2)(D)(i)(II) (prong 4), which as previously described, requires that the SIP contain adequate provisions to protect visibility in any other State. More information on this requirement and EPA's rationale for today's proposal that each state is meeting this requirement for purposes of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS is provided below.

III. What is EPA's analysis of how Region 4 States addressed element (D)(i)(II) related to visibility?

Prong 4 of section 110(a)(2)(D)(i) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures to protect visibility in another state. In describing how its submission meets this requirement, Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee each referred to EPA-approved state provisions requiring electric generating units (EGUs) to comply with the Clean Air Interstate Rule (CAIR) and to the limited approval and limited disapproval of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs. Although Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs have not been fully approved, EPA believes that the infrastructure SIP submission together with previously approved SIP provisions, specifically those provisions that require EGUs to comply with CAIR and the additional measures in the regional haze SIP addressing best available retrofit technology (BART) and reasonable progress requirements for other sources or pollutants, are adequate to demonstrate compliance with prong 4, thus, EPA is proposing to fully approve this aspect of the submission.

Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs relied on previous incorporations of the CAIR into the EPA-approved SIPs as an alternative to the requirement that the regional haze SIPs provide for source-specific BART emission limits for sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emissions from EGUs. CAIR, as originally promulgated, requires significant reductions in emissions of SO_2 and NO_X to limit the interstate transport of these pollutants, and EPA's determination that states could rely on CAIR as an alternative to requiring BART for CAIR-subject EGUs had specifically been upheld in *Utility Air Regulatory Group* v. *EPA*, 471 F.3d 1333 (D.C. Cir. 2006). Moreover, the states with Class I areas affected by emissions from sources in Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee had adopted reasonable progress goals for visibility protection that were consistent with the EGU emission limits resulting from CAIR.

In 2008, however, the D.C. Circuit remanded CAIR back to EPA. *See North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The court found CAIR to be inconsistent with the requirements of the CAA, see *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that "allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR." *North Carolina*, 550 F.3d at 1178.

After the remand of CAIR by the D.C. Circuit and the promulgation by EPA of a new rule—the Cross State Air Pollution Rule (CSAPR) or "Transport Rule"—to replace CAIR, EPA issued a limited disapproval of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs (and other states' regional haze SIPs that relied similarly on CAIR) because EPA believed that full approval of the SIP was not appropriate in light of the court's remand of CAIR and the uncertain but limited remaining period of operation of CAIR. EPA finalized a

[1] On July 17, 2012, Kentucky withdrew its September 8, 2009, 110(a)(1) and (2) infrastructure submission addressing the 2008 8-hour ozone, 2006 $PM_{2.5}$ and 2008 Lead NAAQS. Kentucky replaced its September 8, 2009, section 110(a)(1) and (2) infrastructure submission with a submission provided on July 17, 2012.

limited approval of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee regional haze SIPs, indicating that except for its reliance on CAIR, the SIP met CAA requirements for the first planning period of the regional haze program. *See* Alabama: July 28, 2012 (77 FR 38515); Georgia: July 28, 2012 (77 FR 38501); Kentucky: March 30, 2012 (77 FR 19098); Mississippi: July 27, 2012 (77 FR 38191); North Carolina: July 27, 2012 (77 FR 38185); South Carolina: July 28, 2012 (77 FR 38509) Tennessee: April 24, 2012 (77 FR 243392), and November 27, 2012 (77 FR 70689).[2] EPA also finalized a limited Federal Implementation Plan for Georgia, Kentucky, South Carolina and Tennessee, which merely substituted reliance on EPA's more recent CSAPR's NO_X and SO_2 trading programs for EGUs for the SIP's reliance on CAIR. *See* 77 FR 33642, June 7, 2012.

Since the above-described developments with regard to Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs, the situation has changed. In August 2012, the D.C. Circuit issued a decision to vacate CSAPR. *EME Homer City Generation*, 696 F.3d7 (D.C. Cir. 2012). In this decision, the court ordered EPA to "continue administering CAIR pending the promulgation of a valid replacement." Thus, EPA has been ordered by the court to develop a new rule, and to continue implementing CAIR in the meantime, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Implementation of CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process; states have had an opportunity to draft and submit SIPs; EPA has reviewed the SIPs to determine if they can be approved; and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan, if appropriate.

At this time, the deadline for asking the Supreme Court to review this decision has not passed, and the United States has made no decision regarding whether to seek further appeal.

[2] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttncaaa1/memoranda/siproc.pdf*.

Nonetheless, the EPA intends to act in accordance with the holdings in the *EME Homer City Generation* opinion. Based upon the direction provided in that opinion for EPA to continue administering CAIR, the Agency believes that it is appropriate to rely on CAIR emission reductions for now for purposes of assessing the adequacy of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's infrastructure SIPs with respect to prong 4 while a valid replacement rule is developed and until implementation plans complying with any new rule are submitted by the states and acted upon by EPA or until the court case is resolved in a way that provides different direction regarding CAIR and CSAPR. In addition, EPA believes that based on the court's decision on CSAPR it would be appropriate to propose to rescind its limited disapproval of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs and propose a full approval, however, EPA is not at this time proposing to change the limited approval and limited disapproval of these states' regional haze SIPs. EPA expects to propose an appropriate action regarding Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs in a separate rulemaking.

As neither Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee nor EPA has taken any action to remove CAIR from the Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee SIPs, CAIR remains part of the EPA-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i). EPA is proposing to approve the infrastructure SIP submission with respect to prong 4 because Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs which EPA has given a limited approval in combination with its SIP provisions to implement CAIR adequately prevent sources in Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee from interfering with measures adopted by other states to protect visibility during the first planning period. While EPA is not at this time proposing to change the limited approval and limited disapproval of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs, EPA expects to propose an appropriate action regarding Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee's regional haze SIPs upon final resolution of *EME Homer City Generation* v. *EPA*.

IV. Proposed Action

As described above, EPA is proposing to approve submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee to incorporate provisions into the States' implementation plans to address prong 4 of section 110(a)(2)(D)(i) of the CAA for both the 1997 and 2006 $PM_{2.5}$ NAAQS. Specifically, EPA is proposing to approve the States' prong 4 of section 110(a)(2)(D)(i) submissions because they are consistent with section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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 proposed 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 proposed 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).

EPA has preliminarily determined that this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination does not have "substantial direct effects" on an Indian Tribe as a result of this action. With respect to today's proposed action as it relates to South Carolina, EPA notes that the Catawba Indian Nation Reservation is located within the South Carolina and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, "all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities." Thus, the South Carolina SIP applies to the Catawba Reservation, however, because today's proposed action is not approving any specific rule into the South Carolina SIP, but rather proposing that the State's already approved SIP meets certain CAA requirements, EPA has preliminarily determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–03841 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0762; FRL–9781–9]

Approval and Promulgation of Implementation Plans; Tennessee: Approve Knox County Supplemental Motor Vehicle Emissions Budget Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Tennessee State Implementation Plan (SIP), submitted to EPA on December 13, 2012, by the State of Tennessee, through the Tennessee Department of Environment and Conservation. Tennessee's December 13, 2012, SIP revision includes changes to the maintenance plan for the Knox County 1-hour ozone area submitted on August 26, 1992, and approved by EPA on September 27, 1993, and a subsequent SIP revision approved by EPA on August 5, 1997. The Knox County 1-hour ozone area was comprised of Knox County in its entirety. The December 13, 2012, SIP revision proposes to increase the safety margin allocated to motor vehicle emissions budgets for nitrogen oxides and volatile organic compounds for Knox County to account for changes in the emissions model and vehicle miles traveled projection model. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act.

DATES: Written comments must be received on or before March 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0762 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4–RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* "EPA–R04–OAR–2013–0762," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Kelly Sheckler may be reached by phone at (404) 562–9222 or by electronic mail address *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 18, 2012, EPA proposed to approve, through parallel processing, a draft revision to the Tennessee SIP. EPA explained in that notice that if the State's final submission was changed, EPA will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. Tennessee's final submittal was different from its draft submittal and as a result, EPA is now taking direct final action and this proposed action to approve Tennessee's final submittal dated December 13, 2012. Today's actions replace and supercede EPA's previous December 18, 2012, proposal action.

Additionally, on March 12, 2008, EPA issued a revised ozone National Ambient Air Quality Standards (NAAQS). *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS.

For additional information regarding today's action see the direct final rule which is published in the Rules Section of this **Federal Register**. Through that direct final rule, EPA is approving the State's implementation plan revision without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties

interested in commenting on this document should do so at this time.

Dated: February 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013-03764 Filed 2-19-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2012-0758; FRL 9781-6]

Approval and Promulgation of Implementation Plans; State of Missouri; Restriction of Emission of Particulate Matter From Industrial Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri on March 17, 2011. This revision proposes to amend the rule restricting emissions of particulate matter from industrial sources by providing an alternative compliance method for wet corn milling drying operations. The revision to Missouri's rule does not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments on this proposed action must be received in writing by March 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2012-0758, by mail to Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania at (913) 551-7147, or by email at *bhesania.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 5, 2013.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2013-03770 Filed 2-19-13; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130104009-3099-01]

RIN 0648-XC432

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2013-2014 Atlantic Bluefish Specifications

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2013 and 2014 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. The intent of this action is to establish the allowable 2013 and 2014 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

DATES: Comments must be received on or before March 7, 2013.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2013-0006, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0006*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* (978) 281-9135, Attn: Carly Bari.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS 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, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281-9224.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.162.

The FMP requires the Council to recommend, on an annual basis, the annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). An estimate of annual discards is deducted from the ACT to calculate the TAL that can be harvested during the year by the commercial and recreational fishing sectors. The FMP requires that 17 percent of the ACT be allocated to the commercial fishery, with the remaining 83 percent allocated to the recreational fishery. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available scientific information, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP, overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as ½ B_{MSY}. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} (F_{MSY} = 0.19; therefore F_{target} = 90 percent of F_{MSY}, or 0.17), and the long-term target B is B_{MSY} = 324 million lb (147,052 mt).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41st Stock Assessment Review Committee (SARC 41) in 2005 to estimate F and annual biomass. In June 2012, the ASAP model was updated in order to estimate the current status of the bluefish stock (i.e., 2011 biomass and F estimates) and enable the Monitoring Committee and SSC to recommend 2013 and 2014 specifications using landings information and survey indices through the 2011 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2011, B_{2011} = 292.972 million lb (132,890 mt); and (2) an estimated fishing mortality rate for 2011, F_{2011} = 0.114. Based on the updated 2011 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2011} is slightly less than B_{MSY}, but well above the minimum biomass threshold, ½ B_{MSY}, of 162 million lb (73,526 mt). Estimates of F have declined from 0.41 in 1991 to 0.114 in 2011. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F (F_{2011} = 0.114) is less than the maximum F overfishing threshold specified by SARC 41 (F_{MSY} = 0.19). Bluefish was declared rebuilt in 2009.

2013 and 2014 Catch Limits

Following the framework implemented by the Council's ACL Omnibus Amendment, the Council recommended that ACL be set to acceptable biological catch (ABC) for 2013 (27.472 million lb, 12,461 mt) and for 2014 (27.057 million lb, 12,273 mt). No deductions were recommended to account for management uncertainty; therefore, ABC=ACL=ACT for both years. The ACT is initially allocated between the recreational fishery (83 percent) and the commercial fishery (17 percent). After deducting an estimate of recreational discards (commercial discards are considered negligible), the recreational harvest limit (RHL) would be 19,190 million lb (8,704 mt) for 2013 and 18,846 million lb (8,548 mt) for 2014 and the commercial quota would be 4.670 million lb (2,118 mt) for 2013 and 4.60 million lb (2,087 mt) for 2014.

The FMP specifies that, if 17 percent of the TAL is less than 10.5 million lb, and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. The RHL would then be adjusted downward so that the TAL would be unchanged.

The Council projected an estimated annual recreational harvest for 2013 and 2014 of 14.069 million lb (6,381 mt). As such, it is expected that a transfer of up to 4.686 million lb (2,125 mt) for 2013 and 4.342 million lb (1,969 mt) for 2014 from the recreational sector to the commercial sector could be approved. These options represent the preferred alternatives recommended by the Council in its specifications document. The actual transfer amount in the final rule, if any, will depend on the final 2012 recreational landings data.

RSA

For 2013, the Council preliminarily approved two research projects that would utilize bluefish RSA quota and forwarded them to NOAA's Grants Management Division. The Council preliminarily approved 715,819 lb (325 mt) of RSA quota for use by these projects during 2013. For 2014, the Council preliminarily approved 703,385 lb (319 mt) of RSA quota for future research projects. Proportional adjustments of these amounts to the commercial and recreational allocations would result in a final commercial quota of 9.076 million lb (4,117 mt) for 2013 and 8.674 million lb (3,934 mt) for 2014, and a final RHL of 14.069 million lb (6,381 mt) for both 2013 and 2014. NMFS staff will update the commercial and recreational allocations based on the final 2013 RSA awards as part of the final rule for the 2013 specifications.

Proposed Recreational Possession Limit

The Council recommended, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL for both 2013 and 2014.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2013 and 2014 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2012. Any potential deductions for states that exceeded their quota in 2012 will be accounted for in the final rule.

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2013 AND 2014 (INCLUDING RSA DEDUCTIONS)

State	Percent share	2013 Council-proposed commercial quota (lb)	2013 Council-proposed commercial quota (kg)	2014 Council-proposed commercial quota (lb)	2014 Council-proposed commercial quota (kg)
ME	0.6685	60,673	27,521	57,985	26,302
NH	0.4145	37,620	17,064	35,953	16,308
MA	6.7167	609,606	276,513	582,603	264,264
RI	6.8081	617,902	280,276	590,531	267,860
CT	1.2663	114,929	52,131	109,838	49,822
NY	10.3851	942,549	427,533	900,797	408,595
NJ	14.8162	1,344,715	609,953	1,285,148	582,933
DE	1.8782	170,465	77,322	162,914	73,897
MD	3.0018	272,443	123,578	260,374	118,104
VA	11.8795	1,078,181	489,055	1,030,421	467,391
NC	32.0608	2,909,831	1,319,878	2,780,935	1,261,411
SC	0.0352	3,195	1,449	3,053	1,385
GA	0.0095	862	391	824	374
FL	10.0597	913,016	414,137	872,572	395,792
Total	100.0001	9,075,976	4,116,795	8,673,941	3,934,435

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to $4.0 and $6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule.

An active participant in the commercial sector was defined as any vessel that reported having landed 1 or more lb (0.45 kg) in the Atlantic bluefish fishery in 2011 (the most recent year for which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast seafood dealer reports were used to identify 742 vessels that landed bluefish in states from Maine through North Carolina in 2011. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia or Florida. South Atlantic Trip Ticket reports were used to identify 768 vessels that landed bluefish in North Carolina and 791 vessels that landed bluefish on Florida's east coast in 2011.[1] Bluefish landings in South Carolina and Georgia were near zero in 2011, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2011. In recent years, approximately 2,000 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

[1] Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible.

The IRFA in the Draft EA addressed three alternatives (including a no action/status quo alternative) for the 2013 and 2014 Atlantic bluefish fishing years. All quota alternatives considered in this analysis are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). For analysis of impacts of Alternatives 1 and 2 for both 2013 and 2014, the maximum potential RSA quota of 3 percent of the TAL (715,819 lb (324 mt) for 2013 and 703,385 lb (319 mt) for 2014) was used. For analysis of impacts of Alternative 3 for both years, the status quo RSA quota of 491,672 lb (223 mt) was used. For analysis of impacts of Alternative 1 for 2013, the recommended transfer of 4.686 million lb (2,125 mt) from the recreational sector to the commercial sector were used. Alternative 1 for 2014, the recommended transfer of 4.342 million lb (1,969 mt) was used. For analysis of impacts of Alternative 3 for 2013 and 2014, the transfer of 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector was used, which is the same as the 2012 transfer amount. Under Alternative 2 for both 2013 and 2014, no transfer of bluefish would be made from the recreational sector to the commercial sector, and the allocation of the TAL would be based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational).

For 2013, Alternatives 1 and 2 would implement a TAL of 23.861 million lb (10,823 mt). For 2014, Alternatives 1 and 2 would implement a TAL of 23.446 million lb (10,635 mt). Alternative 3, for 2013 and 2014, would implement status quo management measures for both

years, which would result in a TAL identical to the 2012 TAL, or 28.267 million lb (12,822 mt). The proposed 2013 and 2014 Atlantic bluefish specification alternatives are shown in Table 2, along with the resulting commercial quota and RHL after any applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 9.076 million lb (4,117 mt) for 2013 and 8.674 million lb (3,934 mt) for 2014 to the commercial sector, and 14.096 million lb (6,381 mt) to the recreational sector for both 2013 and 2014. For 2013, Alternative 2 would result in the most restrictive commercial quota and would allocate 4.530 million lb (2,055 mt) to the commercial sector and leave 18.615 million lb (8,444 mt) available to the recreational sector. For 2014, Alternative 2 would also result in the most restrictive commercial quota and would allocate 4.462 million lb (2,024 mt) to the commercial sector and leave 18.281 million lb (8,292 mt) available to the recreational sector. For both 2013 and 2014, Alternative 3 (status quo) would allocate 10.317 million lb (4,680 mt) to the commercial sector and 17.457 million lb (7,918 mt) to the recreational sector. This alternative would also implement the status quo RSA level, which is currently approved for 491,672 lb (223 mt).

TABLE 2—PROPOSED 2013 AND 2014 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL

Year	Alternatives	TAL (million lb)	TAL (mt)	Commercial quota (million lb)	Commercial quota (mt)	RHL (million lb)	RHL (mt)
2013 ..	Alternative 1	23.861	10,823	9.076	4,117	14.096	6,381
	Alternative 2	23.861	10,823	4.530	2,044	18.615	8,444
	Alternative 3	28.267	12,822	10.317	4,680	17.457	7,918
2014 ..	Alternative 1	23.446	10,635	8.674	3,934	14.096	6,381
	Alternative 2	23.446	10,635	4.462	2,024	18.281	8,292
	Alternative 3	28.267	12,822	10.317	4,680	17.457	7,918

Commercial Fishery Impacts

To assess the impact of the alternatives on commercial fisheries, the Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from each alternative, using Northeast dealer reports and South Atlantic Trip Ticket reports.

Under Alternative 1, the recommended commercial quota for 2013 is approximately 79 percent higher than 2011 commercial landings. When this commercial quota is distributed to the states from Maine to Florida (based on the percentages specified in the FMP), except for New York, each state's 2013 quota is higher than its 2011 landings. For New York, 2013 commercial landings would be constrained by the 2013 commercial quota under Alternative 1. The threshold analysis projected that 147 vessels could incur revenue losses of less than 5 percent and 9 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 22 percent had gross sales of $1,000 or less and 44 percent had gross sales of $10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2013, as was done in 2011 and frequently in previous years, the number of affected entities could change, thus changing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

For 2013, Alternative 2 would result in a commercial quota 11 percent below the 2011 commercial landings. Although the overall commercial quota is lower than 2011 commercial landings, except for Massachusetts, Rhode Island, New York, New Jersey, and North Carolina, each state's 2013 quota is higher than its 2011 landings. For these states (Massachusetts, Rhode Island, New York, New Jersey, and North Carolina), 2013 commercial landings would be constrained by the 2013 commercial quota under Alternative 2. The threshold analysis projected that 596 vessels could incur revenue losses of less than 5 percent and 67 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 19 percent had gross sales of $1,000 or less and 55 percent had gross sales of $10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small.

Under Alternative 3, the 2013 commercial quota is approximately 103 percent higher than the 2011 commercial landings. Most states show a similar increase in fishing opportunities under this alternative; however, New York's 2013 commercial quota would be lower than its 2011 commercial landings. Analysis of Alternative 3 concluded that 586 vessels would likely have no change in revenue relative to 2011, 154 vessels were projected to incur revenue losses of less than 5 percent, and 2 vessels were projected to incur revenue loss of 5 percent or more.

Under Alternative 1, the recommended commercial quota for 2014 is approximately 71 percent higher than 2011 commercial landings. When this commercial quota is distributed to the states from Maine to Florida (based on the percentages specified in the FMP), except for New York, each state's 2014 quota is higher than its 2011 landings. For New York, 2014 commercial landings would be constrained by the 2014 commercial quota under Alternative 1. The threshold analysis projected that 147 vessels could incur revenue losses of less than 5 percent and 13 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 22 percent had gross sales of $1,000 or less and 56 percent had gross sales of $10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2014, as was done in 2011 and frequently in previous years, the number of affected entities could change, thus changing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

For 2014, Alternative 2 would result in a commercial quota 12 percent below the 2011 commercial landings. Although the overall commercial quota is lower than 2011 commercial landings,

except for Massachusetts, Rhode Island, New York, New Jersey, and North Carolina, each state's 2014 quota is higher than its 2011 landings. For these states (Massachusetts, Rhode Island, New York, New Jersey, and North Carolina), 2014 commercial landings would be constrained by the 2014 commercial quota under Alternative 2. The threshold analysis projected that 594 vessels could incur revenue losses of less than 5 percent and 69 vessels could incur revenue losses of 5 percent or more. It is expected that the description of the impacted vessels under non-preferred Alternative 2 for 2013 would also apply to this alternative.

The commercial impacts under Alternative 3 for 2014 would be identical to the impacts described in Alternative 3 for 2013.

Recreational Fishery Impacts

In Alternative 1 for 2013, the recommended RHL for the recreational sector (14.096 million lb, 6,381 mt) is approximately 22 percent above the recreational landings for 2011 (11.499 million lb, 5,216 mt) and 21 percent below the RHL implemented for 2012 (17.457 million lb, 7,919 mt). It is not anticipated that the recommend RHL will result in decreased demand for party/charter boat trips or affect angler participation in a negative manner. At the present time, there are neither behavioral or demand data available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. However, given the level of the adjusted recreational harvest limit for 2013 and 2014 and recreational landings in recent years, it is likely that given the proposed recreational harvest limits under all alternatives evaluated, the demand for party/charter boat trips may not be negatively impacted. Overall, it is not expected that the final recreational management measures will affect gross revenues of businesses providing goods and services to anglers participating in the party/charter boat, private/rental boat, and shore fisheries for bluefish. For 2013, the impacts under Alternative 2 and 3 are expected to be similar to the recreational impacts under Alternative 1. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a smaller transfer amount, resulting in a higher RHL.

The 2013 RHL under Alternative 2 would be 62 percent higher than the recreational landings in 2011 and 7 percent higher than the 2012 RHL. Under Alternative 3, the 2013 RHL would be 52 percent higher than 2011 recreational landings and the same as the 2012 RHL. Thus, Alternatives 2 and 3 are not expected to have any negative effects on recreational fishermen or the demand for party/charter boat trips. In addition, neither of these alternatives are expected to result in recreational landings in excess of the RHL.

The recreational impacts for the 2014 alternatives are the same as those for the respective alternatives for 2013.

RSA Quota Impacts

For analysis of each alternative, the maximum RSA quota amount (3 percent of the TAL) was deducted from the initial overall TAL for 2013 and 2014 to derive the adjusted 2013 and 2014 commercial quotas and RHLs under each alternative. Thus, the threshold analyses for each alternative accounted for overall reductions in fishing opportunities due to RSA. Specifications of RSA quota for 2013 and 2014 are expected to benefit all participants in the fishery as a result of improved data and information for management or stock assessment purposes.

Summary

The Council recommended Alternative 1 for both 2013 and 2014, over Alternatives 2 and 3, because it is projected to achieve the target F in 2013 and 2014, respectively, while providing the second least restrictive commercial quota among the alternatives analyzed. Alternative 2 was not recommended by the Council because it would yield the lowest commercial fishing opportunities among the alternatives due to an absence of a quota transfer under this alternative. Alternative 3 was not selected because it would be inconsistent with the advice of the SSC and the Monitoring Committee due to failing to make an effort to prevent overfishing.

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

Dated: February 12, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–03781 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 34
Wednesday, February 20, 2013

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

Submission for OMB Review; Comment Request

February 14, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within March 22, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Information Officer

Title: USDA eAuthentication Service Customer Registration.

OMB Control Number: 0503–0014.

Summary of Collection: The USDA Office of the Chief Information Officer (OCIO) has developed the eAuthentication system as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a voluntary one-time electronic self-registration to obtain an eAuthentication account for each USDA customer desiring access to online services or applications that require user eAuthentication. The information collected through the electronic self-registration process is necessary to enable the electronic authentication of users and grant them access to only those resources for which they are authorized. The authority to collect this information as well as the new Online Identity Proofing function can be found in Section 2,(c), of the Freedom to E-File Act (Pub. L. 106–222), the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277), the Electronic Signatures in Global and National Commerce Act (E-Sign, Pub. L. 106–229), and the E-Government Act of 2002 (H.R. 2458).

Need and Use of the Information: The USDA eAuthentication Service provides public and government businesses single sign-on capability for USDA applications, management of user credentials, and verification of identify, authorization, and electronic signatures. USDA eAuthentication obtains customer information through an electronic self-registration process provided through the eAuthentication Web site. The voluntary self-registration process applies to USDA Agency customers, as well as employees who request access to protected USDA Web applications and services via the Internet. Users can register directly from the eAuthentication Web site located at *www.eauth.egov.usda.gov*. The information collected through the online self-registration process will be used to provide an eAuthentication account that will enable the electronic authentication of users. The users will then have access to authorized resources without needing to reauthenticate within the context of a single Internet session.

Description of Respondents: Farms; Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal government; State, Local or Tribal Government.

Number of Respondents: 114,840.

Frequency of Responses: Reporting; On occasion.

Total burden hours: 35,951.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03887 Filed 2–19–13; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 14, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by March 22, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail

Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Forest Industries Data Collection System.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 (Pub. L. 93–278), National Forest Management Act of 1976 (16 U.S.C. 1600), and the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307) amended by the Energy Security Act of 1980 (42 U.S.C. 8701) require the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crops. The importance and value of the timber products industry is significant in other regions of the United States as well. The FS will collect information using questionnaires.

Need and Use of the Information: To monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. Using the "Primary Mill Questionnaire" FS will collect industrial round wood information from the primary wood-using industries throughout the United States and from mills in Canada that directly receive wood from the United States. FS will also use the "Pulp & Board Forest Industries Questionnaire." The data will be used to develop specific economic development plans for a new forest-related industry in a State and to assist existing industries in identifying raw material problems and opportunities. If the information were not collected, data would not be available for sub-state, state, regional and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1,937.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 1,718.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03889 Filed 2–19–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Creation of a New Computer Matching Program That Will Expire on August 13, 2014

AGENCY: National Finance Center, United States Department of Agriculture.

ACTION: Notice of a Computer Matching Program (CMP).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 published June 19, 1989), and OMB Circular No. A–130, revised November 28, 2000, the Department of Agriculture's (USDA) National Finance Center (NFC) is publishing notice of a computer matching program (CMP) that NFC will conduct on behalf of itself and the Office of Personnel Management (OPM) utilizing records from the Social Security Administration (SSA).

DATES: February 14, 2013 to August 13, 2014.

ADDRESSES: Anthony Priola, Associate Director, Government Insurance and Collection Directorate, National Finance Center, 13800 Old Gentilly Road, New Orleans, LA 70129.

FOR FURTHER INFORMATION CONTACT: Anthony Priola, (504) 426–1292.

SUPPLEMENTARY INFORMATION:

A. General

The Privacy Act (5 U.S.C. 552a), as amended, establishes the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency for agencies participating in the matching programs;

(2) Obtain approval of the match agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching;

(5) Verify match findings before reducing, suspending, termination or denying and individual's benefits or payments.

B. NFC Computer Matching Program Subject to the Privacy Act

The purpose of this NFC Computer Matching Program is to verify applicant eligibility for the Pre-Existing Condition Insurance Plan (PCIP) implemented per the Patient Protection and Affordable Care Act (the PPACA; Pub. L. 111–148). Below is a detailed description of the matching program.

Notice of Computer Matching Program

NFC will match applicant records with SSA records to verify eligibility for PCIP. OPM will have access to the results of the CMP to adjudicate appeals to initial eligibility determinations.

A. Participating Agencies

The U.S. Department of Agriculture's National Finance Center (NFC), the U.S. Office of Personnel Management (OPM), and the Social Security Administration (SSA).

B. Purpose of the Matching Program

SSA will provide data to NFC for the purpose of enrolling eligible applicants in the PCIP, implemented under the PPACA. Section 1101 of the PPACA requires that an individual eligible for the PCIP must be a citizen or national of the United States or lawfully present in the United States. Under this Agreement, SSA will confirm the consistency against SSA records of certain information provided by NFC on applicants for the high risk pool (HRP) program under PPACA. OPM will have access to the results of the CMP to adjudicate applicant appeals to initial eligibility determinations.

C. Authority for Conducting the Matching Program

The legal authority for this match is section 1411(c)(2)(A)(i) and (ii) of the PPACA, section 1106 of the Social Security Act (42 U.S.C. 1306(b)), 5 U.S.C. 552a(b)(3) of the Privacy Act, and the regulations and guidance promulgated there under.

D. Categories of Records and Individuals Covered

Section 1101 of the PPACA requires that an individual eligible for PCIP must

be a citizen or national of the United States or lawfully present in the United States. NFC will disclose applicant information to SSA from the U.S. Department of Health and Human Services' SOR 09–90–275, Pre-Existing Condition Insurance Plan system of records for the purpose of verifying citizenship status for PCIP.

SSA will match this information against the Master Files of SSN Holders and SSN Applications, SSA/OEEAS, 60–0058, full text published at 71 FR 1815 (January 11, 2006); the Master Beneficiary Record, SSA/ORSIS 60–0090, full text published at 71 FR 1826 (January 11, 2006); and Supplemental Security Income and Special Veterans Benefits SSA/ODSSIS, 60–0103, full text published at 71 FR 1826 (January 11, 2006).

E. Inclusive Dates of the Matching Program

This computer match will begin no sooner than 30 days from the date NFC publishes a Computer Matching Notice in the **Federal Register** or 30 days from the date copies of the approved agreement and the notice of the matching program are sent to the Congressional committee of jurisdiction under subsections (O)(2)(B) and (r) of the Privacy Act, as amended, or 30 days from the date the approved agreement is sent to the Office of Management and Budget, whichever is later, provided no comments are received which result in a contrary determination.

F. Address for Receipt of Public Comments

Individuals wishing to comment on this matching program should send comments to Mr. Anthony Priola at *tony.priola@nfc.usda.gov*, or use the mailing address listed under the Addresses heading.

Dated: February 14, 2013.

Kathleen A. Merrigan,

Deputy Secretary.

[FR Doc. 2013–03851 Filed 2–19–13; 8:45 am]

BILLING CODE 3410–91–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of our program for Complaints and Compensation for Construction Defects.

DATES: Comments on this notice must be received by April 22, 2013 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Myron Wooden, Finance and Loan Analyst, Single Family Housing Direct Loan Division, RHS, US Department of Agriculture, STOP 0783, 1400 Independence Avenue SW., Washington, DC 20250–0783. Telephone (202) 720–4780.

SUPPLEMENTARY INFORMATION:

Title: RD Instruction 1924–F, "Complaints and Compensation for Construction Defects."

OMB Number: 0575–0082.

Expiration Date of Approval: 05–31–2013

Type of Request: Extension of a currently approved information collection.

Abstract: The Complaints and Compensation for Construction Defects program under Section 509C of Title V of the Housing Act of 1949, as amended, provides funding to eligible persons who have structural defects with their Agency financed homes to correct these problems. Structural defects are defects in the dwelling, installation of a manufactured home, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The period in which to place a claim for a defect is within 18 months after the date that financial assistance was granted. If the defect is determined to be structural and is covered by the builder's/dealer's-contractor's warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the borrower may be compensated for having the defect corrected, under the Complaints and Compensation for Construction Defects program. Provisions of this subpart do not apply to dwellings financed with Section 502 Guaranteed loans.

Estimate of Burden: Public reporting for this collection of information is estimated to average .32 hours per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1.25.

Estimated Number of Responses: 250.

Estimated Total Annual Burden on Respondents: 80 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information, including a variety of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 8, 2013.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2013–03780 Filed 2–19–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–76–2012]

Foreign-Trade Zone 168—Dallas/Ft. Worth, TX, Authorization of Production Activity, Richemont North America, Inc. dba Cartier (Eyewear Assembly/Kitting), Grand Prairie, TX

On October 17, 2012, Metroplex International Trade Development Corporation, grantee of FTZ 168, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Richemont North America, Inc. dba Cartier, within FTZ 168—Site 4, in Grand Prairie, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 65360, 10/26/2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: February 13, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–03867 Filed 2–19–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose From Finland: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 2012, the Department of Commerce (the Department) published its preliminary results of the 2010–2011 administrative review of the antidumping duty order on Purified Carboxymethylcellulose from Finland.[1] The Department issued the results of its targeted dumping post-preliminary analysis on December 26, 2012.[2] This review covers one respondent, CP Kelco Oy and CP Kelco, Inc. (collectively CP Kelco). The period of review (POR) is July 1, 2010, through June 30, 2011.

DATES: Effective February 20, 2013.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 7850, Washington, DC 20230; telephone (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2012, the Department published the *Preliminary Results*. This review covers one respondent, CP Kelco. The petitioner in this proceeding is the Aqualon Company, a division of Hercules Incorporated (Petitioner). We invited parties to comment on the *Preliminary Results*, and in response, we received a case brief from Petitioner on September 6, 2012. CP Kelco filed a rebuttal brief on September 11, 2012. We also invited parties to comment on our post-preliminary analysis. We received comments from Petitioner and CP Kelco on January 2 and 3, 2013, respectively, and we received rebuttal comments from Petitioner and CP Kelco on January 8, 2013.

Period of Review (POR)

The POR is July 1, 2010, through June 30, 2011.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC). A complete description of the scope of the Order is found in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), which is dated concurrently with and hereby incorporated by reference. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I.

Changes Since the Preliminary Results

The Department conducted a targeted dumping analysis for these final results. The Department also corrected certain ministerial errors, as described in the Memorandum from Tyler Weinhold to the File, Regarding "Final Results of the 2010–2011 Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland: Analysis of Data Submitted by CP Kelco Oy and CP Kelco U.S. Inc. (collectively, CP Kelco)," dated February 5, 2013, and hereby incorporated by reference. This targeted dumping analysis added an analysis of targeted dumping by U.S. Census division, as well as the original consideration of targeted dumping by U.S. Census region.

Final Results of Review

We determine that the following dumping margin exists for the period July 1, 2010, through June 30, 2011:

Manufacturer/Exporter	Weighted-average dumping margin (percentage)
CP Kelco Oy	12.06

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer

[1] *See Purified Carboxymethylcellulose from Finland: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 47036 (August 7, 2012) (*Preliminary Results*).

[2] *See* Memorandum to Laurn Fischer Fox, Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland: *Post-Preliminary Targeted Dumping Analysis Memorandum* (December 26, 2012).

(or customer)-specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its automatic assessment regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, consistent with section 751(a)(1) of the Act: (1) For the company covered by this review, the cash deposit will be the rate listed above; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be 6.65 percent, which is the all-others rate established in the LTFV investigation. *See Notice of Antidumping Duty Order: Purified Carboxymethylcellulose From Finland; Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 5, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Issues Discussed in the Accompanying Issues and Decision Memorandum

Issue 1: Authority to Conduct a Targeted Dumping Analysis and Apply an Alternative Methodology
Issue 2: The Department's Choice of a Targeted Dumping Analysis Methodology
Issue 3: Region vs. Region and Division Targeted Dumping Analysis

[FR Doc. 2013–03740 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–855]

Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2009–2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 6, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the Republic of Korea (Korea). The period of review (POR) is January 23, 2009, through October 31, 2010. For the final results, we continue to find that the companies covered by the review made sales of subject merchandise at less than normal value.

DATES: *Effective Date:* February 20, 2013.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6478 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2011, the Department published the preliminary results of administrative review of the antidumping duty order on diamond sawblades from Korea.[1] On January 5, 2012, we received case briefs with respect to the *Preliminary Results* from Ehwa and Shinhan. We did not receive rebuttal briefs. We did not receive a request for a hearing.

On April 5 2012, the Diamond Sawblades Manufacturers Coalition (Petitioner) alleged that the Korean respondents Ehwa Diamond Industrial Co., Ltd. (Ehwa) and Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc. (collectively, Shinhan), and their respective Chinese subsidiaries Weihai Xianggnang Mechanical Industrial Co., Ltd., and Qingdao Shinhan Diamond Industrial Co., Ltd., sold diamond sawblades into the United States bearing false country of origin designations.

On April 29, 2012, Hyosung Diamond Industrial Co., Ltd., Western Diamond Tools Inc., and Hyosung D&P Co., Ltd. (collectively, "Hyosung") formally withdrew its participation in the administrative review.

We extended the due date for the final results of review to June 4, 2012.[2] On June 4, 2012, the Department deferred

[1] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011) (*Preliminary Results*).

[2] *See Diamond Sawblades and Parts Thereof From the Republic of Korea and the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Reviews*, 77 FR 20788 (April 6, 2012).

the final results of this administrative review to address Petitioner's fraud allegations.[3]

On January 8, 2013, we issued a post-preliminary memorandum finding that the information submitted by Ehwa and Shinhan is reliable for the final results of the review.[4] We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Fraud Allegations

We continue to find the information Ehwa and Shinhan submitted in this review to be reliable for the final results of review. *See* Final Decision Memorandum for more details.

Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Final Decision Memorandum. The written description is dispositive.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Final Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. The Final Decision Memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we changed our calculation methodology for Ehwa's and Shinhan's dumping margins. We modified the model-match methodology to ensure only products with the same physical form matched. For Ehwa, we corrected a currency conversion for an expense reported by the company, we recalculated the costs of certain control numbers, and we added sales to Ehwa's U.S. sales database. For Shinhan, we removed certain Chinese-origin sales in the home market database and applied a revised cost of production database.[5]

Use of Adverse Facts Available

Consistent with the *Preliminary Results*, we determine that Hyosung's failure to provide requested information necessary to calculate accurate dumping margins warrants the use of facts otherwise available with an adverse inference. Consequent to the changes from the *Preliminary Results*, as detailed above, the final margin for Hyosung is 120.90 percent.[6]

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Ehwa and Shinhan made home market sales of the foreign like product during the POR at prices below their costs of production within the meaning of section 773(b) of the Act. For these final results, we performed the cost test following the same methodology as discussed in the *Preliminary Results*. In accordance with sections 773(b)(1) and (2) of the Act, we disregarded certain of Ehwa's and Shinhan's sales in the home market that were made at below-cost prices.

Final Results of the Review

As a result of the administrative review, we determine that the following weighted-average dumping margins exist for the period January 23, 2009, through October 31, 2010:

Exporter/manufacturer	Margin (percent)
Ehwa Diamond Industrial Co., Ltd	11.90
Hyosung Diamond Industrial Co., Ltd, Western Diamond Tools Inc., and Hyosung D&P Co., Ltd	120.90
Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc	3.76

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) will assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). On October 24, 2011, the U.S. Court of International Trade preliminarily enjoined liquidation of entries that are subject to the final determination.[7] Accordingly, the Department will not instruct CBP to assess antidumping duties pending resolution of the associated litigation.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales to an importer, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled "Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Deferral of the Final Results of the First Antidumping Duty Administrative Reviews" dated June 4, 2012.

[4] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled "2009/2010 Review of the Antidumping Duty Orders on Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Post-Preliminary Analysis" dated January 8, 2013. *See also* Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for the Final Results in the First Antidumping Duty Order Administrative Review of Diamond Sawblades and Parts Thereof from the Republic of Korea," dated February 8, 2013 (Final Decision Memorandum), which is hereby adopted by this notice, at Comment.

[5] *See* Final Decision Memorandum, and Department Memoranda, "Final Results Calculation for Ehwa Diamond Industrial Co., Ltd.," and "Final Results Calculation for Shinhan Diamond Industrial Co., Ltd.," dated February 8, 2013, for changes specific to the dumping margin calculations.

[6] For further discussion, *see* Department Memorandum, "Final Adverse Facts Available Rate for Hyosung," dated February 8, 2013.

[7] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006).

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the entered value or the estimated entered value, when entered value was not reported. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its "automatic assessment" regulation on May 6, 2003.[8] This clarification will apply to entries of subject merchandise during the POR produced by Ehwa and Shinhan for which these companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice*.

Cash Deposit Requirements

Effective October 24, 2011, the Department revoked the antidumping duty order on diamond sawblades from Korea, pursuant to a proceeding under section 129 of the Uruguay Round Agreements Act to implement the findings of the World Trade Organization dispute settlement panel in United States—*Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* (WTIDS402/R) (January 18, 2011).[9] Consequently, no cash deposits are required on imports of subject merchandise.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) ("*Assessment Policy Notice*").

[9] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea*, 76 FR 66892 (October 28, 2011), and accompanying Issues and Decision Memorandum.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 8, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

General Issues
Comment 1: Whether to Eliminate Zeroing From the Margin Calculation Constraints
Comment 2: Product-Matching
Comment 3: Fraud Allegations and the Reliability of Respondents' Submissions
Ehwa-Specific Issues
Comment 4: Treatment of Indirect Selling Expenses
Comment 5: Treatment of U.S. Repacking Expenses
Shinhan-Specific Issues
Comment 6: Diamond Raw Material Consumption
Comment 7: Clerical Error in Treatment of U.S. Repacking and Calculation of CEP Profit

[FR Doc. 2013–03865 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC514

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee and Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, March 12, 2013 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Fairfield Inn and Suites, 185 MacArthur Drive, New Bedford, MA 02740; telephone: (774) 634–2000; fax: (774) 634–2001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The VMS/Enforcement Committee and Advisory Panel will meet to discuss Draft NOAA priorities for 2013. Also on the agenda will be the discussion of the role of the Multispecies sector managers in the event a sector vessel receives a violation and joint liability of sectors. They will discuss issues regarding the enforcement of small, seasonal area closures. They will also discuss marking requirements for lobster trawls, stability issues, and unintentional conflicts with mobile gear. The committee and panel will also discuss whether vessels should be allowed to carry two different mesh nets for different fisheries. The committee will meet in closed session to discuss advisory panel membership. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: February 14, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–03830 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Interagency Ocean Observation Committee, Meeting of the Data Management and Communications Steering Team

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The U.S. Integrated Ocean Observing System (IOOS®) Program in NOAA publishes this notice on behalf of the Interagency Ocean Observation Committee (IOOC) to announce a formal meeting of the IOOC's Data Management and Communications Steering Team (DMAC–ST). The DMAC–ST membership is comprised of IOOC-approved federal agency representatives and non-federal participants representing academic, non-profit, private, regional and state sectors who will discuss issues outlined in the agenda.

DATES: The meeting is scheduled for February 27, 2013, between 8 a.m. and 5 p.m. and February 28, 2013, between 8 a.m. and 12 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be broadcast via a conference telephone call. Public access is available at the Consortium for Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact the U.S. IOOS Program (Charles Alexander, 301–427–2429, *Charles.Alexander@noaa.gov*) or the IOOC Support Office (Joshua Young, 202–787–1622, *jyoung@oceanleadership.org*).

SUPPLEMENTARY INFORMATION: The IOOC was established by Congress under the Integrated Coastal and Ocean Observation System Act of 2009 and created under the National Ocean Research Leadership Council (NORLC). The DMAC–ST was subsequently chartered by the IOOC in December 2010 to assist with technical guidance with respect to the management of ocean data collected under the U.S. IOOS®. The IOOC's Web site (*http://www.iooc.us/*) contains more information about their charter and responsibilities. A summary of the DMAC–ST meetings, documentations, activities and terms of reference can also be found on-line, at the following address: *http://www.iooc.us/committee-news/dmac*.

Authority: 33 U.S.C. 3601–3610.

Dated: February 13, 2013.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

[FR Doc. 2013–03824 Filed 2–19–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Thunder Bay National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries, National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applicants for the following seats on the Thunder Bay National Marine Sanctuary Advisory Council (council): Recreation, Business/Economic Development, Tourism (primary seat only), Diving (alternate only), Higher Education, and Citizen-at-Large. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by March 4, 2013.

ADDRESSES: Application kits may be obtained from Thunder Bay National Marine Sanctuary, 500 W. Fletcher Street, Alpena, Michigan 49707. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jean Bauer, Advisory Council Coordinator, Thunder Bay National Marine Sanctuary, 500 W. Fletcher Street, Alpena, Michigan 49707, (989) 356–8805 ext. 13, *jean.bauer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Thunder Bay Sanctuary Advisory Council (council) was established in 1997. The council has fifteen members and fifteen alternates, five seats represent local community governments, and the other ten represent facets of the sanctuary community, including education, research, fishing, diving, tourism, economic development, and the community at large. The council meets bi-monthly, with informal coffees and lunches scheduled for non-meeting months. Working groups meet as needed. The fifteen alternates also take an active role in council meetings as well as assist in carrying out many volunteer assignments throughout the year.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 7, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–03625 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC389

Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Gulf of Mexico, April to May, 2013

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

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Geological Survey (USGS), for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a low-energy marine geophysical (seismic) survey in the Gulf of Mexico, April to May, 2013. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to USGS to incidentally harass, by Level B harassment only, 19 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 22, 2013.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Goldstein@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be

posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The USGS has prepared a draft "Environmental Assessment and Determination Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and Executive Order 12114 Low-Energy Marine Seismic Survey by the U.S. Geological Survey in the Deepwater Gulf of Mexico, April–May 2013" (EA). USGS's EA incorporates a draft "Environmental Assessment of a Low-Energy Marine Geophysical Survey by the U.S. Geological Survey in the Northwestern Gulf of Mexico, April–May 2013.", prepared by LGL Ltd., Environmental Research Associates, on behalf of USGS, which is also available at the same Internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On November 5, 2012, NMFS received an application from the USGS requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey within the U.S. Exclusive Economic Zone in the deep water of the Gulf of Mexico during April to May 2013. The USGS plans to use one source vessel, the R/V *Pelican* (*Pelican*), or similar vessel, and a seismic airgun array to collect seismic data as part of the "Gas Hydrates Project" in the deep water of the northwest Gulf of Mexico. The USGS plans to use conventional low-energy, seismic methodology and ocean bottom seismometers (OBSs) to acquire the data necessary to delineate the distribution, saturation, and thickness of sub-seafloor methane hydrates and to image near-seafloor structure (e.g., faults) at high-resolution. In addition to the proposed operations of the seismic airgun array and hydrophone streamer, USGS intends to operate a sub-bottom profiler continuously throughout the survey.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities, and USGS has requested an authorization to take 19 species of marine mammals by Level B harassment. Take is not expected to result from the use of the sub-bottom profiler, for reasons discussed in this notice; nor is take expected to result from collision with the source vessel because it is a single vessel moving at a relatively slow speed (4.5 knots [kts]; 8.1 kilometers per hour [km/hr]; 5.0 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 8 days of airgun operations out of 15 total operational days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Proposed Specified Activity

USGS proposes to conduct a low-energy seismic survey at two sites that have been studied as part of the Gulf of Mexico Gas Hydrates Joint Industry Project. The GC955 (i.e., Green Canyon lease block 955) and WR313 (i.e., Walker Ridge lease block 313) study sites are located in the deep water of the northwestern GOM (see Figure 1 of the IHA application). Study site GC955 will be surveyed first, followed by WR313. The seismic survey is scheduled to take place for approximately eight days (out of 15 total operational days) in April to May 2013.

The purpose of USGS's proposed seismic survey is to develop technology and to collect data to assist in the characterization of marine gas hydrates in order to better understand their impact on seafloor stability, their role in climate change, and their potential as an energy source. These sites have been extensively studied, including detailed logging while drilling (LWD), and are known to hold thick sequences of sand containing high saturations of gas hydrate. The purpose of this new seismic acquisition is to expand outward from the boreholes the detailed characterization that has been accomplished there and to develop and calibrate improved geophysical

techniques for gas hydrate characterization.

The proposed survey will involve one source vessel, most likely the R/V *Pelican* (*Pelican*) or a similar vessel. USGS will deploy two (each with a discharge volume of 105 cubic inch [in^3]) Generator Injector (GI) airgun array as a primary energy source at a tow depth of 3 m (9.8 ft). A subset of the survey lines will be repeated using either a single 35 in^3 GI airgun. The receiving system will consist of one 450 meter (m) (1,476.4 feet [ft]) long, 72-channel hydrophone streamer and 25 ocean bottom seismometers (OBSs). As the GI airguns are towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the onboard processing system. The OBSs record the returning acoustic signals internally for later analysis. Regardless of which energy source is used, the calculated isopleths for the two GI (105 in^3) airguns will be used.

At each of the two study sites, 25 OBSs will be deployed and a total of approximately 700 km (378 nautical miles [nmi]) of survey lines will be collected in a grid pattern (see Figure 1 of the IHA application). The water depth will be 1,500 to 2,000 m (4,921.3 to 6,561.7 ft) at each study site). All planned seismic data acquisition activities will be conducted by technicians provided by USGS with onboard assistance by the scientists who have proposed the study. The Principal Investigators are Dr. Seth Haines (USGS Energy Program, Denver, Colorado) and Mr. Patrick Hart (USGS Coastal and Marine Geology, Santa Cruz, California). The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

The planned seismic survey (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 1,480 km (799.1 nmi) of transect lines (including turns) in the survey area in the deep water of the northwestern Gulf of Mexico (GOM) (see Figure 1 of the IHA application). In addition to the operation of the airgun array, a Knudsen sub-bottom profiler will also likely be operated from the *Pelican* continuously throughout the cruise. USGS will not be operating a multibeam system, the *Pelican* is not equipped with this equipment. There will be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In USGS's estimated take calculations, 25% has been added for those additional operations.

Vessel Specifications

The *Pelican* (although a similar vessel might be used for this proposed program), a research vessel owned by the Louisiana Universities Marine Consortium (LUMCON), will tow the two GI airgun array, as well as the hydrophone streamer, along predetermined lines (see Figure 1 of the IHA application). When the *Pelican* is towing the airgun array and the relatively short hydrophone streamer, the turning rate of the vessel while the gear is deployed is limited to better than 5 degrees per a minute (this is higher than a seismic vessel towing a streamer of more typical length much greater than 1 km [0.5 nmi]). The LUMCON Marine Superintendent estimates that the turning radius of the *Pelican* will be approximately 500 m (1,640.4 ft) while the vessel is towing the hydrophone streamer. Thus, the maneuverability of the vessel is not limited much during operations with the streamer. The vessel would "fly" the appropriate U.S. Coast Guard-approved day shapes (mast head signals used to communicate with other vessels) and display the appropriate lighting to designate the vessel has limited maneuverability.

The vessel has a length of 33.5 m (109.9 ft); a beam of 8.0 m (26.3 ft); a full load draft of 2.9 m (9.5 ft); and a gross tonnage of 261. The ship is equipped with two Caterpillar Model 3412 1648 in^3 diesel engines and an 80 horsepower (hp) Schottel bowthruster. Electrical power is provided by two Caterpillar 3306, 99 kiloWatt (kW) diesel generators. The *Pelican*'s operation speed during seismic acquisition is typically approximately 8.1 km per hour (hr) (km/hr) (4.5 knots [kts]). When not towing seismic survey gear, the *Pelican* typically cruises at 17 km/hr (9.2 kts). The *Pelican* has an operating range of approximately 5,600 km (3,023.8 nmi) (the distance the vessel can travel without refueling).

The vessel also has two locations as likely observation stations from which Protected Species Observers (PSO) will watch for marine mammals before and during the proposed airgun operations on the *Pelican*. When stationed on the observation platforms, the PSO's eye level will be approximately 12 m (39.4 ft) above sea level providing the PSO an approximately 210° view aft of the vessel from the aft control station, and from the bridge station the PSO's eye level will be approximately 13 m (42.7 ft) above sea level providing the PSO an unobstructed 360° view around the entire vessel. More details of the *Pelican* can be found in the IHA application.

Acoustic Source Specifications

Seismic Airguns

The *Pelican* (or similar vessel) will deploy an airgun array, consisting of two 105 in^3 Sercel GI airguns as the primary energy source and a streamer containing hydrophones along predetermined lines. A subset of the survey lines will be repeated using a single 35 in^3 GI airgun. The airgun array will have a firing pressure of 2,000 pounds per square inch (psi). Discharge intervals depend on both the ship's speed and Two Way Travel Time recording intervals. Seismic pulses for the GI airguns will be emitted at intervals of approximately 6 to 10 seconds. At speeds of approximately 8.1 km/hr, the shot intervals correspond to spacing of approximately will be 14 to 23 m (45.9 to 75.5 ft) during the study. During firing, a brief (approximately 0.03 second) pulse sound is emitted; the airguns will be silent during the intervening periods. The dominant frequency components range from zero to 188 Hertz (Hz).

The generator chamber of each GI airgun in the primary source, the one responsible for introducing the sound pulse into the ocean, is 105 in^3. The injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two GI airguns will be towed 8 m (26.2 ft) apart, side-by-side, 21 m (68.9 ft) behind the *Pelican*, at a depth of 3 m (9.8 ft) during the surveys. The total effective volume will be 210 in^3.

The single 35 in^3 GI airgun is the same type of dual chamber airgun as the 105 in^3 GI airgun described above, with the generator and injector chambers each being 35 in^3. The manufacturer's literature indicates that a 35 in^3 GI airgun has a root mean square (rms) source level of approximately 208 dB re 1 µPam, a duration of about 10 ms, and dominant frequency components of less than 500 Hz. Field measurements by USGS personnel indicate that the GI airgun outputs low sound amplitudes at frequencies greater than 500 Hz. The 35 in^3 GI airgun will be towed approximately 15 m (49.2 ft) behind the ship at approximately 2 m (6.6 ft) depth.

As the GI airgun(s) is towed along the survey line, the towed hydrophone array in the streamer receives the reflected signals and transfers the data to the on-board processing system. The OBSs record the returning acoustic signals internally for later analysis. Given the relatively short streamer

length behind the vessel, the turning rate of the vessel while the gear is deployed is much higher than the limit of five degrees per minute for a seismic vessel towing a streamer of more typical length (i.e., much greater than 1 km [0.54 nmi]). Thus, the maneuverability of the vessel is not limited much during seismic operations.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the rms. Root mean square (rms), which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal downward-directed source levels of the airgun arrays used by USGS on the *Pelican* do not represent actual sound levels that can be measured at any location in the water. Rather they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined GI airguns. The actual received level at any location in the water near the GI airguns will not exceed the source level of the strongest individual source. In this case, that will be about 234.4 dB re 1 μPam peak, or 239.8 dB re 1 μPam peak-to-peak. However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. Actual levels experienced by any organism more than 1 m from either GI airgun will be significantly lower.

Accordingly, Lamont-Doherty Earth Observatory of Columbia University (L–DEO) has predicted the received sound levels in relation to distance and direction from the two GI airgun array. A detailed description of L–DEO's modeling for this survey's marine seismic source arrays for protected species mitigation is provided in the NSF/USGS PEIS. These are the nominal source levels applicable to downward propagation. The NSF/USGS PEIS discusses the characteristics of the airgun pulses. NMFS refers the reviewers to that documents for additional information.

Predicted Sound Levels for the Airguns

To determine exclusion zones for the airgun array to be used in the deep water of the GOM, received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 105 in^3 GI airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels of 190, 180, and 160 dB re 1 μPa (rms) are predicted to be received in deep water are shown in Table 1 (see Table 1 of the IHA application). Received sound levels have not been modeled for the single 35 in^3 GI airgun, but maximum distances for that source would be much lower than those for the two 105 in^3 GI airguns. USGS and NMFS will use the results for the two 105 in^3 GI airguns for all seismic lines, resulting in conservative (precautionary for marine mammals) results when the smaller sources are used.

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.*, 2004) and 2007 to 2008 (Tolstoy *et al.*, 2009). Results of the 36 airgun array are not relevant for the two GI airguns to be used in the proposed survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). Measurements were not made for the two GI airgun array in deep water; however, USGS proposes to use the buffer and exclusion zones predicted by L–DEO's model for the proposed GI airgun operations in deep water, although they are likely conservative given the empirical results for the other arrays. Using the L–DEO model, Table 1 (below) shows the distances at which three rms sound levels are expected to be received from the two GI airguns. The 180 and 190 dB re 1 μPam (rms) distances are the safety criteria for potential Level A harassment as specified by NMFS (2000) and are applicable to cetaceans and pinnipeds, respectively. If marine mammals are detected within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately. Table 1 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the two GI airgun array operating in deep water depths.

Table 1 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the two airgun array operating in deep water (greater than 1,000 m [3,280 ft]) depths. For the proposed project, USGS plans to use the distances for the two 105 in^3 GI airguns for the single 35 in^3 GI airgun, for the determination of the buffer and exclusion zones since this represents the largest and therefore most conservative distances determined by the model results provided by L–DEO.

Table 1. Modeled (two 105 in^3 GI airgun array) distances to which sound levels ≥ 190, 180, and 160 dB re: 1 μPa (rms) could be received in deep water during the proposed survey in the northwestern GOM, April to May, 2013.

Source and volume	Tow depth (m)	Water depth (m)	Predicted RMS radii distances (m) for 2 airgun array		
			190 dB	180 dB	160 dB
Two GI Airguns (105 in^3)	3	Deep (> 1,000)	20 m (65.6 ft)	70 m (229.7 ft)	670 m (2,198.2 ft)

Along with the airgun operations, one additional acoustical data acquisition systems may be operated from the *Pelican* continuously during the survey. A hull-mounted Knudsen 3.5 kHz sub-bottom profiler (successor to model 320B) may be available since the *Pelican* is considering such an installation in the coming months. They have not yet chosen the exact equipment. The ocean floor may be mapped with the Knudsen sub-bottom profiler. If the sub-bottom profiler is available, USGS will use it if it provides quality supplemental information that enhances the higher-energy (i.e., GI airguns) surveys or site characterization in the immediate vicinity of an OBS deployment. This sound source would be operated continuously from the *Pelican* throughout the cruise.

Sub-Bottom Profiler

The *Pelican* may operate a Knudsen 3.5 kHz sub-bottom continuously throughout the cruise simultaneously to map and provide information about the sedimentary features and bottom topography. The beam of the sub-bottom profiler is transmitted as a 27° cone, which is directed downward by a 3.5 kHz transducer in the hull of the *Pelican*. The maximum output is 1 kilowatt (kW) (approximately 204 dB re: 1 μPam), but in practice, the output varies with water depth. Pulse duration is 1, 2, or 4 milliseconds (ms).

The sub-bottom profiler is operated continuously during survey operations. Power levels of the instrument would be modified to account for water depth. Actual operating parameters will be established at the time of the survey. This type of 3.5 kHz system falls within Appendix F (low-energy) of the NSF/USGS PEIS.

NMFS expects that acoustic stimuli resulting from the proposed operation of the two GI airgun array has the potential to harass marine mammals., NMFS does not expect that the movement of the *Pelican*, during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (approximately 4.5 knots [kts]: 8.3 km/hr; 5.2 mph) during seismic acquisition.

Ocean Bottom Seismometers

For the proposed study, 25 OBSs will be deployed from the *Pelican* at each of the two study sites in sequence (see Figure 1 of the IHA application). Once the seismic surveys have been completed at the first site, the OBSs will be retrieved, then re-deployed at the second site. Once the seismic surveys have been completed at the second site, OBSs will be retrieved. OBSs operated by the U.S. National OBS Instrument Pool will be used during the proposed cruise. This type of OBS has a height of approximately 1 m (3.3 ft) and a maximum diameter of 50 centimeters (cm) (19.7 inches [in]). The anchor is a steel plate weighing approximately 40 kilograms (kg) (88.2 pounds [lb]) with dimensions approximately 30x30x8 cm (11.8x11.8x3.1 in). Once an OBS is ready to be retrieved, an acoustic release transponder interrogates the instrument at a frequency of 9 to 11 kiloHertz (kHz), and a response is received at a frequency of 9 to 13 kHz. The burn-wire release assembly is then activated, and the instrument is released from the anchor to float to the surface.

Dates, Duration, and Specified Geographic Region

The proposed project will be located near the GC955 and WR313 study sites in the deep water of the northwest Gulf of Mexico and would have a total duration of approximately 15 operational days occurring during the April through May 2013 timeframe, which will include approximately 8 days of active seismic airgun operations. Water depth at the site is approximately 2,000 m (6561.7 ft). The total survey time would be approximately 96 hours at each site. The proposed survey is scheduled from April 16 to May 5, 2013. The *Pelican* is expected to depart and return to Cocodrie, Louisiana, with no intermediate stops.

Some minor deviation from this schedule is possible, depending on logistics and weather (i.e., the cruise may depart earlier or be extended due to poor weather; there could be additional days of seismic operations if collected data are deemed to be of substandard quality).

The latitude and longitude for the bounds of the two study sites are:

WR313:

91° 34.75′ West to 91° 46.75′ West
26° 33.75′ North to 26° 45.75′ North

GC955:

90° 20.0′ West to 90° 31.75′ West
26° 54.1′ North to 27° 6.0′ North

Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammal species that potentially occur within the GOM include 28 species of cetaceans and one sirenian (Jefferson and Schiro, 1997; Wursig *et al.*, 2000; see Table 2 below). In addition to the 28 species known to occur in the GOM, the long-finned pilot whale (*Globicephala melas*), long-beaked common dolphin (*Delphinus capensis*), and short-beaked common dolphin (*Delphinus delphis*) could potentially occur there. However, there are no confirmed sightings of these species in the GOM, but they have been seen close and could eventually be found there (Wursig *et al.*, 2000). Those three species are not considered further in this document. The marine mammals that generally occur in the proposed action area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the West Indian manatee). Of the marine mammal species that potentially occur within the GOM, 21 species of cetaceans (20 odontocetes, 1 mysticete) are routinely present and have been included in the analysis for incidental take to the proposed seismic survey. Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale, as well as the West Indian (Florida) manatee (*Trichechus manatus latirostris*). Of those endangered species, only the sperm whale is likely to be encountered in the proposed survey area. No species of pinnipeds are known to occur regularly in the GOM, and any pinniped sighted in the proposed study area would be considered extralimital. The Caribbean monk seal (*Monachus tropicalis*) used to inhabit the GOM but is considered extinct and has been

delisted from the ESA. The West Indian manatee is the one marine mammal species mentioned in this document that is managed by the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis; all others are managed by NMFS.

In general, cetaceans in the GOM appear to be partitioned by habitat preferences likely related to prey distribution (Baumgartner *et al.*, 2001). Most species in the northern GOM concentrated along the upper continental slope in or near areas of cyclonic circulation in waters 200 to 1,000 m (656.2 to 3,280.8 ft) deep. Species sighted regularly in these waters include Risso's, rough-toothed, spinner, striped, pantropical spotted, and Clymene dolphins, as well as short-finned pilot, pygmy and dwarf sperm, sperm, *Mesoplodon* beaked, and unidentified beaked whales (Davis *et al.*, 1998). In contrast, continental shelf waters (< 200 m deep) are primarily inhabited by two species: bottlenose and Atlantic spotted dolphins (Davis *et al.*, 2000, 2002; Mullin and Fulling, 2004). Bottlenose dolphins are also found in deeper waters (Baumgartner *et al.*, 2001). The narrow continental shelf south of the Mississippi River delta (20 km [10.8 nmi] wide at its narrowest point) appears to be an important habitat for several cetacean species (Baumgartner *et al.*, 2001; Davis *et al.*, 2002). There appears to be a resident population of sperm whales within 100 km (54 nmi) of the Mississippi River delta (Davis *et al.*, 2002).

Table 2 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the proposed study area during April to May, 2013.

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN THE DEEP WATER OF THE NORTHWEST GULF OF MEXICO

[See text and Table 2 in USGS's application for further details.]

Species	Habitat	Population estimate[3] (minimum)	ESA[1]	MMPA[2]	Population Trend[3]
Mysticetes					
North Atlantic right whale (*Eubalaena glacialis*).	Coastal and shelf.	Extralimital	EN	D	Increasing.
Humpback whale (*Megaptera novaeangliae*).	Pelagic, near-shore waters, and banks.	Rare	EN	D	Increasing.
Minke whale (*Balaenoptera acutorostrata*).	Pelagic and coastal.	Rare	NL	NC	No information available.
Bryde's whale (*Balaenoptera brydei*).	Pelagic and coastal.	15 (5)—Northern GOM stock	NL	NC	Unable to determine.
Sei whale (*Balaenoptera borealis*)	Primarily off-shore, pelagic.	Rare	EN	D	Unable to determine.
Fin whale (*Balaenoptera physalus*)	Continental slope, pelagic.	Rare	EN	D	Unable to determine.
Blue whale (*Balaenoptera musculus*).	Pelagic, shelf, coastal.	Extralimital	EN	D	Unable to determine.
Odontocetes					
Sperm whale (*Physeter macrocephalus*).	Pelagic, deep sea.	1,665 (1,409)—Northern GOM stock.	EN	D	Unable to determine.
Pygmy sperm whale (*Kogia breviceps*).	Deep waters off the shelf.	323 (203)—Northern GOM stock	NL	NC	Unable to determine.
Dwarf sperm whale (*Kogia sima*)	Deep waters off the shelf.	453 (340)—Northern GOM stock	NL	NC	Unable to determine.
Cuvier's beaked whale (*Ziphius cavirostris*).	Pelagic	65 (39)—Northern GOM stock	NL	NC	Unable to determine.
Mesoplodon beaked whale (includes Blainville's beaked whale [*M. densirostris*], Gervais' beaked whale [*M. europaeus*], and Sowerby's beaked whale [*M. bidens*].	Pelagic	57 (24)—Northern GOM stock	NL	NC	Unable to determine.
Killer whale (*Orcinus orca*)	Pelagic, shelf, coastal.	49 (28)—Northern GOM stock	NL	NC	Unable to determine.
Short-finned pilot whale (*Globicephala macrorhynchus*)	Pelagic, shelf coastal.	716 (542)—Northern GOM stock	NL	NC	Unable to determine.
False killer whale (*Pseudorca crassidens*).	Pelagic	777 (501)—Northern GOM stock	NL	NC	Unable to determine.
Melon-headed whale (*Peponocephala electra*).	Pelagic	2,283 (1,293)—Northern GOM stock.	NL	NC	Unable to determine.
Pygmy killer whale (*Feresa attenuata*).	Pelagic	323 (203)—Northern GOM stock	NL	NC	Unable to determine.
Risso's dolphin (*Grampus griseus*)	Deep water, seamounts.	1,589 (1,271)—Northern GOM stock.	NL	NC	Unable to determine.

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN THE DEEP WATER OF THE NORTHWEST GULF OF MEXICO—Continued

[See text and Table 2 in USGS's application for further details.]

Species	Habitat	Population estimate[3] (minimum)	ESA[1]	MMPA[2]	Population Trend[3]
Bottlenose dolphin (*Tursiops truncatus*).	Offshore, inshore, coastal, estuaries.	NA (NA)—32 Northern GOM Bay, Sound and Estuary stocks. NA (NA)—Northern GOM continental shelf stock. 7,702 (6,551)—GOM eastern coastal stock. 2,473 (2,004)—GOM northern coastal stock. NA (NA)—GOM western coastal stock. 3,708 (2,641)—Northern GOM oceanic stock.	NL	NC S—32 stocks inhabitiing the bays, sounds, and estuaries along GOM coast, and GOM western coastal stock.	Unable to determine.
Rough-toothed dolphin (*Steno bredanensis*).	Pelagic	2,653 (1,890)—Northern GOM stock.	NL	NC	Unable to determine.
Fraser's dolphin (*Lagenodelphis hosei*).	Pelagic	Unknown (Unkown)—Northern GOM stock.	NL	NC	Unable to determine.
Striped dolphin (*Stenella coeruleoalba*).	Pelagic	3,325 (2,266)—Northern GOM stock.	NL	NC	Unable to determine.
Pantropical spotted dolphin (*Stenella attenuata*).	Pelagic	34,067 (29,311)—Northern GOM stock.	NL	NC	Unable to determine.
Atlantic spotted dolphin (*Stenella frontalis*).	Coastal and pelagic.	Unknown (Unknown)—Northern GOM stock.	NL	NC	Unable to determine.
Spinner dolphin (*Stenella longirostris*).	Mostly pelagic	1,989 (1,356)—Northern GOM stock.	NL	NC	Unable to determine.
Clymene dolphin (*Stenella clymene*).	Pelagic	6,575 (4,901)—Northern GOM stock.	NL	NC	Unable to determine.
Sirenians					
West Indian (Florida) manatee (*Trichechus manatus latrostris*).	Coastal, rivers, and estuaries	3,802—U.S. stock	EN	D	Increasing or stable throughout much of Florida.

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] NMFS Stock Assessment Reports.
[4] USFWS Stock Assessment Reports.

Refer to sections 3 and 4 of USGS's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the proposed project area. The application also presents how USGS calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.*, 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected. A more comprehensive review of these issues can be found in the "Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement prepared for Marine Seismic Research that is funded by the National Science Foundation and conducted by the U.S. Geological Survey" (NSF/USGS, 2011).

Tolerance

Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.*, 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in

areas where they are exposed to chronic stimuli (Richardson, *et al.*, 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions. The relative responsiveness of baleen and toothed whales are quite variable.

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.*, 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.*, 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nienkirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the North Atlantic Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; and Jochens *et al.*, 2008). Dilorio and Clark (2009) found evidence of increased calling by blue whales during operations by a lower-energy seismic source (i.e., sparker). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, b; and Potter *et al.*, 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

- Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.*, 1995; Southall *et al.*, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.*, 1995; Gordon *et al.*, 2004). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.*, 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km (2.2 to 8.1 nmi) from the source. A

substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies have shown that some species of baleen whales, notably bowhead, gray, and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 µPa (rms).

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in^3) and to a single airgun (20 in^3) with source level of 227 dB re 1 µPa (p-p). In the 1998 study, they documented that avoidance reactions began at 5 to 8 km (2.7 to 4.3 nmi) from the array, and that those reactions kept most pods approximately 3 to 4 km (1.6 to 2.2 nmi) from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of 4 to 5 km (2.2 to 2.7 nmi) by traveling pods and 7 to 12 km (3.8 to 6.5 nmi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 µPa (rms) for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 µPa (rms). The initial avoidance response generally occurred at distances of 5 to 8 km (2.7 to 4.3 nmi) from the airgun array and 2 km (1.1 nmi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 µPa (rms).

Data collected by observers during several seismic surveys in the Northwest Atlantic showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic vs. non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.*, 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re 1 µPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 µPa (rms). However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the Northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Studies have suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.*, 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.*, 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was "no observable direct correlation" between strandings and seismic surveys (IWC, 2007: 236).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 µPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 µPa (rms). Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.*, 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.*, 1999; Gailey *et al.*, 2007; Johnson *et al.*, 2007; Yazvenko *et al.*, 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.*, 1995; Dunn and Hernandez, 2009; Castellote *et al.*, 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) reported that singing fin whales in the Mediterranean moved away from an operating airgun array.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and humpback whales) in the Northwest Atlantic found that overall, this group had lower sighting rates during seismic vs. non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.*, 1984; Richardson *et al.*, 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.*, 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their

numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987; Allen and Angliss, 2010). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009; Moulton and Holst, 2010).

Seismic operators and PSOs on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.*, 2009; Barkaszi *et al.*, 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008; Barry *et al.*, 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.*, 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.*, 2008; Miller *et al.*, 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.*, 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.*, 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.*, 2006; Tyack *et al.*, 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.*, 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the "Stranding and Mortality" section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of some mysticetes. However, other data suggest that some odontocete species, including harbor porpoises, may be more responsive than might be expected given their poor low-frequency hearing. Reactions at longer distances may be particularly likely when sound propagation conditions are conducive to transmission of the higher frequency components of airgun sound to the animals' location (DeRuiter *et al.*, 2006; Goold and Coates, 2006; Tyack *et al.*, 2006; Potter *et al.*, 2007).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.*, 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.*, 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days.

For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 (above) presents the estimated distances from the *Pelican*'s airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 or 190 dB re 1 µPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 µPa (rms), respectively. NMFS believes that to avoid the potential for Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 µPa (rms), respectively. The established 180 and 190 dB (rms) criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals.

For toothed whales, researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. The experiments show that exposure to a single impulse at a received level of 207 kPa (or 30 psi, p-p), which is equivalent to 228 dB re 1 Pa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.*, 2002). For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.*, 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.*, 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales than those of odontocetes (Southall *et al.*, 2007).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.*, 1995, p. 372*ff*; Gedamke *et al.*, 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals (Southall *et al.*, 2007). PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise times. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than 6 dB (Southall *et al.*, 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality—When a living or dead marine mammal swims or floats onto shore and becomes "beached" or incapable of returning to sea, the event is termed a "stranding" (Geraci *et al.*, 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that "(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance."

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a, 2005b; Romero, 2004; Sih *et al.*, 2004).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor et al., 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of mid-

frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Refer to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.*, (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). However, explosives are no longer used in marine waters for commercial seismic surveys or (with rare exceptions) for seismic research. These methods have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar (non-pulse sound) and, in one case, the co-occurrence of an L–DEO seismic survey (Malakoff, 2002; Cox *et al.*, 2006), has raised the possibility that beaked whales exposed to strong "pulsed" sounds could also be susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.*, 2007).

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to "the bends"), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.*, 2006; Southall *et al.*, 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to expect that the same to marine mammals will result from military sonar and seismic surveys. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.*, 2003; Fernández *et al.*, 2004, 2005; Hildebrand 2005; Cox *et al.*, 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.*, 2004) were not well founded (IAGC, 2004; IWC, 2007). In September, 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.*, 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

Sub-bottom Profiler

USGS may also operate a sub-bottom profiler from the source vessel during the proposed survey. A hull-mounted Knudsen 3.5 kHz sub-bottom profiler may be available since the *Pelican* is

considering such an installation in the coming months. Sounds from the sub-bottom profiler are very short pulses, occurring for 1 to 4 ms once every second. Most of the energy in the sound pulses emitted by the sub-bottom profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler that may be used on the *Pelican* has a maximum source level of 204 dB re 1 µPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a sub-bottom profiler more powerful than that that may be on the *Pelican*. If the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the sub-bottom profiler signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the sub-bottom profiler signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the sub-bottom profiler are likely to be similar to those for other pulsed sources if received at the same levels. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources, including airguns. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler.

Acoustic Release Signals

The acoustic release transponder used to communicate with the OBSs uses frequencies 9 to 13 kHz. These signals will be used intermittently. It is unlikely that the acoustic release signals would have a significant effect on marine mammals through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumable low levels.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections) which, as noted are designed to effect the least practicable impact on affected marine mammal species and stocks.

Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below in this section.

Behavioral Responses to Vessel Movement—There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals (especially low frequency specialists) may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003, 2006), and the shift of behavioral activities which may increase energetic costs (Constantine et al., 2003, 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.*, (1995). For each of the marine mammal taxonomy groups, Richardson *et al.*, (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales—"In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic."

Baleen whales—"When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale."

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reaction varied when exposed to vessel noise and traffic. In some cases, beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (43.2 nmi) away and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were "modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli." Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested

reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that "whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways."

Although the radiated sound from the *Pelican* will be audible to marine mammals over a large distance, it is unlikely that marine mammals will respond behaviorally (in a manner that NMFS would consider harassment under the MMPA) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.*, 2004). In light of these facts, NMFS does not expect the *Pelican*'s movements to result in Level B harassment.

Vessel Strike—Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 kts (24.1 km/hr, 14.9 mph).

USGS's proposed operation of one source vessel for the proposed survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during the proposed survey is unlikely due to the *Pelican*'s slow operational speed, which is typically 4.5 kts (8.1 km/hr, 5 mph). Outside of seismic operations, the *Pelican*'s cruising speed would be approximately 9.2 kts (17 km/hr, 10.6 mph), which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.*, 2001).

As a final point, the *Pelican* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: the *Pelican*'s bridge offers good visibility to visually monitor for marine mammal presence; PSOs posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the PSOs receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately a single 450 m cable streamer. This large of an array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of becoming entangled due to slow speed of the survey vessel and onboard monitoring efforts. In May, 2011, there was one recorded entanglement of an olive ridley sea turtle (*Lepidochelys olivacea*) in the R/V *Marcus G. Langseth*'s barovanes after the conclusion of a seismic survey off Costa Rica. There have cases of baleen whales, mostly gray whales (Heyning, 1990), becoming entangled in fishing lines. The probability for entanglement of marine mammals is considered not significant because of the vessel speed and the monitoring efforts onboard the survey vessel.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections) which, as noted are designed to effect the least practicable impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e. fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals in any particular area of the approximately 445.4 km^2 proposed project area, previously discussed in this notice. The next section discusses the potential impacts of anthropogenic sound sources on common marine mammal prey in the proposed survey area (i.e., fish and invertebrates).

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish and invertebrate populations is limited. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent

changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because, ultimately, the most important issues concern effects on marine fish populations, their viability, and their availability to fisheries.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as USGS and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* [2003] and less than approximately 200 Hz in Popper *et al.* [2005]) likely did not propagate to the fish because the water in the study areas was very shallow (approximately nine m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the "cutoff frequency") at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005; Boeger *et al.*, 2006).

An experiment of the effects of a single 700 in^3 airgun was conducted in Lake Meade, Nevada (USGS, 1999). The data were used in an Environmental Assessment of the effects of a marine reflection survey of the Lake Meade fault system by the National Park Service (Paulson *et al.*, 1993, in USGS, 1999). The airgun was suspended 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and was fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates were hired by USGS to monitor the effects of the surveys and concluded that airgun operations were not responsible for the death of any of the fish carcasses observed. They also concluded that the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.*, 1996; Dalen *et al.*, 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially

could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.*, 1994; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Santulli *et al.*, 1999; Wardle *et al.*, 2001; Hassel *et al.*, 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. MMS noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary. MMS also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.*, 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix D of NSF/USGS's PEIS.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) the received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.*, 1994; Christian *et al.*, 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.*, 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.*, 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.*, 2004), but the article provides little evidence to support this claim. Tenera Environmental (2011b) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.*, 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes.

Andre *et al.* (2011) exposed four species of cephalopods (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris*, and *Ilex coindetii*), primarily cuttlefish, to two hours of continuous 50 to 400 Hz sinusoidal wave sweeps at 157+/−5 dB re 1 µPa while captive in relatively small tanks. They reported morphological and ultrastructural evidence of massive acoustic trauma (i.e., permanent and substantial alterations [lesions] of statocyst sensory hair cells) to the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low frequency sound. The received SPL was reported as 157+/−5 dB re 1 µPa, with peak levels at 175 dB re 1 µPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.*, 2007). It was noted however, than no behavioral impacts

were exhibited by crustaceans (Christian *et al.*, 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.*, 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.*, 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.*, 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

OBS Deployment—A total of approximately 25 OBSs will be deployed during the proposed survey. OBSs operated by the U.S. National OBS Instrument Pool will be used during the proposed cruise. This type of OBS has a height of approximately 1 m (3.3 ft) and a maximum diameter of 50 cm (19.7 in). The anchor is a steel plate weighing approximately 40 kg (88.2 lb) with dimensions approximately 30 x 30 x 8 cm (11.8 x 11.8 x 3.1 in). Once an OBS is ready to be retrieved, an acoustic release transponder interrogates the instrument at a frequency of 9 to 11 kHz, and a response is received at a frequency of 9 to 13 kHz. The burn-wire release assembly is then activated, and the instrument is released from the anchor to float to the surface. OBS anchors will be left behind upon equipment recovery. Although OBS placement will disrupt a very small area of the seafloor habitat and could disturb invertebrates, the impacts are expected to be localized and transitory.

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

USGS reviewed the following source documents and have incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the recently completed Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, USGS and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones around the sound source;

(2) Speed and course alterations;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

Proposed Exclusion Zones—USGS use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 1 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160, 180, and 190 dB) from the 18 airgun array and a single airgun. The 180 dB and 190 dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000). USGS used these levels to establish the exclusion and buffer zones.

Received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 105 in^3 GI airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels are predicted to be 190, 180, and 160 dB re 1 µPa (rms) in deep water were determined (see Table 1 above).

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.*, 2004) and 2007 to 2008 (Tolstoy *et al.*, 2009). Results of the 36 airgun array are not relevant for the 2 GI airguns to be used in the proposed survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). Measurements were not made for the two GI airgun array in deep water; however, USGS propose to use the safety radii predicted by L–DEO's model for the proposed GI airgun operations in deep water, although they are likely conservative given the empirical results for the other arrays. The 180 and 190 dB (rms) radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish exclusion zones. Therefore, the assumed 180 and 190 dB radii are 70 m (229.7 ft) and 20 m (65.6 ft), respectively. If the PSO detects a marine mammal(s) within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately.

Speed and Course Alterations—If a marine mammal is detected outside the exclusion zone and, based on its position and direction of travel (relative motion), is likely to enter the exclusion zone, changes of the vessel's speed and/or direct course will be considered if this does not compromise operational safety. This would be done if operationally practicable while minimizing the effect on the planned science objectives. For marine seismic surveys towing large streamer arrays, however, course alterations are not typically implemented due to the vessel's limited maneuverability. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the exclusion zone. If the marine mammal appears likely to enter the exclusion zone, further mitigation actions will be taken, including further course alterations and/or shut-down of the airgun(s). Typically, during seismic operations, the source vessel is unable to change speed or course, and one or more alternative

mitigation measures will need to be implemented.

Shut-down Procedures—USGS will shut-down the operating airgun(s) if a marine mammal is detected outside the exclusion zone for the airgun(s), and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the exclusion zone, the seismic source will be shut-down before the animal is within the exclusion zone. Likewise, if a marine mammal is already within the exclusion zone when first detected, the seismic source will be shut down immediately.

Following a shut-down, USGS will not resume airgun activity until the marine mammal has cleared the exclusion zone. USGS will consider the animal to have cleared the exclusion zone if:

- A PSO has visually observed the animal leave the exclusion zone, or
- A PSO has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, killer, and beaked whales).

Although power-down procedures are often standard operating practice for seismic surveys, they are not proposed to be used during this planned seismic survey because powering-down from two airguns to one airgun would make only a small difference in the exclusion zone(s)—but probably not enough to allow continued one-airgun operations if a marine mammal came within the exclusion zone for two airguns.

Ramp-up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to "warn" marine mammals in the vicinity of the airguns and to provide the time for them to leave the area avoiding any potential injury or impairment of their hearing abilities. USGS will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down shut down has exceeded that period. USGS proposes that, for the present cruise, this period would be approximately 15 minutes. L–DEO and Scripps Institution of Oceanography (SIO) has used similar periods (approximately 15 minutes) during previous low-energy seismic surveys.

Ramp-up will begin with a single GI airgun (105 in^3). The second GI airgun (105 in^3) will be added after 5 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if marine mammals are sighted, a shut-down will be implemented as though both GI airguns were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, USGS will not commence the ramp-up. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array will not be visible during those conditions. If one airgun has operated, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, by only where the exclusion zone is small enough to be visible. USGS will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Proposed Monitoring

USGS propose to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. L–DEO and PG&E's proposed "Monitoring Plan" is described below this section. USGS understand that this monitoring plan will be subject to review by NMFS and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. USGS are prepared to discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

PSOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups of the airguns at night. PSOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (i.e., greater than approximately 15 minutes for this proposed cruise). When feasible, PSOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSO observations, the airguns will be shut-down when marine mammals are observed within or about to enter a designated exclusion zone. The exclusion zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the deep water of the northwestern GOM, at least three PSOs will be based aboard the *Pelican*. USGS will appoint the PSOs

with NMFS's concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, at least one PSO will be on duty from observation platforms (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. PSO(s) will be on duty in shifts no longer than 4 hours in duration. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Pelican* is a suitable platform for marine mammal observations and will serve as the platform from which PSOs will watch for marine mammals before and during seismic operations. Two locations are likely as observation stations onboard the *Pelican*. When stationed on the aft control station on the upper deck (01 level), the eye level will be approximately 12 m (39.3 ft) above sea level, and the PSO will have an approximately 210° view aft of the vessel centered on the seismic source location. At the bridge station, the eye level will be approximately 13 m (42.7 ft) above sea level, and the location will offer a full 360° view around the entire vessel. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), optical range-finders (to assist with distance estimation), and the naked eye. At night, night-vision equipment will be available. The optical range-finders are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. Estimating distances is done primarily with the reticles in the binoculars. The PSO(s) will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or a shut-down of the seismic source.

When marine mammals are detected within or about to enter the designated exclusion zone, the airguns will immediately be shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the exclusion zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially "taken" by harassment (as defined in the MMPA). They will also provide information needed to order a shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during daytime periods when the *Pelican* is underway without seismic operations (i.e., transits, to, from, and through the study area) to collect baseline biological data.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, wind force, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding ramp-ups or shut-downs will be recorded in a standardized format. The data accuracy will be verified by the PSOs at sea, and preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility weekly or more frequently.

Results from the vessel-based observations will provide the following information:

1. The basis for real-time mitigation (airgun shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

USGS will submit a comprehensive report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report submitted to NMFS will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (i.e., dates, times, locations, activities, and associated seismic survey activities). The report will minimally include:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals sightings including date, water depth, numbers, age/size/gender, and group sizes; and analyses of the effects of seismic operations;
- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report will also include estimates of the number and nature of exposures that could result in "takes" of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), USGS will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division,

Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov and Erin.Fougeres@noaa.gov*) or the Florida Marine Mammal Stranding Hotline at 888–404–3922. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with USGS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. USGS may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that USGS discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), USGS will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with USGS to determine whether modifications in the activities are appropriate.

In the event that USGS discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate or advanced decomposition, or scavenger damage), USGS will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southeast Regional Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. USGS will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Level B harassment is anticipated and proposed to be authorized as a result of the proposed low-energy marine seismic survey in the deep water of the northwestern GOM. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array are expected to result in the behavioral disturbance of some marine mammals. There is no evidence that the planned activities could result in injury, serious injury, or mortality for which USGS seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe USGS's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program in the deep water of the northwestern GOM. The estimates are based on a consideration of the number of marine mammals that could be harassed by approximately 1,480 km (799.1 nmi) of seismic operations with the two GI airgun array to be used. The size of the proposed 2D seismic survey area in 2013 is approximately 356 km^2 (103.8 nmi^2) (approximately 445 km^2 [129.7 nmi^2]), as depicted in Figure 1 of the IHA application.

USGS assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the sub-bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, USGS provides no additional allowance for animals that could be affected by sound sources other than airguns.

USGS used spring densities reported in Table A–9 of Appendix A of the Bureau of Ocean Energy Management, Regulation and Enforcement's (BOEMRE, now the Bureau of Ocean Energy Management [BOEM] and Bureau of Safety and Environmental Enforcement [BSEE]) "Request for incidental take regulations governing seismic surveys on the Outer Continental Shelf (OCS) of the Gulf of Mexico" (BOEMRE, 2011). Those densities were calculated from the U.S. Navy's "OPAREA Density Estimates" (NODE) database (DoN, 2007b). The density estimates are based on the NMFS-Southeast Fisheries Science Center (SEFSC) shipboard surveys conducted from 1994 to 2006 and were derived using a model-based approach and statistical analysis of the existing survey data. The outputs from the NODE database are four seasonal surface density plots of the GOM for each of the marine mammal species occurring there. Each of the density plots was overlaid with the boundaries of the 9 acoustic model regions used in Appendix A of BOEMRE (2011). USGS used the densities for Acoustic Model Region 8, which corresponds roughly with the deep waters (greater than 1,000 m) of the BOEMRE GOM Central Planning

Area, and includes the GC955 and WR313 study sites.

TABLE 3—ESTIMATED DENSITIES AND POSSIBLE NUMBER OF MARINE MAMMAL SPECIES THAT MIGHT BE EXPOSED TO GREATER THAN OR EQUAL TO 160 dB DURING USGS'S PROPOSED SEISMIC SURVEY (ENSONIFIED AREA 445.4 KM^2) IN THE DEEP WATER OF THE NORTHWESTERN GOM, APRIL TO MAY, 2013

Species	Density [a] (#/1,000 km^2)	Calculated take (i.e., estimated number of individuals exposed to sound levels > 160 dB re 1 µPa) [1]	Approximate percentage of best population estimate of stock (calculated take) [2]	Requested take authorization [3]
Mysticetes				
North Atlantic right whale	NA	NA	NA	NA
Humpback whale	NA	NA	NA	NA
Minke whale	NA	NA	NA	NA
Bryde's whale	0.1	0	0	0
Sei whale	NA	NA	NA	NA
Fin whale	NA	NA	NA	NA
Blue whale	NA	NA	NA	NA
Odontocetes				
Sperm whale	4.9	2	0.18 (0.12)	3
Kogia spp. (Pygmy and dwarf sperm whale)	2.1	1	0.62 (0.31)—Pygmy sperm whale. 0.44 (0.22)—Dwarf sperm whale.	2
Small (*Mesoplodon* and Cuvier's) beaked whale	3.7	2	3.51 (3.51)—*Mesoplodon* beaked whale. 3.1 (3.1)—Cuvier's beaked whale.	2
Killer whale	0.40	0	0	0
Short-finned pilot whale	6.3	3	2.65 (0.42)	19
False killer whale	2.7	1	4.63 (0.13)	36
Melon-headed whale	9.1	4	5.17 (0.18)	118
Pygmy killer whale	1.1	0	0	0
Risso's dolphin	10.0	4	0.57 (0.25)	9
Bottlenose dolphin	4.8	2	NA (NA)—32 Northern GOM Bay. Sound and Estuary stocks. NA (NA)—Northern GOM continental shelf stock. 0.23 (0.03)—GOM eastern coastal stock. 0.73 (0.08)—GOM northern coastal stock. NA (NA)—GOM western coastal stock. 0.49 (0.05)—Northern GOM oceanic stock.	18
Rough-toothed dolphin	6.7	3	0.6 (0.11)	16
Fraser's dolphin	1.9	1	NA (NA)	117
Striped dolphin	51.5	23	1.35 (0.69)	45
Pantropical spotted dolphin	582.6	259	0.76 (0.76)	259
Atlantic spotted dolphin	2.2	1	NA (NA)	15
Spinner dolphin	72.6	32	4.98 (1.61)	99
Clymene dolphin	45.6	20	1.14 (0.3)	75

NA = Not available or not assessed.
[1] Calculated take is density times the area ensonified to >160 dB (rms) around the planned seismic lines, increased by 25%.
[2] Stock sizes are best populations from NMFS Stock Assessment Reports (see Table 2 above).
[3] Requested Take Authorization increased to mean group size.

USGS estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 µPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals in the area. The number of possible exposures (including repeat exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, excluding areas of overlap. During the proposed survey, the transect lines in the square

grid are closely spaced (approximately 100 m [328.1 ft] apart at the GC955 site and 250 m [820.2 ft] apart at the WR313 site) relative to the 160 dB distance (670 m [2,198.2 ft]). Thus, the area including overlap is 6.5 times the area excluding overlap at GC955 and 5.3 times the area excluding overlap at WR313, so a marine mammal that stayed in the survey areas during the entire survey could be exposed approximately 6 or 7 times on average. While some individuals may be exposed multiple times since the survey tracklines are spaced close together; however, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 µPa (rms) was calculated by multiplying:

(1) The expected species density (in number/km^2), times

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by "drawing" the applicable 160 dB buffer (see Table 1 of the IHA application) around each seismic line, and then calculating the total area within the buffers.

Applying the approach described above, approximately 356 km^2 (approximately 445 km^2 including the 25% contingency) would be within the 160 dB isopleth on one or more occasions during the proposed survey. The take calculations within the study sites do not explicitly add animals to account for the fact that new animals (i.e., turnover) are not accounted for in the initial density snapshot and animals could also approach and enter the area ensonified above 160 dB; however, studies suggest that many marine mammals will avoid exposing themselves to sounds at this level, which suggests that there would not necessarily be a large number of new animals entering the area once the seismic survey started. Because this approach for calculating take estimates does not allow for turnover in the marine mammal populations in the area during the course of the survey, the actual number of individuals exposed may be underestimated, although the conservative (i.e., probably overestimated) line-kilometer distances used to calculate the area may offset this. Also, the approach assumes that no cetaceans will move away or toward the tracklines as the *Pelican* approaches in response to increasing sound levels before the levels reach 160 dB. Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in absence of a seismic program) to occur in the waters that will be exposed to greater than or equal to 160 dB (rms).

USGS's estimates of exposures to various sound levels assume that the proposed surveys will be carried out in full (i.e., approximately 8 days of seismic airgun operations for the two study sites, respectively); however, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25% to accommodate lines that may need to be repeated, equipment testing, account for repeat exposure, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The estimates of the numbers of marine mammals potentially exposed to 160 dB (rms) received levels are precautionary and probably overestimate the actual numbers of marine mammals that could be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Table 3 (Table 3 of the IHA application) shows the estimates of the number of different individual marine mammals anticipated to be exposed to greater than or equal to 160 dB re 1 µPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization is given in the far right column of Table 3 (Table 3 of the IHA application). The requested take authorization has been increased to the average mean group sizes in the GOM in 1996 to 2001 (Mullin and Fulling, 2004) and 2003 and 2004 (Mullin, 2007) in cases where the calculated number of individuals exposed was between one and the mean group size.

The estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 µPa (rms) during the proposed survey is 358, respectively (with 25% contingency) (see Table 3 of the IHA application). That total (with 25% contingency) includes 0 baleen whales, 1 dwarf/pygmy sperm whale, and 2 beaked whales, (including Cuvier's and *Mesoplodon* beaked whales) could be taken by Level B harassment during the proposed seismic survey. Most of the cetaceans potentially taken by Level B harassment are delphinids; pantropical spotted, spinner, Clymene, and striped dolphins are estimated to be the most common species in the area, with estimates of 259, 32, 20, and 23, which would represent 0.76, 0.3, 1.61, and 0.69% of the affected populations or stocks, respectively.

Encouraging and Coordinating Research

USGS will coordinate the planned marine mammal monitoring program associated with the proposed seismic survey with any parties that express interest in this activity.

Negligible Impact and Small Numbers Analysis Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As described above and based on the following factors, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death. The factors include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the implementation of the shut-down measures;

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the USGS's planned marine

seismic surveys, and none are proposed to be authorized by NMFS. Table 3 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see "Potential Effects on Marine Mammals" section above) in this notice, the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given the NMFS and the applicant's proposal to implement mitigation, monitoring, and reporting measures to minimize impacts to marine mammals.

For the other marine mammal species that may occur within the proposed action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Additionally, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than day.

Of the 28 marine mammal species under NMFS jurisdiction that may or are known to likely to occur in the study area, six are listed as threatened or endangered under the ESA: North Atlantic right, humpback, sei, fin, blue, and sperm whales. These species are also considered depleted under the MMPA. Of these ESA-listed species, incidental take has been requested to be authorized for sperm whales. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), USGS must cease or reduce airgun operations if any marine mammal enters designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, and the activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 19 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 3 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, the impact of conducting a low-energy marine seismic survey in the deep water of the northwestern GOM, April to May, 2013, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the length of the seismic survey, the requirement to implement mitigation measures (e.g., shut-down of seismic operations), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that it will have a negligible impact on the species or stocks in the action area.

NMFS has preliminary determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine seismic survey in the deep water of the Gulf of Mexico, April to May, 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Table 3 for the requested authorized take numbers of marine mammals.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (in the deep water of the northwest GOM) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the North Atlantic right, humpback, sei, fin, blue, and sperm whales. USGS did not request take of endangered North Atlantic right, humpback, sei, fin, and blue whales due to the low likelihood of encountering this species during the cruise. Under section 7 of the ESA, USGS has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, USGS, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both USGS and NMFS's Office of Protected Resources.

National Environmental Policy Act

With USGS's complete application, they provided NMFS a draft "Environmental Assessment and Determination Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and Executive Order 12114 Low-Energy Marine Seismic Survey by the U.S. Geological Survey in the Deepwater Gulf of Mexico, April-May 2013," which incorporates a draft "Environmental Assessment of Low-Energy Marine Geophysical Survey by the U.S. Geological Survey in the

Northwestern Gulf of Mexico, April-May 2013," prepared by LGL Ltd., Environmental Research Associates on behalf of USGS. The EA analyzes the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the USGS EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the USGS EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

NMFS proposes to issue an IHA to USGS for conducting a low-energy marine seismic survey in the deep water of the northwestern GOM, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determination of issuing an IHA (see **ADDRESSES**). 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.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–03837 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC360

Taking of Marine Mammals Incidental to Specified Activities; Bremerton Ferry Terminal Wingwall Replacement Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Washington State Department of Transportation (WSDOT) Ferries Division (WSF) for an authorization to take small numbers of six species of marine mammals, by Level B harassment, incidental to proposed construction activities for the replacement of wingwalls at the Bremerton ferry terminal in Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to WSDOT to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than March 22, 2013.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.guan@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application may be obtained by writing to the address specified above or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On August 14, 2012, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of six marine mammal species incidental to construction associated with the replacement of wingwalls at the Bremerton ferry terminal in Washington State. On December 4, 2012, WSDOT submitted a revised IHA application. The action discussed in this document is based on WSDOT's December 4, 2012, IHA application. NMFS is proposing to authorize the Level B harassment of the following marine mammal species: harbor seal, California sea lion, Steller sea lion, killer whale, gray whale, and humpback whale.

Description of the Specified Activity

Wingwalls are structures that protect the vehicle transfer span from direct vessel impact and help guide and hold the vessel in position when the ferry is docked. There are two types of wingwalls common at WSF ferry terminals: timber and steel. Timber wingwalls are older structures, typically constructed of creosote treated pilings lashed together by galvanized steel rope, and reinforced as needed with 13" plastic/steel core piles. The current timber wingwalls at the Bremerton terminal are near the end of their design life, and must be replaced with steel wingwalls to ensure safe and reliable functioning of the terminal.

Steel wingwalls are designed similarly to timber wingwalls in that they contain two rows of plumb piling and one row of batter piling or a third row of plumb piling. A rubber fender between the first and second rows of plumb piling absorbs much of the energy and returns the front row to its original vertical position after an impact. The second row of plumb piling is driven deeper into the sediment and braced with batter piling to minimize movement of the structure. Both pile rows are welded together with horizontal I-beams to which rubbing timbers are attached faced with ultra-high molecular weight (UHMW) plastic, which acts as a rub surface for the ferry. They are designed for a 25-year life span.

The proposed project at the Bremerton Ferry Terminal is to replace the existing Slip 2 timber wingwalls with new standard steel design wingwalls.

Overview of the Planned Activities

The following construction activities are anticipated for the proposed wingwall replacement project:

- Remove two timber wingwalls (112 13-inch timber piles and 100 tons of creosote-treated timber) with a vibratory hammer, direct pull or clamshell removal. Vibratory pile-drive eight 24- and two 30-inch hollow steel piles for each wingwall (20 piles total). Attach rub timbers to new wingwall faces.
- A total of 100 tons of creosote-treated timbers will be removed from the marine environment. The total mudline footprint of the existing wingwalls is 206 square feet (ft²). The total mudline footprint of the new wingwalls will be 95 ft², a reduction of 111 ft². The new wingwalls will have 20 piles, compared to the existing wingwalls, which have approximately 112 tightly clustered piles with no space between them. The footprint of the new steel wingwalls will be more open, allowing fish movement between the piles.

Construction Activity Elements

1. Vibratory Hammer Removal

Vibratory hammer extraction is a common method for removing timber piling. A vibratory hammer is a large mechanical device mostly constructed of steel (weighing 5 to 16 tons) that is suspended from a crane by a cable. It is attached to a derrick and positioned on the top of a pile. The pile is then unseated from the sediments by engaging the hammer, creating a vibration that loosens the sediments binding the pile, and then slowly lifting up on the hammer with the aid of the crane.

Once unseated, the crane would continue to raise the hammer and pull the pile from the sediment. When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland. Vibratory removal would take approximately 10 to 15 minutes per pile, depending on sediment conditions.

2. Direct Pull and Clamshell Removal

Older timber pilings are particularly prone to breaking at the mudline because of damage from marine borers and vessel impacts and must be removed because they can interfere with the installation of new pilings. In some cases, removal with a vibratory hammer is not possible if the pile is too fragile to withstand the hammer force. Broken or damaged piles may be removed by wrapping the piles with a cable and pulling them directly from the sediment with a crane. If the piles break below the waterline, the pile stubs would be removed with a clamshell bucket, a hinged steel apparatus that operates like a set of steel jaws. The bucket would be lowered from a crane and the jaws would grasp the pile stub as the crane pulled up. The broken piling and stubs would be loaded onto the barge for off-site disposal. Clamshell removal would be used only if necessary. Direct pull and clamshell removal are not expected to produce noise that could impact marine mammals.

3 Vibratory Hammer Installation

Vibratory hammers are commonly used in steel pile installation where sediments allow and involve the same vibratory hammer used in pile extraction. The pile is placed into position using a choker and crane, and then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy the sediment surrounding the pile allowing the pile to penetrate to the required seating depth. The type of vibratory hammer that will be used for the project will likely be an APE 400 King Kong (or equivalent) with a drive force of 361 tons.

Sound Levels From Proposed Construction Activity

As mentioned earlier, the proposed project includes vibratory removal of 13-inch timber piles, and vibratory driving of 24-inch and 30-inch hollow steel piling.

No source level data is available for 13-inch timber piles. Based on in-water measurements at the WSF Port Townsend Ferry Terminal (Laughlin 2011), removal of 12-inch timber piles generated 149 to 152 dB_{rms} re 1 µPa with an overall average root-mean-square (RMS) value of 150 dB_{rms} re 1 µPa measured at 16 meters. A worst-case noise level for vibratory removal of 13-inch timber piles will be 152 dB_{rms} re 1 µPa at 16 m.

Based on in-water measurements at the WSF Friday Harbor Ferry Terminal, vibratory pile driving of a 24-inch steel pile generated 162 dB_{rms} re 1 µPa measured at 10 meters (Laughlin 2010a).

Based on in-water measurements during a vibratory test pile at the WSF Port Townsend Ferry Terminal, vibratory pile driving of a 30-inch steel pile generated 170 dB_{rms} re 1 µPa (overall average), with the highest measured at 174 dB_{rms} re 1 µPa measured at 10 meters (Laughlin 2010b). A worst-case noise level for vibratory driving of 30-inch steel piles will be 174 dB_{rms} re 1 µPa at 10 m.

Using practical spreading model to calculate sound propagation loss, Table 1 provides the estimated distances where the received underwater sound levels drop to 120 dB_{rms} re 1 µPa, which is the threshold that is currently used for determining Level B behavioral harassment (see below) from non-impulse noise sources based on measurements of different pile sizes.

TABLE 1—ESTIMATED DISTANCES WHERE VIBRATORY PILE DRIVING RECEIVED SOUND LEVELS DROP TO 120 dB_{rms} re 1 µPa BASED ON MEASUREMENTS OF DIFFERENT PILE SIZES

Pile size (inch)	Measured source levels	Distance to 120 dB_{rms} re 1 µPa (km)
13	152 dB_{rms} re 1 µPa @ 16 m	2.2
24	162 dB_{rms} re 1 µPa @ 10 m	6.3
30	174 dB_{rms} re 1 µPa @ 10 m	39.8

However, land mass is intersected before the extent of vibratory pile driving is reached, at a maximum of 4.7 km (2.9 miles) at the Bremerton Terminal proposed construction area.

For airborne noise, currently NMFS uses an in-air noise disturbance threshold of 90 dB_{rms} re 20 µPa (unweighted) for harbor seals, and 100 dB_{rms} re 20 µPa (unweighted) for all other pinnipeds. Using the above aforementioned measurement of 97.8 dB_{rms} re 20 µPa @ 50 ft, and attenuating at 6 dBA per doubling distance, in-air noise from vibratory pile removal and driving will attenuate to the 90 dB_{rms} re 20 µPa within approximately 37 m, and the 100 dB_{rms} re 20 µPa within approximately 12 m.

Dates, Duration, and Region of Activity

In-water construction is planned to take place between September 1, 2013, and February 15, 2014.

The number of days it will take to remove and install the pilings largely depends on the condition of the piles being removed and the difficulty in penetrating the substrate during pile installation. Duration estimates of each of the pile driving elements follow:

- The daily construction window for pile removal or driving would begin no sooner than 30 minutes after sunrise to allow for initial marine mammal monitoring, and would end at sunset (or soon after), when visibility decreases to the point that effective marine mammal monitoring is not possible.
- Vibratory pile removal of the existing timber piles would take approximately 10 to 15 minutes per pile. Vibratory removal would take less time than driving, because piles are vibrated to loosen them from the soil, then pulled out with the vibratory hammer turned off. Assuming the worst case of 15 minutes per pile (with no direct pull or clamshell removal), removal of 112 piles would take 28 hours over four days of pile removal (Table 2).
- Vibratory pile driving of the steel piles would take approximately 20 minutes per pile, with three to five piles installed per day. Assuming 20 minutes per pile, and three piles per day, driving of 20 piles would take 6 hours 45 minutes over seven days.

The total worst-case time for pile removal is four days, and seven days for pile installation. The actual number of pile-removal/driving days is expected to be less (Table 2).

TABLE 2—WORST CASE PILE REMOVAL AND DRIVING FOR THE PROPOSED BREMERTON WINGWALLS DOLPHIN REPLACEMENT PROJECT

Removal/Installed	Maximum number of piles	Time (hrs.)	Days
Vibratory pile removal	112	28	4
Vibratory pile installation	20	6.75	7

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2011), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf*. Refer to that document for information on these species. Specific information concerning these species in the vicinity of the proposed action area is provided below.

Harbor Seal

Harbor seals are members of the true seal family (Phocidae). For management purposes, differences in mean pupping date (Temte 1986), movement patterns (Jeffries 1985; Brown 1988), pollutant loads (Calambokidis *et al.* 1985), and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng 1988). The three distinct stocks are: (1) Inland waters of Washington State (including Hood Canal, Puget Sound, Georgia Basin and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2011).

Pupping seasons vary by geographic region. For the southern Puget Sound region, pups are born from late June through September. After October 1 all pups in the inland waters of Washington are weaned.

Harbor seals, like all pinnipeds, communicate both on land and underwater. Harbor seals have the broadest auditory bandwidth of the pinnipeds, estimated by Southall *et al.* (2007) as between 75 hertz (Hz) and 75 kilohertz (kHz) for "functional" in-water hearing and between 75 Hz and 30 kHz for "functional" in-air hearing. At lower frequencies (below 1 kHz) sounds must be louder to be heard (Kastak and Schusterman 1998). Studies indicated that pinnipeds are sensitive to a broader range of sound frequencies in-water than in-air (Southall *et al.* 2007). Hearing capabilities for harbor seals in-water are 25 to 30 dB better than in-air (Kastak and Schusterman 1998).

Of the two pinniped species that commonly occur within the region of activity, harbor seals are the most

numerous and the only one that breeds in the inland marine waters of Washington (Calambokidis and Baird 1994). In 1999, Jeffries *et al.* (2003) recorded a mean count of 9,550 harbor seals in Washington's inland marine waters, and estimated the total population to be approximately 14,612 animals (including the Strait of Juan de Fuca). The population across Washington increased at an average annual rate of 10 percent between 1991 and 1996 (Jeffries *et al.* 1997) and is thought to be stable (Jeffries *et al.* 2003).

The nearest documented harbor seal haulout site to the Bremerton ferry terminal is 8.5 km north and west (shoreline distance). The number of harbor seals using the haulout is less than 100.

From July 2006 to January 2007, a consultant completed 10 at-sea surveys in preparation for replacement of the WSDOT Manette Bridge, located in Bremerton. Marine mammals were recorded during these surveys; 29 harbor seals were observed in an area approximately the same as the Bremerton wingwalls project ZOI. Seals observed outside of the Bremerton ZOI were subtracted from the total observed (36) during this project. According to the dates on harbor seal observation tags, the most seals seen in any one day is two (given that two tags cover others, the dates may be the same underneath).

From August 2010 to January 2012, marine mammal monitoring was implemented during construction of the Manette Bridge. Counts were conducted only during pile removal/driving days, not every day of the month. Counts were recorded in blocks of working days (not counts per day). The highest number of harbor seals observed was 93 over three days (10/18–20, 2011). The highest number observed during one day was 59 (10/18/2011). It was assumed that these included multiple observations of the same animal by different observers (David Evans & Assoc. Inc. 2011a; 2011b).

Harbor seals are not listed as endangered or threatened under the ESA or as depleted under the MMPA. They are not considered a strategic stock under the MMPA.

California Sea Lion

NMFS recognizes three stocks of California sea lion based on their geographic distribution: (1) The U.S. stock begins at the U.S./Mexico border and extends northward into Canada; (2) the Western Baja California stock extends from the U.S./Mexico border to the southern tip of the Baja California Peninsula; and (3) the Gulf of California stock, which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.* 1992). California sea lions in the Washington State belong to the U.S. stock.

The U.S. stock was estimated at 296,750 in the 2011 Stock Assessment Report (SAR) and may be at carrying capacity (Carretta *et al.* 2011). The number of California sea lions in the San Juan Islands and the adjacent Strait of Juan de Fuca totaled fewer than 3,000 in the mid-1980s (Bigg 1985; Gearin *et al.* 1986). In 1994, it was reported that the number of sea lions had stabilized or decreased in some areas (Gearin *et al.* 1988; Calambokidis and Baird 1994). More recently, 3,000 to 5,000 animals are estimated to move into northwest waters (both Washington and British Columbia) during the fall (September) and remain until the late spring (May) when most return to breeding rookeries in California and Mexico (Jeffries *et al.* 2000; WSDOT 2012). Peak counts of over 1,000 animals have been made in Puget Sound (Jeffries *et al.* 2000).

The closest documented California sea lion haulout site to the Bremerton Ferry Terminal is the Puget Sound Naval Shipyard security barrier, located approximately 435 m SW of the ferry terminal. The next closest documented California sea lion haulout sites to the Bremerton Ferry Terminal are navigation buoys and net pens in Rich Passage, approximately nine and ten km east of the terminal, respectively. The number of California sea lions using each haulout is less than 10.

From August 2010 to February 2011, marine mammal monitoring was implemented during construction of the Manette Bridge. Counts were conducted only during pile removal/driving days, not every day of the month. Counts were recorded in blocks of working days (not counts per day). The highest number of California sea lions observed was 21 (September) over six days, an average of 3.5/day (David Evans & Assoc. Inc. 2011a; 2011b).

The Bremerton Puget Sound Naval Shipyard (PSNS) is located to the west of the Bremerton Ferry Terminal. Since November 2010, PSNS personnel have been conducting monthly counts of the number of sea lions that use the security barrier floats as a haulout. As of June 13, 2012, the highest count has been 144 observed during one day in November 2011. All are believed to be California sea lions.

California sea lions do not avoid areas with heavy or frequent human activity, but rather may approach certain areas to investigate. This species typically does not flush from a buoy or haulout if approached.

California sea lions are not listed as endangered or threatened under the ESA or as depleted under the MMPA. They are not considered a strategic stock under the MMPA.

Steller Sea Lion

Steller sea lions comprise two recognized management stocks (eastern and western), separated at 144° W longitude (Loughlin 1997). Only the eastern stock is considered here because the western stock occurs outside of the geographic area of the proposed activity. Breeding rookeries for the eastern stock are located along the California, Oregon, British Columbia, and southeast Alaska coasts, but not along the Washington coast or in inland Washington waters (Angliss and Outlaw 2007). Steller sea lions primarily use haulout sites on the outer coast of Washington and in the Strait of Juan de Fuca along Vancouver Island in British Columbia. Only sub-adults or non-breeding adults may be found in the inland waters of Washington (Pitcher *et al.* 2007).

The eastern stock of Steller sea lions is estimated to be between 58,334 and 72,223 individuals based on 2006 through 2009 pup counts (Allens and Angliss 2011). Washington's estimate including the outer coast is 651 individuals (non-pups only) (Pitcher *et al.* 2007). However, recent estimates are that 1,000 to 2,000 individuals enter the Strait of Juan de Fuca during the fall and winter months (WSDOT 2012).

Steller sea lions in Washington State decline during the summer months, which correspond to the breeding season at Oregon and British Columbia rookeries (approximately late May to early June) and peak during the fall and winter months (Jeffries *et al.* 2000). A few Steller sea lions can be observed year-round in Puget Sound/Georgia Basin although most of the breeding age animals return to rookeries in the spring and summer.

For Washington inland waters, Steller sea lion abundances vary seasonally with a minimum estimate of 1,000 to 2,000 individuals present or passing through the Strait of Juan de Fuca in fall and winter months. However, the number of haulout sites has increased in recent years. The nearest documented Steller sea lion haulout site to the Bremerton ferry terminal are the Orchard Rocks in Rich Passage, approximately nine and ten km east of the terminal, respectively (Kitsap Transit 2012).

From July 2006 to January 2007, a consultant completed 10 at-sea surveys in preparation for replacement of the

WSDOT Manette Bridge that is located in Bremerton. Marine mammals were recorded during these surveys; no Stellar sea lions were observed (USDA 2007).

From August 2010 to February 2011, marine mammal monitoring was implemented during construction of the Manette Bridge. No Stellar sea lions were observed (David Evans & Assoc. Inc. 2011).

Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). After division into two stocks, the western stock was listed as endangered under the ESA on May 4, 1997 and the eastern stock remained classified as threatened (62 FR 24345). On August 27, 1993, NMFS published a final rule designating critical habitat for the Steller sea lion (NMFS 1993). No critical habitat has been designated in Washington (NMFS 1993). Critical habitat is associated with breeding and haulout areas in Alaska, California, and Oregon (NMFS 1993).

On June 29, 2010, NMFS initiated a review of the eastern stock of Steller sea lion status to reassess the listing classification under the ESA (75 FR 37385). Based on the comprehensive review, NMFS proposed to delist the eastern stock of Steller sea lion on April 18, 2012 (77 FR 23209).

Steller sea lions are listed as depleted under the MMPA. Both stocks are thus classified as strategic.

Killer Whale

Two sympatric ecotypes of killer whales are found within the proposed activity area: transient and resident. These types vary in diet, distribution, acoustic calls, behavior, morphology, and coloration (Baird 2000; Ford *et al.* 2000). The ranges of transient and resident killer whales overlap; however, little interaction and high reproductive isolation occurs among the two ecotypes (Barrett-Lennard 2000; Barrett-Lennard and Ellis 2001; Hoelzel *et al.* 2002. Resident killer whales are primarily piscivorous, whereas transients primarily feed on marine mammals, especially harbor seals (Baird and Dill 1996). Resident killer whales also tend to occur in larger (10 to 60 individuals), stable family groups known as pods, whereas transients occur in smaller (less than 10 individuals), less structured pods.

One stock of transient killer whale, the West Coast Transient stock, occurs in Washington State. West Coast transients primarily forage on harbor seals (Ford and Ellis 1999), but other species such as porpoises and sea lions are also taken (NMFS 2008a). Two stocks of resident killer whales occur in Washington State: the Southern Resident and Northern Resident stocks. Southern Residents occur within the activity area, in the Strait of Juan de Fuca, Strait of Georgia, and in coastal waters off Washington and Vancouver Island, British Columbia (Ford *et al.* 2000). Northern Residents occur primarily in inland and coastal British Columbia and Southeast Alaska waters and rarely venture into Washington State waters. Little interaction (Ford *et al.* 2000) or gene flow (Barrett-Lennard 2000; Barrett-Lennard and Ellis 2001; Hoelzel *et al.* 2004) is known to occur between the two resident stocks.

The West Coast Transient stock, which includes individuals from California to southeastern Alaska, was estimated to have a minimum number of 354 (NMFS 2010b). Trends in abundance for the West Coast Transients were unavailable in the most recent stock assessment report (Angliss and Outlaw 2007).

The Southern Resident stock was first recorded in a 1974 census, at which time the population comprised 71 whales. This population peaked at 97 animals in 1996, declined to 79 by 2001 (Center for Whale Research 2011), and then increased to 89 animals by 2006 (Carretta et al. 2007a). As of October 2012, the population collectively numbers 85 individuals: J pod has 25 members, K pod has 20 members, and L pod has 40 members (Whale Museum 2012b).

Both West Coast Transient and the Southern Resident stocks are found within Washington inland waters. Individuals of both forms have long-ranging movements and thus regularly leave the inland waters (Calambokidis and Baird 1994).

The West Coast Transient stock occurs in California, Oregon, Washington, British Columbia, and southeastern Alaskan waters. Within the inland waters, they may frequent areas near seal rookeries when pups are weaned (Baird and Dill 1995).

There are only two reports of Transient killer whale in the Bremerton terminal area. From May 18–19 of 2004, a group of up to 12 individuals entered Sinclair and Dyes Inlet. From May 26–27 of 2010, a group of up to five individuals again entered the same area (Orca Network 2012b).

Southern Residents are documented in coastal waters ranging from central California to the Queen Charlotte Islands, British Columbia (NMFS 2008a). They occur in all inland marine waters within the activity area. While in the activity area, resident killer whales generally spend more time in deeper water and only occasionally enter water less than 15 feet deep (Baird 2000). Distribution is strongly associated with areas of greatest salmon abundance, with heaviest foraging activity occurring over deep open water and in areas characterized by high-relief underwater topography, such as subsurface canyons, seamounts, ridges, and steep slopes (Wiles 2004).

West Coast Transients are documented intermittently year-round in Washington inland waters. Records from 1976 through 2006 document Southern Residents in the inland waters of Washington during the months of March through June and October through December, with the primary area of occurrence in inland waters north of Admiralty Inlet, located in north Puget Sound (The Whale Museum 2008a).

Beginning in May or June and through the summer months, all three pods (J, K, and L) of Southern Residents are most often located in the protected inshore waters of Haro Strait (west of San Juan Island), in the Strait of Juan de Fuca, and Georgia Strait near the Fraser River. Historically, the J pod also occurred intermittently during this time in Puget Sound; however, records from The Whale Museum (2008a) from 1997 through 2007 show that J pod did not enter Puget Sound south of the Strait of Juan de Fuca from approximately June through August.

In fall, all three pods occur in areas where migrating salmon are concentrated such as the mouth of the Fraser River. They may also enter areas in Puget Sound where migrating chum and Chinook salmon are concentrated (Osborne 1999). In the winter months, the K and L pods spend progressively less time in inland marine waters and depart for coastal waters in January or February. The J pod is most likely to appear year-round near the San Juan Islands, and in the fall/winter, in the lower Puget Sound and in Georgia Strait at the mouth of the Fraser River.

Under contract with the NMFS, the Friday Harbor Whale Museum keeps a database of verified marine mammal sightings by location quadrants. Whale sightings do not indicate sightings of individual animals. Instead, sightings can be any number of animals. Between 1990 and 2008, in the September to February window proposed for the Bremerton project, an average of 2.9 SR killer whale sightings/month were annually reported for Quad 411 (which encompasses the Bremerton action area) (WSDOT 2012).

Between September 2009 and February 2012, there was one unconfirmed report of a single SR killer

whale in the Bremerton action area (January 2009) during the proposed in-water work window for this project (Orca Network 2012b). Based on this information, the possibility of encountering killer whales during the Bremerton project is low to medium, depending on the actual work month.

In one highly unusual 1997 event, 19 L pod individuals entered Sinclair and Dyes Inlet, and remained in Dyes Inlet for 30 days, from October 21 to November 19. As this event unfolded, whale specialists became increasingly concerned that the whale's exit was blocked by shallow water and the need to pass under several bridges, even though they had passed under the same bridges to enter the inlet. After several individuals displayed signs of weight loss, hazing was considered to drive them out of the inlet. However, on day 30 the group exited on their own (Kitsap Sun 2012).

Killer whales are protected under the MMPA of 1972. The West Coast Transient stock is not designated as depleted under the MMPA or listed as "threatened or "endangered" under the ESA. The Southern Resident stock is listed as an endangered distinct population segment (DPS) under the ESA. On November 29, 2006, NMFS published a final rule designating critical habitat for the Southern Resident killer whale DPS (71 FR 69054). Both Puget Sound and the San Juan Islands are designated as core areas of critical habitat under the ESA, but areas less than 20 feet deep relative to extreme high water are not designated as critical habitat (71 FR 69054). A final recovery plan for southern residents was published in January of 2008 (NMFS 2008a).

Gray Whale

Gray whales are recorded in Washington waters during feeding migrations between late spring and autumn with occasional sightings during winter months (Calambokidis *et al.* 1994, 2002; Orca Network 2011).

Early in the 20th century, it is believed that commercial hunting for gray whales reduced population numbers to below 2,000 individuals (Calambokidis and Baird 1994). After listing of the species under the ESA in 1970, the number of gray whales increased dramatically resulting in their delisting in 1994. Population surveys since the delisting estimate that the population fluctuates at or just below the carrying capacity of the species (~ 26,000 individuals) (Rugh *et al.* 1999; Calambokidis *et al.* 1994; Angliss and Outlaw 2007).

Gray whales migrate within 5 to 43 km of the coast of Washington during their annual north/south migrations (Green *et al.* 1995). Gray whales migrate south to Baja California where they calve in November and December, and then migrate north to Alaska from March through May (Rice *et al.* 1984; Rugh *et al.* 2001) to summer and feed. A very few gray whales are observed in Washington inland waters between the months of September and January, with peak numbers of individuals from March through May. Peak months of gray whale observations in the area of activity occur outside the proposed work window of September through February. The average tenure within Washington inland waters is 47 days and the longest stay was 112 days.

Although typically seen during their annual migrations on the outer coast, a regular group of gray whales annually comes into the inland waters at Saratoga Passage and Port Susan from March through May to feed on ghost shrimp (Weitkamp *et al.* 1992). During this time frame they are also seen in the Strait of Juan de Fuca, the San Juan Islands, and areas of Puget Sound, although the observations in Puget Sound are highly variable between years (Calambokidis *et al.* 1994).

Between December 2002 and May 2012, there were three reports of gray whale in the Bremerton area during the proposed in-water work window months for this project: January 8 and 10, 2008 (likely the same individual); November 28–29, 2008; and December 2–6, 2009 (Orca Network 2012b). There were also two reports of gray whale stranding, one on May 3, 2005 at the US Navy Puget Sound Naval Shipyard to the west of the Bremerton terminal (Cascadia 2005), and one on a beach in the Bremerton area on July 27, 2011. Typically 4–6 gray whales strand every year in Washington State (Cascadia 2011).

The Eastern North Pacific stock of gray whales was removed from listing under the ESA in 1994 after a 5-year review by NOAA Fisheries (Angliss and Outlaw 2007). In 2001 NOAA Fisheries received a petition to relist the stock under the ESA, but it was determined that there was not sufficient information to warrant the petition (Angliss and Outlaw 2007).

Humpback Whale

Humpback whales are wide-ranging baleen whales that can be found virtually worldwide. They summer in temperate and polar waters for feeding, and winter in tropical waters for mating and calving. Humpbacks are vulnerable to whaling due to their tendency to feed in near shore areas. Recent studies have indicated that there are three distinct stocks of humpback whale in the North Pacific: California-Oregon-Washington (formerly Eastern North Pacific), Central North Pacific and Western North Pacific (NMFS 2011e).

The California-Oregon-Washington (CA-OR-WA) stock calve and mate in coastal Central America and Mexico and migrate up the coast from California to southern British Columbia in the summer and fall to feed (NMFS 1991; Marine Mammal Commission 2003; Carretta *et al.* 2011). Although infrequent, interchange between the other two stocks and the Eastern North Pacific stock occurs in breeding areas (Carretta *et al.* 2011). Few Eastern North Pacific stock humpback whales are seen in Puget Sound, but more frequent sightings occur in the Strait of Juan de Fuca and near the San Juan Islands. Most sightings are in spring and summer. Humpback whales feed on krill, small shrimp-like crustaceans and various kinds of small fish.

The 2007/2008 estimate of 2,043 humpback whales is the best estimate for abundance for this stock, though it does exclude some whales in Washington (Calambokidis *et al.* 2009).

Historically, humpback whales were common in inland waters of Puget Sound and the San Juan Islands (Calambokidis *et al.* 2002). In the early part of this century, there was a productive commercial hunt for humpbacks in Georgia Strait that was probably responsible for their long disappearance from local waters (Osborne *et al.* 1988). Since the mid-1990s, sightings in Puget Sound have increased. Between 1996 and 2001, Calambokidis *et al.* (2002) recorded only six individuals south of Admiralty Inlet (northern Puget Sound).

Between September 2003 and February 2012, there was one unconfirmed report (February 24, 2012) of humpback whale in the Bremerton action area (Orca Network 2012).

Humpback whales are listed as "endangered" under the ESA, and consequently the stock is automatically considered a depleted stock under the MMPA.

Potential Effects of the Specified Activity on Marine Mammals

WSDOT and NMFS determined that open-water pile driving and pile removal associated with the construction activities at Bremerton Ferry Terminal has the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the proposed activity.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, hearing impairment could result in the reduced ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that leads to TTS could cause PTS.

Experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p–p), which is equivalent to 228 dB (p–p) re 1 µPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 µPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Current NMFS acoustic thresholds that identify the received sound levels above which permanent hearing impairment (permanent threshold shift, PTS) or other injury could potentially occur are 180 and 190 dB re 1 µPa (rms) for cetaceans and pinnipeds, respectively. The established 180– and 190–dB re 1 µPa (rms) criteria are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before direct data on temporary threshold shift (TTS) (from which PTS is primarily extrapolated) for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. For the proposed wingwall replacement work at the Bremerton Ferry Terminal, only vibratory pile driving would be used. Noise levels measured near the source of vibratory hammers (10 m and 16 m from the source, see above) are much lower than the 180 dB re 1 µPa (rms) threshold currently used by NMFS. Therefore, it is very unlikely that any marine mammals would experience TTS or PTS as a result of noise exposure to WSDOT's proposed construction activities at Bremerton Ferry Terminal.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed WSDOT construction activities is confined in an area that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depths near the ferry terminals, underwater sound propagation for low-frequency sound (which is the major noise source from pile driving) is expected to be poor.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerrero Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with WSDOT construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 120 dB_{rms} re 1 µPa received level for non-impulse noises (such as vibratory pile driving, saw cutting, drilling, and dredging) for the onset of marine mammal Level B behavioral harassment.

As far as airborne noise is concerned, the estimated in-air source level from vibratory pile driving a 30-in steel pile is estimated at 97.8 dB re 1 µPa at 15 m (50 feet) from the pile (Laughlin 2010b). Using the spreading loss of 6 dB per doubling of distance, it is estimated that the distances to the 90 dB and 100 dB thresholds were estimated at 37 m and 12 m, respectively.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from vessels) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Further, during the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Water and Sediment Quality

Short-term turbidity is a water quality effect of most in-water work, pile removal and driving. WSF must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area.

Roni and Weitkamp (1996) monitored water quality parameters during a pier replacement project in Manchester, Washington. The study measured water quality before, during and after pile removal and driving. The study found that construction activity at the site had "little or no effect on dissolved oxygen, water temperature and salinity," and turbidity (measured in nephelometric turbidity units [NTU]) at all depths nearest the construction activity was typically less than 1 NTU higher than stations farther from the project area throughout construction.

Similar results were recorded during pile removal operations at two WSF ferry facilities. At the Friday Harbor terminal, localized turbidity levels (from three timber pile removal events) were generally less than 0.5 NTU higher than background levels and never exceeded 1 NTU. At the Eagle Harbor maintenance facility, local turbidity levels (from removal of timber and steel piles) did not exceed 0.2 NTU above background levels. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980).

Cetaceans are not expected to be close enough to the Bremerton ferry terminal to experience effects of turbidity, and any pinnipeds will be transiting the terminal area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

Removal of the timber wingwalls at the Bremerton ferry terminal will result in 112 creosote-treated piles (100 tons) removed from the marine environment. This will result in the potential, temporary and localized sediment re-suspension of some of the contaminants associated with creosote, such as polycyclic aromatic hydrocarbons. However, the actual removal of the creosote-treated wood piles from the marine environment will result in a long-term improvement in water and sediment quality. The net impact is a benefit to marine organisms, especially toothed whales and pinnipeds that are high in the food chain and bioaccumulate these toxins. This is especially a concern for long-lived species that spend their entire life in Puget Sound, such as Southern Resident killer whales (NMFS 2008a).

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

No subsistence harvest of marine mammals occur in the proposed action area.

Proposed Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Bremerton Ferry Terminal wingwall replacement project, WSDOT proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. These mitigation measures would be employed during all pile removal and installation activities at the Bremerton Ferry Terminal. WSDOT has informed NMFS that any monitoring measures required by the IHA would be imposed upon contracting parties, through the Contract Plans and Specifications, and contractors.

Since the measured source levels (at 10 and 16 m, Table 1) of the vibratory hammer involved in pile removal and pile driving are below NMFS current thresholds for Level A takes, i.e., below 180 dB re 1 µPa (rms), no exclusion zone would be established, and there would be no required power-down and shutdown measures. Instead, WSDOT would establish and monitor the 120 dB re 1 µPa (rms) zone of influence (ZOI, see below Proposed Monitoring and Reporting section).

One major mitigation measure for WSDOT's proposed pile removal and pile driving activities is ramping up, or soft start, of vibratory pile hammers. The purpose of this procedure is to reduce the startling behavior of marine mammals in the vicinity of the proposed construction activity from sudden loud noise.

Soft start requires contractors to initiate the vibratory hammer at reduced power for 15 seconds with a 1 minute

interval, and repeat such procedures for an additional two times.

In addition, monitoring for marine mammal presence will take place 20 minutes before, during and 30 minutes after pile driving to ensure that marine mammals takes will not exceed the authorized levels.

Furthermore, a containment boom surrounding the work area would be used during creosote-treated pile removal to contain and collect any floating debris and sheen, provided that the boom does not interfere with operations. The contractor would also retrieve any debris generated during construction and properly disposed of at an approved upland location. The contractor would have oil-absorbent materials on site to be used in the event of a spill if any oil product is observed in the water.

Finally, if the number of any allotted marine mammal takes (see *Estimated Take by Incidental Harassment* section below) reaches the limit under the IHA (if issued), WSDOT would implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Proposed Monitoring Measures

The monitoring plan proposed by WSDOT can be found in its IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

(1) Marine Mammal Monitoring Coordination

WSDOT would conduct briefings between the construction supervisors and the crew and protected species observers (PSOs) prior to the start of pile-driving activity, marine mammal monitoring protocol and operational procedures.

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research would be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: the NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sighting information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study killer whale communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile removal or driving.

(2) Protected Species Observers (PSOs)

WSDOT will employ qualified PSOs to monitor the 120 dB_{rms} re 1 µPa for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be necessary to correctly identify the target.
- Advanced education in biological science, wildlife management, mammalogy or related fields (Bachelors degree or higher is preferred), but not required.
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(3) Monitoring Protocols

PSOs would be present on site at all times during pile removal and driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle would be recorded.

WSDOT proposes the following methodology to estimate marine mammals that were taken as a result of the proposed Bremerton Ferry Terminal construction work:

- A range finder or hand-held global positioning system device would be used to ensure that the 120 dB_{rms} re 1 µPa Level B behavioral harassment ZOI is monitored.
- The vibratory Level B acoustical harassment ZOI would be monitored for the presence of marine mammals 20 minutes before, during, and 30 minutes after any pile removal or driving activity.
- Monitoring would be continuous unless the contractor takes a significant break—then the 20 minutes before, during, and 30 minutes monitoring sequence will begin again.
- If marine mammals are observed, the following information will be documented:
  - Species of observed marine mammals;
  - Number of observed marine mammal individuals;
  - Behavioral of observed marine mammals;
  - Location within the ZOI; and
  - Animals' reaction (if any) to pile-driving activities.
- During vibratory pile removal and driving, one land-based biologist would monitor the area from the terminal work site, and one monitor will move among a number of access points along the southern Sinclair Inlet shore. Binoculars

shall be used during marine mammal monitoring.

NMFS has reviewed the WSDOT's proposed marine mammal monitoring protocol, and has determined the applicant's monitoring program is adequate, particularly as it relates to assessing the level of taking or impacts to affected species. The land-based PSO is expected to be positioned in a location that will maximize his/her ability to detect marine mammals and will also utilize binoculars to improve detection rates. In addition, the boat-based PSO will cruise within the 120 dB ZOI, which is not a particularly large zone, thereby allowing him/her to conduct additional monitoring with binoculars. With respect to WSDOT's take limits, NMFS is primarily concerned that WSDOT could reach its Southern Resident killer whale limit. However, killer whales have large dorsal fins and can be easily spotted from great distances. Further, Southern Resident killer whales typically move in groups, which makes visual detection much easier. In addition, added underwater acoustic monitoring by Orca Network in the region would further provide additional detection, since resident killer whales are very vocal.

Proposed Reporting Measures

WSDOT would provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

Estimated Take by Incidental Harassment

As mentioned earlier in this document, a worst-case scenario for the Bremerton Ferry Terminal project assumes that it may take four days to remove the existing piles and seven days to install the new piles. The maximum total number of hours of pile removal activity is about 28 hours, and pile-driving activity is about 6.75 hours (averaging about 3.2 hours of active pile removal/driving for each construction day). The actual number of hours for both projects is expected to be less.

Also, as described earlier, for non-impulse noise, NMFS uses 120 dB re 1 µPa (rms) as the threshold for Level B behavioral harassment. The distance to the 120 dB contour Level B acoustical harassment threshold due to vibratory pile driving for the Bremerton ferry terminal project extends a maximum of 4.7 km (2.9 miles) before land is intersected. The ZOI would be monitored during construction to estimate actual harassment take of marine mammals.

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m, and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m.

The nearest known harbor seal haulout site to the Bremerton ferry terminal is 8.5 km north and west (shoreline distance). The nearest documented California and Steller sea lion haulout sites to the Bremerton ferry terminal are navigation buoys in Rich Passage, approximately 9 and 10 km east of the terminal. The Puget Sound Naval Shipyard security barrier California sea lion haulout is located approximately 435 m SW of the ferry terminal.

In-air noise from this project will not reach to haulout sites, but harbor seals swimming on the surface through the 37 m zone, and other pinnipeds swimming on the surface through the 12 m zone during vibratory pile removal or driving may be temporarily disturbed.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the Bremerton Ferry Terminal during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal. As a result, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and observations from Navy biologists.

Based on the estimates, approximately 649 Pacific harbor seals, 1,584 California sea lions, 66 Steller sea lions, 40 killer whales (24 transient, 16 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received sound levels above 120 dB re 1 µPa (rms) from the proposed Bremerton Ferry Terminal wingwall dolphin replacement work. A summary of the estimated takes is presented in Table 3.

TABLE 3—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE DRIVING AND PILE REMOVAL LEVELS ABOVE 120 dB re 1 µPa (rms)

Species	Estimated marine mammal takes	Percentage
Pacific harbor seal	649	4.4
California sea lion	1,584	0.53
Steller sea lion	66	0.11
Killer whale, transient	24	6.8
Killer whale, Southern Resident	16	18.8
Gray whale	8	0.03
Humpback whale	8	0.7

The requested takes represent 4.4% of the Inland Washington stock harbor seals (estimated at 14,612), 0.53% of the U.S. stock California sea lion (estimated at 296,750), 0.11% of the eastern stock Steller sea lion (estimated at 58,334), 6.8% of the West Coast transient killer whale (estimated at 354), 18.8% of Southern Resident killer whale (estimated at 85), 0.03% of the Eastern North Pacific stock gray whale (estimated at 26,000), and 0.7% of the

Eastern North Pacific stock humpback whale (estimated at 1,100).

Negligible Impact and Small Numbers Analysis and Preliminary Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSDOT's proposed Bremerton Ferry Terminal construction project would conduct vibratory pile removal and pile driving to replace wingwall structures. Elevated underwater noises are expected to be generated as a result of pile removal and pile driving activities. However, noise levels from the machinery and activities are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with WSDOT construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the proposed construction areas, it is estimated that approximately 649 Pacific harbor seals, 1,584 California sea lions, 66 Steller sea lions, 40 killer whales (24 transient, 16 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received noise levels above 120 dB_{rms} re 1 µPa from the proposed construction work at the Bremerton Ferry Terminal. These numbers represent approximately 0.03%–18.8% of the stocks and populations of these species could be affected by Level B behavioral harassment. As mentioned earlier in this document, the worst case scenario for the proposed construction work would only take a total of 34.75 hours (28 hours for pile removal and 6.75 hours for pile driving).

In addition, these low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. In addition, no important feeding and/or reproductive areas of marine mammals is known to be near the proposed action area. Therefore, the take resulting from the proposed Bremerton Ferry Terminal construction projects is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. The maximum estimated 120 dB isopleths from vibratory pile driving is approximately 4.7 km at from the pile before being blocked by landmass.

The closest documented California sea lion haulout site to the Bremerton Ferry Terminal is the Puget Sound Naval Shipyard security barrier, located approximately 435 m SW of the ferry terminal. The next closest documented California sea lion haulout sites to the Bremerton Ferry Terminal are navigation buoys and net pens in Rich Passage, approximately nine and ten km east of the terminal, respectively. However, it is estimated that airborne noise from vibratory pile driving a 30-in steel pile would fall below 90 dB and 100 dB re 1 20 µPa at 37 m and 12 m from the pile, respectively. Therefore, pinnipeds hauled out at the Puget Sound Naval Shipyard security barrier will not be affected.

For the reasons discussed in this document, NMFS has preliminarily determined that the impact of vibratory pile removal and pile driving associated with wingwall replacements at Bremerton Ferry Terminal would result, at worst, in the Level B harassment of small numbers of six marine mammals that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within Washington coastal waters and haul-out sites has led NMFS to preliminarily determine that this action will have a negligible impact on these species in the vicinity of the proposed construction area.

In addition, no take by TTS, Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Authorization is valid from September 1, 2013, through February 15, 2014.

2. This Authorization is valid only for activities associated in-water construction work at the Bremerton Ferry Terminals in the State of Washington.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), transient and Southern Resident killer whales (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) Vibratory pile removal; and

(ii) Vibratory pile driving.

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Northwest Regional Administrator (206–526–6150), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or his designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions.

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a)

above and by the numbers listed in Table 3. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation.

(a) Ramp Up (Soft Start):

Vibratory hammer for pile removal and pile driving shall be initiated at reduced power for 15 seconds with a 1 minute interval, and be repeated with this procedure for an additional two times.

(b) Marine Mammal Monitoring:

Monitoring for marine mammal presence shall take place 20 minutes before, during and 30 minutes after pile driving.

(c) Power Down and Shutdown Measures

If the number of any allotted marine mammal takes reaches the limit under the IHA (if issued), WSDOT shall implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

7. Monitoring.

(a) Protected Species Observers: WSDOT shall employ qualified protected species observers (PSOs) to monitor the 120 dB_{rms} re 1 µPa zone of influence (ZOI) for marine mammals. Qualifications for marine mammal observers include:

(i) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be required to correctly identify the target.

(ii) Advanced education in biological science, wildlife management, mammalogy or related fields (bachelors degree or higher is preferred), but not required.

(iii) Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).

(iv) Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

(v) Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.

(vi) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

(vii) Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

(i) A range finder or hand-held global positioning system device will be used to ensure that the 120 dB_{rms} re 1 µPa Level B behavioral harassment ZOI is monitored.

(ii) A 20-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(iii) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavioral of observed marine mammals;

(D) Location within the ZOI; and

(E) Animals' reaction (if any) to pile-driving activities

(iv) During vibratory pile removal and driving, one land-based biologist would monitor the area from the terminal work site, and one monitor will move among a number of access points along the southern Sinclair Inlet shore. Binoculars shall be used during marine mammal monitoring.

(v) WSDOT shall contact the Orca Network and/or Center for Whale Research to find out the location of the nearest marine mammal sightings.

(vi) WSDOT shall also utilize marine mammal occurrence information collected by the Orca Network using hydrophone systems to maximize marine mammal detection in the project vicinity.

8. Reporting:

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this Authorization and the Incidental Take Statement must be in the possession of each contractor who performs the construction work at the Bremerton Ferry Terminals.

11. WSDOT is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion. National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not the issuance of the proposed IHA may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Endangered Species Act (ESA)

The humpback whale, Southern Resident stock of killer whale, and the eastern population of Steller sea lions, are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. NMFS' Permits and Conservation Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to WSDOT under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to WSDOT's Bremerton Ferry Terminal construction projects,

provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 14, 2013.

Helen Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–03808 Filed 2–19–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this Notice announces that the Information Collection Request ("ICR") abstracted below has been forwarded to the Office of Management and Budget ("OMB") for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before March 22, 2013.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection described in this Notice, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038–NEW, Form TO in any correspondence. Submit comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, by the following method:

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street NW., Washington, DC 20503.

And

Commodity Futures Trading Commission ("CFTC"), by any of the following methods:

- *Agency Web Site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Melissa Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same address as for "Mail," above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: Please submit your comments to both OMB and CFTC (for CFTC, use only one of the methods listed above), and identify all comments as pertaining to OMB Control No. 3038–NEW, Form TO.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received, without change, to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Division of Market Oversight, *dheitman@cftc.gov,* (202) 418–5041, FAX: (202) 418–5507; or David Aron, Office of the General Counsel, *daron@cftc.gov,* (202) 418–6621, FAX: (202) 418–5702; Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, and refer to OMB Control No. 3038–NEW, Form TO.

SUPPLEMENTARY INFORMATION:

Title: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options (OMB Control No. 3038–NEW, Form TO). This is a request for approval of a new collection of information.

Abstract: In accordance with section 721 of the Dodd-Frank Act, on April 27, 2012, the Commission published a final and interim final rule governing commodity options ("Commodity Options Rules").[2] The final rule portion of that rulemaking adopted the Commission's proposal to generally permit market participants to trade commodity options, which are statutorily defined as swaps,[3] subject to the same rules applicable to every other swap. The interim final rule portion of the rulemaking includes a trade option exemption for physically delivered commodity options purchased by commercial users of the commodities underlying the options ("Trade Option Interim Final Rule" or "Trade Option IFR"), subject to certain conditions. Those conditions, which include both recordkeeping and reporting obligations, are primarily intended to preserve a level of market visibility for the Commission while reducing the regulatory compliance burden for market participants. The requirement to file Form TO constitutes the collection of information within the meaning of the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Form TO filing requirement was promulgated last year in the Commodity Options Rules, and the associated collection of information is now being submitted to OMB. The **Federal Register** notice for the 60-day comment period on this request for approval of a new collection of information was published on December 17, 2012.[4] That notice included a description of the content of Form TO and when a person would be required to file Form TO.

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[1] *See* 17 CFR 145.9.

[2] Commodity Options, 77 FR 25320, April 27, 2012.

[3] *See* 7 U.S.C. 1a(47)(A)(i). Note that the swap definition excludes options on futures (which must be traded on a designated contract market ("DCM") pursuant to part 33 of the Commission's regulations) (*see* Commodity Exchange Act ("CEA") section 1a(47)(B)(i), 7 U.S.C. 1a(47)(B)(i)), but it includes options on physical commodities (whether or not traded on a DCM) (*see* CEA section 1a(47)(A)(i), 7 U.S.C. 1a(47)(A)(i)). Other options excluded from the statutory definition of swap are options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that are subject to the Securities Act of 1933 and the Securities Exchange Act of 1934 (*see* CEA section 1a(47)(B)(iii), 7 U.S.C. 1a(47)(B)(iii)) and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (*see* CEA section 1a(47)(B)(iv), 7 U.S.C. 1a(47)(B)(iv)).

Note also that the Commission's regulations define a commodity option transaction or commodity option as "any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'call,' 'put,' 'advance guaranty' or 'decline guaranty'." 17 CFR 1.3(hh). For purposes of this release, the Commission uses the term "commodity options" to apply solely to commodity options not excluded from the swap definition set forth in CEA section 1a(47)(A), 7 U.S.C. 1a(47)(A). Last year, the Commission published, jointly with the Securities and Exchange Commission ("SEC") final rules to further define, among other things, the term "swap." *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security Based Swap Agreement; Final Rule, 77 FR 48207, August 13, 2012 ("Product Definitions Final Rules"). The Product Definitions Final Rules address the determination of whether a commodity option or a transaction with optionality is subject to the swap definition in the first instance. If a commodity option or a transaction with optionality is excluded from the scope of the swap definition (for example, if it is an excluded forward contract—*see id.* at 48227), the commodity options rules, including the Form TO reporting requirement, are not applicable.

[4] *See* Agency Information Collection Activities; Proposed Collection, Comment Request; Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options, 77 FR 74647.

Burden statement: The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN HOURS AND BURDEN HOUR COSTS

17 CFR	Annual number of respondents	Frequency of response per respondent	Hours per response and cost	Total annual responses	Total hours cost
Part 32, Appendix A, Form TO.	100	Annually	2 hours at $200 per response[5].	100 (one form per otherwise unreported trade option participant).	$20,000 (100 responses times 2 hours per response, based on $100/hour).

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 13, 2013.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2013–03792 Filed 2–19–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0028]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 22, 2013.

Title, Associated Form and OMB Number: Federal Agency Retail Pharmacy Program; OMB Control Number 0720–0032.

Type of Request: Extension.

Number of Respondents: 250.

Responses per Respondent: 8.

Annual Responses: 2000.

Average Burden per Response: 8 hours.

Annual Burden Hours: 16,000.

Needs and Uses: The Department of Defense (DoD) is extending the information collection requirements under current OMB control number 0720–0032. Specifically, under the collection of information, respondents (drug manufacturers) will base refund calculation reporting requirements on both the Federal Ceiling Price and the Federal Supply Schedule Price, whichever is lower. Previously, drug manufacturers' reporting requirements addressed only the Federal Ceiling Price. DoD will use the reporting and audit capabilities of the Pharmacy Data Transaction Service (PDTS) to validate refunds owed to the Government. The government received approximately $1.5 billion from pharmaceutical companies as a result of this program/refund calculation reporting requirements.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: January 31, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–03825 Filed 2–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0015]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program (DL) Regulations

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 22, 2013.

[5] The Commission estimates that entities will spend $100 per hour. The $100 per hour estimate was used as the average hourly wage rate in the PRA section of the Internal Business Conduct Standards for Swap Dealers and Major Swap Participants final rule (see Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, 20194 (Apr. 3, 2012)) and the wage rate for CCOs under the DCO final rules (see Proposed Collection, Comment Request; Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Book-out Agreement Confirmation, 76 FR 59344, 59428 (Aug. 16, 2012)). As the Commission explained in the Internal Business Conduct Standards final rule, the estimate of $100 per hour was based on recent Bureau of Labor Statistics findings, including the mean hourly wage of an employee under occupation code 23–1011, "Lawyers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage Industry," which is $85.20. The mean hourly wage of an employee under occupation code 11–3031, "Financial Manager," in the same industry is $80.90. Additionally, SIFMA's "Report on Management & Professional Earnings in the Securities Industry—2011" estimates the average wage of a compliance attorney at $96.42 and a compliance specialist in the U.S. at $74.85 per hour. As in those rules, the Commission is using a $100 per hour wage rate in calculating the cost burdens imposed by this collection of information and requests comment on the accuracy of its estimate.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0015 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program (DL) Regulations.

OMB Control Number: 1845–0021.

Type of Review: an extension of an existing information collection of a previously approved information collection.

Respondents/Affected Public: Individuals or households; State, Local, or Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 6,603,667.

Total Estimated Number of Annual Burden Hours: 535,998.

Abstract: The William D. Ford Federal Direct Loan Program regulations cover areas of program administration. These regulations are in place to minimize administrative burden for program participants, to determine eligibility for and provide program benefits to borrowers, and to prevent fraud and abuse of program funds to protect the taxpayers' interests. This request is for continued approval of reporting and recordkeeping related to the administrative requirements of the Direct Loan program.

Dated: February 13, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–03789 Filed 2–19–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Arts in Education Model Development and Dissemination Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Arts in Education Model Development and Dissemination Program

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.351D.

DATES: *Applications Available:* February 20, 2013.

Deadline for Notice of Intent to Apply: March 22, 2013.

Deadline for Transmittal of Applications: April 22, 2013.

Deadline for Intergovernmental Review: June 20, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Arts in Education Model Development and Dissemination (AEMDD) program supports the enhancement, expansion, documentation, evaluation, and dissemination of innovative, cohesive models that are based on research and have demonstrated that they effectively— (1) Integrate standards-based arts education into the core elementary and middle school curriculum; (2) strengthen standards-based arts instruction in these grades; and (3) improve students' academic performance, including their skills in creating, performing, and responding to the arts. Projects funded through the AEMDD program are intended to increase the amount of nationally available information on effective models for arts education that integrate the arts with standards-based education programs.

Priorities: This competition includes one absolute priority and four competitive preference priorities that are explained in the following paragraphs. Absolute priority 1 is from the notice of final priority, requirements, and definitions for this program, published in the **Federal Register** on March 30, 2005 (70 FR 16234). The competitive preference priorities are from the notice of supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities).

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

This priority supports projects that enhance, expand, document, evaluate, and disseminate innovative, cohesive models that are based on research and have demonstrated their effectiveness in (1) integrating standards-based arts education into the core elementary or middle school curriculum, (2) strengthening standards-based arts instruction in the elementary or middle school grades, and (3) improving the academic performance of students in elementary or middle school grades, including their skills in creating, performing, and responding to the arts.

In order to meet this priority, an applicant must demonstrate that the model project for which it seeks funding (1) serves only elementary school or middle school grades, or both, and (2) is linked to State and national standards intended to enable all students to meet challenging expectations and to improve student and school performance.

Note: National standards are the arts standards developed by the Consortium of National Arts Education Associations or another comparable set of national arts standards. The standards developed by the

Consortium outline what students should know and be able to do in the arts. These are not Department standards.

Competitive Preference Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an applicant that meets Priority 1, up to an additional 10 points to an applicant that meets Priority 2, up to an additional 5 points to an applicant that meets Priority 3, and up to an additional 5 points to an applicant that meets Priority 4. Therefore, the maximum number of competitive preference points that an application can receive under this competition is 30 points, depending on how well the application meets one or more of these priorities.

When using these priorities to give competitive preference to an application, we will review the applications using a two-stage review process. In the first stage, we will review the applications without taking the competitive preference priorities into account. In the second stage, we will review the applications rated highest in the first stage of the process to determine whether they will receive the competitive preference priority points. We will consider awarding competitive preference priority points only to those applicants with top-ranked scores based on the selection criteria. An applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning the competitive preference priority points.

These priorities are:

Priority 1—Building Evidence of Effectiveness (0 to 10 Points)

Projects that propose evaluation plans that are likely to produce valid and reliable evidence in one or more of the following priority areas: (a) Improving project design and implementation or designing more effective future projects to improve outcomes, (b) Identifying and improving practices, strategies, and policies that may contribute to improving outcomes.

Under this priority, at a minimum, the outcome of interest is to be measured multiple times before and after the treatment for project participants and, where feasible, for a comparison group of non-participants.

Priority 2—Supporting Programs, Practices, or Strategies for Which There Is Strong or Moderate Evidence of Effectiveness (0 to 10 Points)

Projects that are supported by strong or moderate evidence.

A project that is supported by strong evidence (as defined in this notice) will receive more points than a project that is supported by moderate evidence (as defined in this notice).

Priority 3—Turning Around Persistently Lowest-Achieving Schools (0 to 5 Points)

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants program (see 75 FR 66363) as part of a State's approved FY 2009, FY 2010, or FY 2011 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html.*

Priority 4—Technology (0 to 5 Points)

Projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Application Requirements: To be eligible for AEMDD funds, applicants must propose to address the needs of low-income children by carrying out projects that serve at least one elementary or middle school in which 35 percent or more of the children enrolled are from low-income families (based on data used in meeting the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)).

Definitions

The definitions for "arts" and "integrating," as used in this notice, are from the notice of final priority, requirements, and definitions for this program, published in the **Federal Register** on March 30, 2005 (70 FR 16234). The remaining definitions are from the Supplemental Priorities published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Arts includes music, dance, theater, media arts, and visual arts, including folk arts.

Carefully matched comparison group design means a type of quasi-experimental study (as defined in this notice) that attempts to approximate an experimental study (as defined in this notice). More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) Demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) The time period in which the two groups are studied (e.g., the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) Methods used to collect outcome data (e.g., the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Integrating means (i) encouraging the use of high-quality arts instruction in other academic/content areas, and (ii) strengthening the place of the arts as a core academic subject in the school curriculum.

Interrupted time series design means a type of quasi-experimental study (as defined in this notice) in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a

different geographic area, substantially increases the reliability of the findings.[1]

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (i.e., moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence:

(1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability;

(2) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or

(3) Correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the "all students" group.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental study (as defined in this notice) and can support causal conclusions (i.e., minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed and well-implemented (as defined in this notice) quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design (as defined in this notice) that closely approximates an experimental study (as defined in this notice). In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence:

(1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or

(2) One large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Student achievement means—(a) For tested grades and subjects: (1) a student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Program Authority: 20 U.S.C. 7271.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final priority, requirements, and definitions for this program, published in the **Federal Register** on March 30, 2005 (70 FR 16234); (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

[1] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time; a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,047,326.

The Administration's budget request for FY 2013 does not include funds for this program. In place of this program and several other, sometimes narrowly targeted, programs focused on student achievement in specific subject areas, the Administration has proposed to create, through the ESEA reauthorization, a broader program, "Effective Teaching and Learning for a Well-Rounded Education," that would support activities to improve student achievement and teacher effectiveness in arts and other subject areas.

However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $275,000 to $325,000 for the first year of the project. Funding for the second, third, and fourth years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Average Size of Awards: $300,000.

Estimated Number of Award: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months (subject to availability of funds).

Note: The first 12 months of the project period may be used to build capacity to effectively carry out the comprehensive activities involved in the evaluation plan described in competitive preference priority #1.

III. Eligibility Information

1. *Eligible Applicants:* (1) One or more local educational agencies (LEAs), including charter schools that are considered LEAs under State law and regulations, that may work in partnership with one or more of the following:

- A State or local non-profit or governmental arts organization.
- A State educational agency (SEA) or regional educational service agency.
- An institution of higher education.
- A public or private agency, institution, or organization, such as a community- or faith-based organization; or

(2) One or more State or local non-profit or governmental arts organizations that must work in partnership with one or more LEAs and may partner with one or more of the following:

- An SEA or regional educational service agency.
- An institution of higher education.
- A public or private agency, institution, or organization, such as a community- or faith-based organization.

Note: If more than one LEA or arts organization wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 of EDGAR.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under the program.

This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 76.569. As soon as they decide to apply, applicants are urged to contact the ED Indirect Cost Group at (202) 377–3840 for guidance about obtaining a restricted indirect cost rate to use on the Budget Information form (ED Form 524) included with the application package.

c. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with funds awarded under this program with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

IV. Application and Submission Information

1. *Address to Request Application Package:*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.351D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this program. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This email notification should be sent to Diane Austin at *artsdemo@ed.gov*.

Applicants that fail to provide this email notification may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (Part III) to the equivalent of no more than 50 single-sided pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the

application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: February 20, 2013.

Deadline for Notice of Intent to Apply: March 22, 2013.

Deadline for Transmittal of Applications: April 22, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: June 20, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for Grants under the Arts in Education Model Development and Dissemination program, CFDA number 84.351D, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Arts in Education Model Development and Dissemination program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.351, not 84.351D).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application

deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under FOR FURTHER INFORMATION CONTACT in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You 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 through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

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: Diane Austin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W245, Washington, DC 20202–5950. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *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 the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.351D), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

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.

(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.

(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.

c. *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 original and two copies of your application by hand,

on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.351D), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260 .

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in item 11 of the SF 424 the CFDA number, including sulfix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The notes following the selection criteria are guidance to help applicants in preparing their applications and are not required by statute or regulations. The selection criteria are as follows:

(1) *Need for project (15 points).*

The Secretary considers the need for the proposed project by considering the following factors:

(a) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance (10 points).*

The Secretary considers the significance of the proposed project by considering the following factor:

The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(3) *Quality of the project design (30 points).*

The Secretary considers the quality of the design of the proposed project by considering the following factors:

(a) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practices.

(b) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) *Quality of project personnel (10 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the following factor:

The qualifications, including relevant training and experience, of key project personnel.

(5) *Quality of the management plan (25 points).*

The Secretary considers the quality of the management plan for the proposed project by considering the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(c) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(6) *Quality of the project evaluation (10 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project by considering the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The evaluation plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning, or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when these instruments will be developed; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system

that does not meet the standards in 34 CFR part 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the Arts in Education Model Development and Dissemination program: (1) The percentage of students participating in arts model projects funded through the AEMDD program who demonstrate proficiency in mathematics compared to those in control or comparison groups and (2) the percentage of students participating in arts model projects who demonstrate proficiency in reading compared to those in control or comparison groups.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W245, Washington, DC 20202–5950. Telephone: (202) 260–1280 or by email: *artsdemo@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: February 14, 2013.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2013–03876 Filed 2–19–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities (Board).

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Wednesday, March 6, 2013.

Time: 9:00 a.m.–2:00 p.m. (CST).

ADDRESSES: J. F. Drake State Technical College, S. C. O'Neal, Sr. Library and Technology Center, 3421 Meridian Street North, Huntsville, AL 35811, 256–551–3117.

FOR FURTHER INFORMATION CONTACT: John P. Brown, Jr., Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW, Washington, DC 20204; telephone: (202) 453–5634 or (202) 453–5630, fax: (202) 453–5632.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Board is

to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

Agenda

The Board will receive updates from the Chairman of the President's Board of Advisors on HBCUs, the Board's subcommittees and the Acting Executive Director of the White House Initiative on HBCUs on their respective activities, thus far, during Fiscal Year 2013 including activities that have occurred since the Board's last meeting, which was held on September 27, 2012. In addition, the Board will discuss possible strategies to meet its duties under its charter and special guests have been invited to discuss initiatives that are directed at two-year colleges.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify John P. Brown, Acting Executive Director, White House Initiative on HBCUs, at (202) 453–5634, no later than Friday, March 1, 2013. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Wednesday, March 6, 2013, from 1:30 p.m.–2:00 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of John P. Brown, Jr., White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, by Friday, March 1, 2013.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday (excluding federal holidays) during the hours of 9:00 a.m. to 5:00 p.m.

Electronic Access to the Document: You may 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: *www.ed.gov/fedregister/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Dated: February 13, 2013.

Martha J. Kanter,

Under Secretary, U.S. Department of Education.

[FR Doc. 2013–03746 Filed 2–19–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 21, 2013, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

991ST—MEETING, REGULAR MEETING, FEBRUARY 21, 2013, 10:00 A.M.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	RM10–12–000	Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.
	Electric	
E–1	ER13–85–000	Maine Public Service Company.
E–2	ER13–83–000	Duke Energy Carolinas LLC and Carolina Power and Light Company.
	ER13–88–000	Alcoa Power Generating, Inc.
E–3	RM05–5–020	Standards for Business Practices and Communication Protocols for Public Utilities.
E–4	RM12–12–000	Regional Reliability Standard PRC–006–NPCC–1–Automatic Underfrequency Load Shedding.
E–5	OMITTED.	
E–6	EL12–106–000	J. William Foley Incorporated v. United Illuminating Company.
E–7	OMITTED.	
E–8	ER12–959–001	Southwest Power Pool, Inc.
E–9	EL13–15–000	Southwestern Public Service Company v. Southwest Power Pool, Inc.

991ST—MEETING, REGULAR MEETING, FEBRUARY 21, 2013, 10:00 A.M.—Continued

Item No.	Docket No.	Company
E–10	EL13–35–000	Southwestern Public Service Company v. Southwest Power Pool, Inc.
	Gas	
G–1	RP04–274–000 RP04–274–023. RP04–274–026. RP04–274–027. RP04–274–029. RP10–1406–002. RP11–2356–001. RP11–2356–002. RP11–1499–001. RP13–199–000.	Kern River Gas Transmission Company.
	Hydro	
H–1	P–11175–024	Crown Hydro, LLC.
H–2	P–5730–018	River Bounty, Inc.
H–3	P–2079–072	Placer County Water Agency.
H–4	P–12646–013	City of Broken Bow, Oklahoma.
	Certificates	
C–1	CP12–464–000	Petal Gas Storage, L.L.C. Hattiesburg Industrial Gas Sales, L.L.C.
C–2	CP12–40–001	Questar Pipeline Company.
C–3	CP12–5–001	Trunkline Gas Company, LLC. Sea Robin Pipeline Company, LLC.
C–4	CP12–469–000	Northern Natural Gas Company.
C–5	CP05–91–000	Calhoun LNG, L.P.
	CP05–380–000 CP05–381–000. CP05–382–000.	Point Comfort Pipeline Company, LLC.
C–6	CP12–503–000	CenterPoint Energy Gas Transmission Company, LLC. CenterPoint Energy-Mississippi River Transmission, LLC.
C–7	CP12–351–000	Cheniere Creole Trail Pipelines, L.P.
C–8	OMITTED.	
C–9	RP13–128–001	ConocoPhillips Company v. Texas Eastern Transmission, LP.

Issued February 14, 2013.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through www.*ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to www.*ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit www.*CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2013–03954 Filed 2–15–13; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–63–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on January 31, 2013, CenterPoint Energy Gas Transmission Company, LLC (CenterPoint), P.O. Box 21743, Shreveport, Louisiana 71151, filed in Docket No. CP13–63–000, a prior notice request pursuant to sections 157.205, 157.208(b), 157.211(a)(2) and 157.216(b)(2) of the Commission's regulations under the Natural Gas Act (NGA), and CenterPoint's blanket certificate authorized in Docket Nos. CP82–384–000 and CP82–384–001. CenterPoint seeks authorization to replace approximately 10.8 miles of its Line A with 12 miles of 12-inch diameter pipeline, including the installation of delivery taps and appurtenant facilities. CenterPoint also seeks to abandon the entire 10-mile Line A, all located in Nevada and Hempstead Counties, Arkansas. CenterPoint will not terminate any of its customers' service as the result to the proposed replacement and abandonments, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any questions regarding the applications should be directed to Michelle Willis, Manager, Regulatory & Compliance, CenterPoint Energy Gas Transmission Company, LLC, P.O. Box 21743, Shreveport, Louisiana 71151, or call 318–429–3708.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of

the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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 commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, 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 via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link. 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.

Dated: February 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03815 Filed 2–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Meeting

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee

February 22, 2013 (9:00 a.m.–12:00 p.m.)

This meeting will be held at the Windsor Court Hotel, 300 Gravier Street, New Orleans, LA 70130.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–50	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–55	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–65	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL11–34	Midwest Independent System Transmission Operator, Inc.
Docket No. EL11–63	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1676	Entergy Services, Inc.
Docket No. ER10–3357	Entergy Arkansas, Inc.
Docket No. ER11–3156	Entergy Arkansas, Inc.
Docket No. ER12–480	Midwest Independent Transmission System Operator, Inc.
Docket No. ER12–1303	Entergy Arkansas, Inc.
Docket No. ER12–2681	Entergy Arkansas, Inc.
Docket No. ER12–2682	Entergy Arkansas, Inc.
Docket No. ER12–2683	Entergy Arkansas, Inc.
Docket No. ER12–2693	Entergy Arkansas, Inc.
Docket No. EL13–41	Occidental Chemical Corporation v. Midwest Independent Transmission System Operator, Inc.
Docket No. EL13–43	Petition for Declaratory Order of Council of the City of New Orleans, Louisiana, Mississippi Public Service Commission and the Arkansas Public Service Commission.
Docket No. ER13–84	Cleco Power LLC.
Docket No. ER13–95	Entergy Arkansas, Inc.
Docket No. ER13–432	Entergy Arkansas, Inc.
Docket No. ER13–665	Midwest Independent Transmission System Operator, Inc.

Docket No. ER13–708	Midwest Independent Transmission System Operator, Inc.
Docket No. ER13–782	ITC Arkansas, LLC.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Dated: February 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03814 Filed 2–19–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0525; FRL–9782–3]

Proposed Information Collection Request; Comment Request; Registration of Fuels and Fuel Additives—Health-Effects Research Requirements for Manufacturers; EPA ICR No. 1696.07

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an Information Collection Request (ICR), Registration of Fuels and Fuel Additives—Health-Effects Research Requirements for Manufacturers, EPA ICR No. 1696.07, OMB Control No. 2060–0297, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 22, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0525, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2802; email address: *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) 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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In accordance with the regulations at 40 CFR 79, Subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR 79, Subpart F, is the subject of this ICR. The information collection requirements for Subparts A through D, and the supplemental notification requirements of Subpart F (indicating how the manufacturer will satisfy the health-effects data requirements) are covered by a separate ICR (EPA ICR Number 309.13, OMB Control Number 2060–1050). The health-effects data will be used to determine if there are any products which have evaporative or combustion emissions that may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, gasoline and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulfur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a "baseline" group. Oxygenated additives, such as ethanol, when used in gasoline at an oxygen level of at least 1.5 weight percent, define separate "nonbaseline" groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and sulfur fall into separate "atypical" groups. There are similar grouping requirements for diesel fuel and diesel fuel additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline gasoline, baseline diesel fuel, baseline fuel additives, and the prominent nonbaseline oxygenated additives for gasoline. The research is structured into three tiers of requirements for each group. Tier 1

requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data for gasoline and diesel fuel were submitted by API and others in 1997. Tier 1 data have been submitted for biodiesel, water/diesel emulsions, several atypical additives, and renewable gasoline and diesel fuels. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Tier 2 data have been submitted for baseline diesel, biodiesel, and water/diesel emulsions. Alternative Tier 2 testing can be required in lieu of standard Tier 2 testing if EPA concludes that such testing would be more appropriate. EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements were established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. Alternative Tier 2 requirements have also been established for the manganese additive MMT manufactured by the Afton Chemical Corporation (formerly the Ethyl Corporation). Tier 3 provides for follow-up research, at EPA's discretion, when remaining uncertainties as to the significance of observed health effects, welfare effects, and/or emissions exposures from a fuel or fuel/additive mixture interfere with EPA's ability to make reasonable estimates of the potential risks posed by emissions from a fuel or additive. To date, EPA has not imposed any Tier 3 requirements. Under regulations promulgated pursuant to Section 211 of the Clean Air Act, (1) submission of the health-effects information is necessary for a manufacturer to obtain registration of a motor-vehicle gasoline, diesel fuel, or fuel additive, and thus be allowed to introduce that product into commerce, and (2) the information shall not be considered confidential.

Form Numbers: None.

Respondents/affected entities: Manufacturers of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels.

Respondent's obligation to respond: Mandatory per 40 CFR 79.

Estimated number of respondents: 2.

Frequency of response: On occasion.

Total estimated burden: 19,200 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2 million per year, includes $0.5 million annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 2,000 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the conclusion of a testing program included in the previous ICR.

Dated: February 13, 2013.

Byron J. Bunker,

Director, Compliance Division.

[FR Doc. 2013–03839 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ –OAR–2005–0161; FRL–9782–4]

Proposed Information Collection Request; Comment Request; Renewable Fuels Standard (RFS2) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Renewable Fuels Standard (RFS2) Program" (EPA ICR No. 2333.03, OMB Control No. 2060–0640) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a "RENEWAL" of the ICR, which is currently approved through June 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 22, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2005–0161 online using *www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center in Washington, DC (EPA/DC). The docket is located in the EPA West Building, 1301 Constitution Avenue NW., Room 3334, and is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding legal holidays, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Environmental Protection Specialist, Fuels Compliance Center, 6406J Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017 fax number: 202–343–2800; email address: *heard.geanetta@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) 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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA would like to continue to collect annual compliance reports from obligated parties, quarterly reports for all EPA Moderated Transaction System (EMTS) users, generation and assignment of Renewable Identification Numbers (RINs) quarterly reports from biofuels producers and importers and third party disclosure reports from

biofuel feedstock producers by way of the Agency's Central Data Exchange (CDX). The recordkeeping and reporting of this regulation will allow EPA to monitor compliance with the RFS program. We inform respondents that they may assert claims of business confidentiality (CBI) for information they submit in accordance with 40 CFR 2.203.

Form Numbers:

RFS0103: RFS2 Q1 2012 Activity Report
RFS9104: RFS2 Activity Report
RFS0201: RFS1 RIN Transaction Report (only if RFS1 RINs were bought, sold, retired, or reinstated)
RFS0600: RFS2 Renewable Fuel Producer Supplemental Report (if applicable)
RFS0701: RFS2 Renewable Fuel Producer Co-products Report
RFS0801: RFS2 Renewable Biomass Report
RFS0901: RFS2 Production Outlook Report
EMTS: RFS2 RIN Transaction Report
EMTS: RFS2 RIN Generation Report (Equivalent to RFS0400)
RFS0301: RFS2 2010 Annual Compliance Report
RFS0302: RFS2 2011 Annual Compliance Report
EMTS: RFS2 RIN Transaction Report

Respondents/affected entities: Producers of Renewable Fuels, Importers, Obligated Parties, Parties who own RINS (including foreign RIN owners).

Respondent's obligation to respond: mandatory Sections 114 and 208 of the Clean Air Act (CAA), 42 U.S.C. 7414 and 7542.

Estimated number of respondents: 2,092,731.

Frequency of response: Quarterly.

Total estimated burden: 6,379,263 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $60,459,623 (per year), includes $ 320 annualized capital or operation & maintenance costs.

Changes in Estimates: EMTS was introduced at the onset of the RFS2 program and was not a feature of RFS1. For the new EMTS system, all parties who owned RINs were required to re-register, disclose feedstock sources, prepare quarterly reports on RIN activity and submit annual compliance reports (obligated party only). Re-submittal provisions utilized in RFS1 are no longer required, resulting in a decrease in total responses for this ICR. The total responses for industry dropped from 4,525,625 to 2,092,731 a difference of 2,432,894 responses. Currently, biofuels producers and importers submit required quarterly reports along with their third party disclosure on feedstock producers to EPA. All users of the EMTS system are required to submit quarterly RIN reports.

The number of respondents or users of the EMTS system has more than doubled from 1,059,326 to 2,092,731 an increase of 1,639,992 users due to the additional response burden for mapping foreign and domestic plantation/forest land owners and foreign biofuel feedstock producers which were not reflected in the previous ICR reporting period. With an increase in the number of respondents, total burden hours have increased by more than 4 million costing the industry $60,459,623; however, a decrease of $47,882,366 was realized. The reduction in the total cost for this renewal is due to the fact that the EMTS system is automated and more efficient and helps users to prepare reports instantly, reducing the amount of time and the cost associated with responding, even with more than a million added users. This notable factor increased the industry burden hours, but will lower the total cost of this information collection request if renewed.

Dated: February 13, 2013.

Byron Bunker,

Director, Transportation and Regional Programs Division.

[FR Doc. 2013–03840 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0053; FRL–9377–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. In addition under TSCA, EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from December 1, 2012 to January 11, 2013, and provides the required notice and status report, consists of the PMNs and TME, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 22, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0053, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the 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 regulations.gov or email. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM

you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division, Records Docket Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a "new chemical," while those that are on the TSCA Inventory are classified as an "existing chemical." For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm*. Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems*.

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from December 1, 2012 to January 11,2013, consists of the PMNs and TME, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—74 PMNS RECEIVED FROM 12/1/12 TO 1/11/13

Case no.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–13–0142	11/30/2012	2/27/2013	Scott Bader, Inc	(G) Fabrication of composite articles.	(G) Unsaturated urethane methacrylate
P–13–0143	11/30/2012	2/27/2013	Dover Chemical Corporation.	(G) Water emulsifier	(G) Polyalkylene acid, alkanol amine derivative
P–13–0144	12/3/2012	3/2/2013	CBI	(G) Additive (generally 2–20% of the coating formulation) to enhance adhesion and gloss..	(G) polymer of substituted sulfonamide & didlycidylether
P–13–0145	12/3/2012	3/2/2013	Corsitech	(G) Fuel additive—destructive use.	(G) 2,5-furandione, polymer with alkene and alkyldiamine
P–13–0146	12/4/2012	3/3/2013	CBI	(S) Acrylic resin used in the manufacture of ultra violet curable inks and coatings.	(G) Aromatic urethane acrylate composed of aliphatic glycol, aliphatic ester, aliphatic acid and aromatic isocyanate
P–13–0147	12/5/2012	3/4/2013	Sika Corporation	(G) Hardener for roofing adhesive.	(G) Latent hardener for polyurethane
P–13–0148	12/5/2012	3/4/2013	CBI	(G) Crosslinker for radiation cured coatings.	(G) Urethane acrylate
P–13–0149	12/5/2012	3/4/2013	Ashland, Inc	(G) Monomer for use in manufacturing polymers.	(G) Substituted hydroxyalkyl methacrylate
P–13–0150	12/6/2012	3/5/2013	CBI	(G) Reactant in polymer synthesis.	(G) Aluminoxanes, alkyl, reaction products with dichloro substituted alkanediyl substituted heteropolycycle alkyl biphneyl zirconium and silica complex
P–13–0151	12/6/2012	3/5/2013	CBI	(G) Chemical intermediate	(G) Vegetable oil based polyol polyester
P–13–0152	12/7/2012	3/6/2013	CBI	(G) Contained use	(G) Metal, substituted heteropolycyclic
P–13–0153	12/7/2012	3/6/2013	CBI	(G) Destructive and contained use.	(G) Aromatic hydrocarbon
P–13–0154	12/7/2012	3/6/2013	CBI	(G) Destructive use	(G) Substituted carbomonocycie boron salt
P–13–0155	12/7/2012	3/6/2013	CBI	(G) Contained use	(G) Substituted carbomonocycle derivative metal
P–13–0156	12/7/2012	3/6/2013	CBI	(G) Acrylic emulsion for waterborne exterior coatings.	(G) Alkyl methacrylate polymer with alkyl acrylate, amino acrylate and alkyl methacrylate
P–13–0157	12/7/2012	3/6/2013	CBI	(G) Acrylic emulsion for waterborne exterior coatings.	(G) Acidic methacrylate polymer with alkyl methyacrylate, alkyl acrylate, amino acrylate and alkyl methacrylate
P–13–0158	12/7/2012	3/6/2013	CBI	(G) Acrylic emulsion for waterborne exterior coatings.	(G) Acidic methacrylate polymer with alkyl methyacrylate, alkyl acrylate, amino acrylate, alkyl methacrylate, ammonium salt
P–13–0159	12/7/2012	3/6/2013	CBI	(G) Acrylic emulsion for waterborne exterior coatings.	(G) Alkyl methacrylate polymer with alkyl acrylate, amino acrylate, alkyl hydroxy methacrylate, hydroxy alkyl methacrylate and alkyl methacrylate
P–13–0160	12/7/2012	3/6/2013	CBI	(G) Acrylic emulsion for waterborne exterior coatings.	(G) Acidic methacrylate polymer with alkyl methacrylate, alkyl acrylate, amino acrylate, hydroxy alkyl methacrylate, and alkyl methacrylate
P–13–0161	12/7/2012	3/6/2013	CBI	(G) Acrylic emulsion for waterborne exterior coatings.	(G) Acidic methacrylate polymer with alkyl methacrylate, alkyl acrylate, amino acrylate, hydroxy alkyl methacrylate, alkyl methacrylate, ammonium salt
P–13–0162	12/7/2012	3/6/2013	Univation Technologies, LLC.	(G) Catalyst in polymer synthesis.	(G) Substituted cyclopentadienyl silico aluminoxanes

TABLE I—74 PMNS RECEIVED FROM 12/1/12 TO 1/11/13—Continued

Case no.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–13–0163	12/10/2012	3/9/2013	CBI	(S) Textile finishing resin & industrial water-based ink vehicle.	(G) Alkyldioic acid, polymer with [(2-Aminoalkyl)amino]alkylsulfonic acid monosodium salt. alkyldiol, alkyldiol, cycloaliphatic diisocyanate and cycloaliphatic diisocyanate, polyalkylene glycol monoalkyl ether-blocked
P–13–0164	12/10/2012	3/9/2013	CBI	(G) Chemical intermediate	(G) Benzotriazole derivative
P–13–0165	12/10/2012	3/9/2013	CBI	(G) Paint component	(G) Organic derivative of hydrotalcite
P–13–0166	12/11/2012	3/10/2013	CBI	(G) Electronic industry contained use.	(G) Carbopolycyclic
P–13–0167	12/11/2012	3/10/2013	Sika Corporation	(G) Roof membrane hardener	(G) Roofing adhesive
P–13–0168	12/12/2012	3/11/2013	CBI	(S) Reactant for a lubricant additive.	(G) Alkylphenol
P–13–0169	12/12/2012	3/11/2013	CBI	(G) Lubricant additive	(G) Sulfurized fatty acid derivative
P–13–0170	12/12/2012	3/11/2013	Amfine Chemical Corporation.	(G) Plastic additive	(G) Phosphoric acid, mixed esters
P–13–0171	12/13/2012	3/12/2013	Dow Chemical U.S.A.	(G) Polymer used for adhesive formuation.	(G) Silanated urethane polymer
P–13–0172	12/13/2012	3/12/2013	Dow Chemical U.S.A.	(G) Polymer used for adhesive formuation.	(G) Silanated urethane polymer
P–13–0173	12/14/2012	3/13/2013	CBI	(G) Chemical intermediate	(G) Alkenoic acid ester
P–13–0174	12/17/2012	3/16/2013	Cytec Industries, Inc.	(S) Resin for ultra violet cured ink formulations.	(G) Substituted carbomoncycles, polymer with alkyldiol
P–13–0175	12/18/2012	3/17/2013	CBI	(S) Use as a coating additive in paper and paperboard to impart grease, alcohol, and solvent resistance.	(G) Perfluoro epoxide copolymer
P–13–0176	12/18/2012	3/17/2013	CBI	(S) Intermediate for use in the manufacture of a polymer.	(G) Fluorinated oxirane polymer
P–13–0177	12/18/2012	3/17/2013	DIC International (USA), LLC.	(G) A polymer component of industrial paint for coating/spray coating building materials, automotive materials and aero materials.	(G) Polyxiloxane acrylic resin
P–13–0178	12/18/2012	3/17/2013	Mane, USA	(S) Fragrance in a fine fragrance; fragrance in a cosmetic product; fragrance in non cosmetic products.	(S) Cyclopentanol. 2-methyl-5-(1-methylethyl)- . 1-propanoate
P–13–0179	12/19/2012	3/18/2013	CBI	(G) The notified substance, nppt, is a new urea fertiliser additive that temporarily retards the enzymatic breakdown of urea by inhibition of urease. This provides an effective means of managing losses of nitrogen in the form of ammonia from surface-applied urea containing fertilizers.	(G) Alkyl-substituted thiophosphoric acid triamide
P–13–0180	12/19/2012	3/18/2013	CBI	(S) Adhesion promoter for use in aphalt applications; emulsifier for use in asphalt applications.	(G) Fatty acid amide
P–13–0181	12/19/2012	3/18/2013	CBI	(S) Adhesion promoter for use in aphalt applications; emulsifier for use in asphalt applications.	(G) Fatty acid amide
P–13–0182	12/19/2012	3/18/2013	CBI	(S) Adhesion promoter for use in aphalt applications; emulsifier for use in asphalt applications.	(G) Fatty acid amide

TABLE I—74 PMNS RECEIVED FROM 12/1/12 TO 1/11/13—Continued

Case no.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–13–0183	12/19/2012	3/18/2013	CBI	(S) Adhesion promoter for use in aphalt applications; emulsifier for use in asphalt applications.	(G) Fatty acid amide
P–13–0184	12/19/2012	3/18/2013	CBI	(S) Adhesion promoter for use in aphalt applications; emulsifier for use in asphalt applications.	(G) Fatty acid amide
P–13–0185	12/19/2012	3/18/2013	CBI	(S) Adhesion promoter for use in aphalt applications; emulsifier for use in asphalt applications.	(G) Fatty acid amide
P–13–0186	12/19/2012	3/18/2013	CBI	(G) Lubricant additive	(G) Substituted 2,5-pyrrolidinedione, alkyl derivates
P–13–0187	12/18/2012	3/17/2013	CBI	(G) Industrial feedstock chemical.	(G) Algal biomass from a fermentation
P–13–0188	12/21/2012	3/20/2013	Colonial Chemical, Inc.	(S) Fire-fighting foams	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl me, ethoxylated, ethers with oligomeric C_{10-16}-alkyl D-glycopyranosides and oligomeric decyl octyl D-glycopyranosides and oligomeric decyl octyl D-glycopryanosides
P–13–0189	12/23/2012	3/22/2013	CBI	(S) Intermediate for use in the manufacture of polymers.	(G) Depolymerized waste plastics
P–13–0190	12/26/2012	3/25/2013	CBI	(G) Pigment formulation additive	(G) 2-Oxepanone, homopolymer, ester with -alkyl—hydroxypoly (oxy-1,2-ethanediyl), phosphate
P–13–0191	12/28/2012	3/27/2013	Zeon Chemicals, L.P.	(S) Rubber compounds	(G) alicyclic hydrocarbon resin
P–13–0192	12/28/2012	3/27/2013	Zeon Chemicals, L.P.	(S) Rubber compounds	(S) 4, 7-methano-1*H*-indene, 3a, 4, 7, 7a-tetrahydro-, polymer with 2-methyl-1, 3-butadiene and 5-(1-methyletheny-l)bicyclo[2.2.2.1]hept-2-ene
P–13–0193	1/2/2013	4/1/2013	Sika Corporation	(G) Hardener for roofing adhesive.	(G) Amine adduct
P–13–0194	1/3/2013	4/2/2013	CBI	(G) Coupling agent & film former.	(G) Silylated polyazamide
P–13–0195	1/3/2013	4/2/2013	Praxair Specialty Ceramics.	(G) Catalysts used in closed processes.	(G) Lanthanide group, groupiia, mn, oxide
P–13–0196	1/3/2013	4/2/2013	Praxair Specialty Ceramics.	(G) Catalysts used in closed processes.	(G) Ni, lanthanide group, oxides
P–13–0197	1/7/2013	4/6/2013	Dow Chemical Company.	(G) Raw material for organic synthesis.	(G) Alkyl substituted catechol
P–13–0198	1/7/2013	4/6/2013	Dow Chemical Company.	(G) Coating curing agent	(G) Alkyl hydroxyamine polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane]
P–13–0199	1/7/2013	4/6/2013	Dow Chemical Company.	(G) Coating curing agent	(G) Alkyl hydroxyamine polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane]
P–13–0200	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0201	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0202	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0203	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0204	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride

TABLE I—74 PMNS RECEIVED FROM 12/1/12 TO 1/11/13—Continued

Case no.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–13–0205	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0206	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0207	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0208	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0209	1/8/2013	4/7/2013	CBI	(S) Surfactant for use in asphalt emulsions.	(G) Fatty acid amide hydrochloride
P–13–0210	1/8/2013	4/7/2013	CBI	(G) Thermoplastic binder	(G) Styrene acrylate polymer
P–13–0211	1/8/2013	4/7/2013	CBI	(G) Thermoplastic binder	(G) Styrene acrylate polymer
P–13–0212	1/8/2013	4/7/2013	The Lubrizol Corporation.	(S) Metalworking fluid additive (lubricity and corrosion protection).	(G) Alkenyl succinate, amine salt
P–13–0213	1/8/2013	4/7/2013	The Lubrizol Corporation.	(S) Metalworking fluid additive (lubricity and corrosion protection).	(G) Alkenyl succinate, amine salt
P–13–0214	1/10/2013	4/9/2013	CBI	(G) Coating resin	(G) Polymer reaction product of formaldehyde, chloromethyl oxirane, phenol, 1,3-isobenzofurandione, with n-(2-aminoethyl)-1,2-ethanediamine and phenol with tetrahydro-methano-indene glycidyl ether
P–13–0215	1/11/2013	4/10/2013	3M Company	(G) Adhesive	(G) Hetero substituted alkyl acrylate polymer

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—1 TMES RECEIVED FROM 12/1/12 TO 1/11/13

Case No.	Received date	Projected notice end date	Manufacturer/ Importer	Use	Chemical
T–13–5	12/10/12	3/16/13	Cytec Industries, Inc.	(S)Resin for ultra violet formations.	(G)Substituted carbomoncycles, polymer with alkyldiol.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—33 NOCS RECEIVED FROM 12/1/12 TO 1/11/13

Case no.	Received date	Commencement notice end date	Chemical
P–06–0203	1/3/2013	12/31/2012	(G) Polyisobutenyl succinimide
P–07–0072	12/14/2012	11/19/2012	(G) Alkanoic acid potassium salt
P–09–0402	12/11/2012	11/19/2012	(G) Oxoalkyl amino acid reaction product, sodium salt
P–10–0361	12/12/2012	12/1/2012	(G) Substituted phenol
P–10–0439	12/4/2012	10/25/2012	(S) Benzenesulfonic acid, 4-chloro-2-{[4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1h-pyrazole-4-yl)azo]-5-methyl,calcium salt (1:1)
P–10–0442	12/18/2012	12/17/2012	(G) MDI modified resin
P–12–0044	11/30/2012	11/1/2012	(G) Multi-wall carbon nanotubes
P–12–0064	12/14/2012	11/16/2012	(G) Green line emitting phosphor
P–12–0196	12/19/2012	10/5/2012	(G) Aromatic distillation bottoms
P–12–0245	12/27/2012	12/13/2012	(S) Niobium sulfur tin zinc oxide
P–12–0264	1/10/2013	12/10/2012	(G) Substituted, 2-hydroxy-*N,N*-dimethyl-*N*-[3-[[(13z)-1-oxo-13-docosen-1-yl]amino]propyl]-3-sulfo-, inner salt

TABLE III—33 NOCs RECEIVED FROM 12/1/12 TO 1/11/13—Continued

Case no.	Received date	Commencement notice end date	Chemical
P–12–0321	12/6/2012	11/16/2012	(G) Aliphatic acrylate mixture
P–12–0378	1/3/2013	12/28/2012	(G) Diacrylate polymer with alkane esterdiol, alkane diol, alkane acid diol and diisocyanates
P–12–0398	12/7/2012	11/7/2012	(S) 1,2,4-benzenetricarboxylic acid, mixed lauryl and octyl triesters
P–12–0444	1/2/2013	12/18/2012	(G) Carbopolycyclic-alkyl-[[[[[[(haloalkyl-aryl]diazenyl]aryl]diazenyl]-carbopolycyclic]diazenyl
P–12–0445	1/2/2013	12/18/2012	(G) Morpholine, [[[[(haloaryl)diazenyl]-alkylaryl]-diazenyl]aryl]-
P–12–0446	1/2/2013	12/18/2012	(G) Morpholine, [[[[(haloaryl)diazenyl]-alkylaryl]-diazenyl]aryl]-
P–12–0468	12/6/2012	11/27/2012	(G) Doped yttrium oxalate
P–12–0469	12/6/2012	11/9/2012	(G) Yttrium europium oxalate
P–12–0473	12/12/2012	11/23/2012	(S) Phenol 4-(ethoxymethyl)-2-methoxy-l
P–12–0485	12/6/2012	11/21/2012	(G) Oxirane, alkyl, polymer with aromatic isocyanate, alkyloxirane polymer with oxirane ether with alkyltriol, and oxirane, polyethylene glycol mono(alkylaromatic) ether-blocked
P–12–0519	12/13/2012	12/8/2012	(G) Alkyd polyester polyurethane
P–12–0521	12/6/2012	12/3/2012	(G) 2-Propenoic acid, 2-methyl-, alkyl esters, polymer with substituted methacrylate, substituted methacrylate, me methacrylate and polyalkene glycol alkyl ether, tert-bu 2-ethylhexaneperoxoate-initiated
P–12–0523	12/13/2012	11/27/2012	(G) Alkyl ketimines; polymeric ketimines
P–12–0524	12/6/2012	12/3/2012	(G) Vegetable-oil fatty acids, conjugated, polymers with ethylene glycol, substituted propanoic acid, anhydride, polyethylene glycol and trimethylolpropane, compounds with substituted alkanol
P–12–0526	1/2/2013	12/27/2012	(G) Siloxanes and silicones, substituted alkyl group-terminated ethers with polyethylene glycol and polyethylene glycol anhydride ester
P–12–0527	12/6/2012	12/3/2012	(G) Fatty acids of natural oils, conjugated, maleated
P–12–0528	12/11/2012	12/10/2012	(G) Substituted heteromonocycle, polymer with substituted alkane and substituted alkanediol, alkanoic acid substituted ester and substituted hetermonocyle homopolymer
P–12–0529	12/5/2012	12/4/2012	(G) Hydrogenated modified rosin
P–12–0540	12/18/2012	12/5/2012	(G) Styrenic anhydride maleimide terpolymer
P–12–0542	12/19/2012	12/17/2012	(G) Polyethyleneglycol modified polyacrylate block polypyridine polymer, hydrolyzed, sodium salts
P–12–0544	1/3/2013	12/24/2012	(G) Alkenoic acid, polymers with acrylate and polyalkandiol alkane ether alkyl alkenoate and polyalkene alkandiol alkane ether alkenoic alkyl ethers
P–12–0564	1/10/2013	1/4/2013	(G) 2-Propenoic acid 2-methyl, alkyl ester, polymer with heteromonocycle, substituted carbomonocycle, substituted alkyl propenoate, alkyl propenoate, alkyl propenoate, tert-bu benzenecarboperoxoate-initiated

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: February 4, 2013.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2013–03765 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2013–0063; FRL–9782–5]

Announcement of Requirements Gathering Meetings for the Electronic Manifest (e-Manifest) System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA's Office of Resource Conservation and Recovery (ORCR) is holding public meetings in Arlington, Virginia; Chicago, Illinois; and Denver, Colorado to discuss and obtain public input from stakeholders on a national electronic manifest ("e-Manifest") system to capture information regarding the shipment of hazardous waste from the time it leaves the generator facility where it was produced, until it reaches the off-site waste management facility that will store, treat, or dispose of the hazardous waste. Specifically, the purpose of these meetings is to engage the states, industry, communities, non-governmental organizations, and other stakeholders on what expectations and technical requirements EPA should consider as the agency begins the planning stage of the e-Manifest system development process. EPA envisions that e-Manifest will facilitate the electronic transmittal of manifests throughout the hazardous waste shipping process, including enabling better transparency by sharing data with the public at appropriate stages. Each meeting will be approximately one and one-half days. In order to meet the goals of the meetings, we encourage meeting participants from a variety of professional backgrounds to attend, such as state governmental staff, hazardous waste handlers (generators, transporters, waste management firms) staff, and each of their information technology (IT) staff. EPA will use

stakeholder input gathered during these meetings to finalize e-Manifest requirements and prepare for eventual system development.

DATES: EPA will conduct three face-to-face public meetings. The dates and locations for each meeting are as follows:

- February 25–26, 2013: Arlington, Virginia, EPA Headquarters, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202.
- March 14–15, 2013: Chicago, Illinois, EPA Region 5, Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604–3590.
- March 21–22, 2013: Denver, Colorado, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

FOR FURTHER INFORMATION CONTACT: Kristen Gunthardt, Office of Resource Conservation and Recovery, Program Implementation and Information Division (5303P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number: (703) 347–8955; email address: *gunthardt.kristen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

While the meeting is open to the public in general, the identified topics may be of particular interest to technical staff that manage or work directly with manifest data and processes as well as staff that have specialized understanding of the manifest program and business process. Potentially interested parties may include but are not limited to: IT staff personnel supporting hazardous waste generators, hazardous waste treatment, storage and disposal facilities (TSDFs), and hazardous waste transporters for their respective companies; Federal, State and local environmental and transportation regulators and IT staff; enforcement personnel; non-governmental organizations; and trade associations dealing with hazardous waste transportation issues. People with specific technical expertise, such as computer system specialists, information officers, IT managers and others are encouraged to attend. If you have any questions regarding the applicability of this meeting to a particular entity, organization or occupational discipline, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How may I participate in this meeting?

For security purposes, all persons wishing to attend the meetings must register in advance of each meeting. Please visit the following Web site for information on how to register: *http://www.epa.gov/osw/hazard/transportation/manifest/e-man.htm*.

Access to the meeting for non-registered attendees may be denied by EPA building security or by limited seating capacity. When registering, please provide your name, affiliation, mailing address, telephone number, and email address if you have one. A valid photo ID will be required to gain access to the EPA meeting rooms. Any person needing special accessibility accommodations at this meeting should inform the contact person above when registering. Space for the meetings may be limited; therefore, potential participants are encouraged to attend only one of the three meetings.

C. How can I get copies of this document and other related information?

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2013–0063. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 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, and the telephone number for the RCRA Docket is (202) 566–0270.

II. Historical Background on e-Manifest Project

For more than a decade, EPA, states, industry, and other stakeholders have sought to transform the hazardous waste manifest system from its current paper-based approach to one that takes greater advantage of electronic information technologies. On May 22, 2001, EPA published a notice of proposed rulemaking that, among other things, proposed revisions to the Federal manifest program aimed at adopting an electronic manifesting approach that would allow waste shipments to be tracked electronically, thereby mitigating the burdens and inefficiencies associated with the use of paper manifest forms (66 FR 28240). Although comments generally supported an electronic tracking scheme, several significant issues were raised that necessitated further analysis and stakeholder outreach prior to adopting a final e-Manifest regulation.

As a result, EPA's ORCR held a two-day public meeting on May 19–20, 2004 to discuss and obtain public input on how best to proceed with the e-Manifest project. During the meeting, stakeholders—including States and the hazardous waste management industry—expressed a strong interest in a uniform national approach to developing an e-Manifest system that would consistently and securely generate and process electronic manifests. Moreover, members of industry who use the manifest indicated that they would be willing to help pay the costs of such a system, perhaps through the assessment of reasonable service fees or by a similar "user pays" approach.

In April 2006, EPA published a follow-up notice to request comment on its preferred approach for electronically completing and transmitting manifests through a national, centralized e-Manifest system (71 FR 19842). The public notice also explained that EPA intended to establish and maintain an e-Manifest system by imposing service fees as a means to fund an information technology contract to build and operate the e-Manifest system. Finally, the notice explained that EPA's ability to proceed with the development of the national e-Manifest system was contingent upon the enactment of new legislation. This legislation would establish EPA's authority to enter into a contract with one or more IT vendors and would provide that the contract would be funded by the e-Manifest service fees. EPA would use these fees for payment of e-Manifest system costs.

On November 19 and 20, 2008, EPA's ORCR held a two-day public meeting in Arlington, VA to begin discussions with state and industry representatives concerning the goals, requirements, and criteria needed for the development of an IT system that would support the e-Manifest and would provide effective implementation of the hazardous waste manifest program. Following the 2008 public meeting, EPA's ORCR held a series of webinars with participants to discuss various topics addressed during the public meeting but which required further input. The webinars took place between April and June of 2009.

On October 5, 2012, the Hazardous Waste Electronic Manifest Establishment Act ("the Act") was signed into law by the President. The Act authorizes EPA to establish and implement an electronic manifest (e-

Manifest) system in partnership with industry and states by 2015. The Act also requires EPA to adopt an e-Manifest regulation authorizing e-Manifests that are created and transmitted through the use of the e-Manifest system by October 5, 2013. The e-Manifests will be deemed as the legal equivalent to Uniform Hazardous Waste Paper Manifest Form and Continuation Sheet (EPA Form 8700–22 and 8700–22a). The scope of e-Manifest will extend to all federally and state regulated wastes that require a manifest; use of e-Manifest, however, is optional to users. Although the Act states use of e-Manifest is optional, the Act authorizes EPA to collect e-Manifests and paper manifests in the system. Therefore, EPA intends to collect all manifests, both electronic and paper formats, in the system. For further information regarding the Hazardous Waste Electronic Manifest Act and the e-Manifest project in general, please refer to the following EPA Web site: *http://www.epa.gov/epawaste/hazard/transportation/manifest/e-man.htm.*

III. Current Activities on e-Manifest Project

Pursuant to the Act, EPA has begun its initial planning phase to begin the development and ultimately the deployment of the e-Manifest system by 2015. The purpose of the three face-to-face requirements gathering meetings is to continue with efforts conducted during previous public meetings and webinars by engaging stakeholders on current expectations and technical requirements for the e-Manifest system. The goals of the meetings will be to obtain input from future users as to their needs and the capability of the IT system to address performance standards for the success of an e-Manifest system. Additionally, EPA will be gathering input from stakeholders on what technical requirements or tools the agency should consider to ensure that it also establishes an IT reporting system that will enhance access to the data (including to states and the general public).

The topics of discussions at these meetings will cover the following functional requirements:

- e-Manifest workflow, including mobile field component and handler submission;
- e-Manifest business rule processing;
- Electronic signature (e-signature) and Cross-Media Electronic Reporting Regulation (CROMERR) conformance;
- Paper manifest processing;
- Data access and reporting;
- State data consumption and interaction;
- Data QA; and
- User administration and security.

EPA is currently determining the actual format and agenda for the meetings. It anticipates that each of the meetings will have a similar agenda, which will further our intent to provide multiple opportunities for stakeholder participation. Therefore, it is only necessary for participants to attend one of the three meetings.

All up to date information, including advanced copies of meeting materials and meeting logistics, is available on our Web site: *http://www.epa.gov/osw/hazard/transportation/manifest/e-man.htm.*

EPA will use stakeholder input gathered during these meetings to finalize the e-Manifest requirements and prepare for eventual system development.

Dated: February 5, 2013.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2013–03838 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9377–2]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a December 5, 2012 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the December 5, 2012 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. 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 cancellations are effective February 20, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@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.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 41 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000100–00641	Banner Fungicide	Propiconazole
000100–00781	Orbit 45W Fungicide	Propiconazole
000352–00558	DuPont Muster Herbicide	Ethametsulfuron
000352–00559	DuPont Etuametsulfuron Methyl Technical Herbicide	Ethametsulfuron
000499–00518	Prescription Treatment Brand 2% Propoxur Bait	Propoxur
009404–00087	Permethrin 0.25% Insecticide Granules	Permethrin
009404–00088	Sunniland Chinch Bug & Mole Cricket Spray	Permethrin
010163–00298	GWN–3772 Technical	Tribenuron-methyl
010466–00024	Ultrafresh 300 DD Nonionic	Triclosan/Tributyltin oxide (no inert use)
010466–00043	T-Bate	Tributyltin oxide (no inert use)
010807–00146	Weed-A-Cide Concentrate	Prometon
010807–00206	Misty Weed-A-Cide CF	Prometon
010807–00444	CB Fogger IV	Tetramethrin/Esfenvalerate
010807–00451	Bee, Wasp & Hornet Jet Stream	Phenothrin/Tetramethrin
028293–00293	Unicorn 30 Day Flea & Tick Treatment	Permethrin
028293–00357	Unicorn 45% Permethrin Fly & Tick Insecticide	Permethrin
028293–00358	Unicorn 45% Permethrin Flee & Tick Insecticide	Permethrin
038167–00029	Mach 2 1.5G	Benzoic acid,4- chloro-,2-benzoyl-2- (1,1-dimethylethyl) hydrazide
061483–00058	Pentacon-7	Pentachlorophenol
061483–00059	Pentacon-10	Pentachlorophenol
062719–00351	Dursban HF Insecticidal Concentrate	Chlorpyrifos
062719–00352	Dursban W Insecticidal Chemical	Chlorpyrifos
062719–00364	Dursban 20 MEC Microencapsulated Insecticidal Concentrate.	Chlorpyrifos
066222–00025	Pramitol 1.5% Liquid Vegetation Killer	Prometon
066222–00044	Pramitol 1.8L	Prometon
066222–00045	Pramitol 2.2L	Prometon
066222–00052	Pramitol 1.8 RTU	Prometon
066222–00118	Bumper 41.8 EC Calif.	Propiconazole
066330–00037	Chloropicrin	Chloropicrin
066330–00047	TM–442	Chloropicrin
066330–00228	Malathion Technical	Malathion (no inert use)
066330–00248	Malathion 8EC	Malathion (no inert use)
066330–00325	Propiconazole 14.3% T&O	Propiconazole
066330–00331	Bifenthrin 13% MUP	Bifenthrin
068451–00003	Deltamethrin Technical Insecticide (micronized)	Deltamethrin
068451–00004	Deltamethrin Technical Insecticide	Deltamethrin
073327–00011	Green Light Conquest Indoor & Outdoor Pest Control	Permethrin
073327–00012	Green Light Conquest Insecticide Concentrate	Permethrin
075829–00001	H2Pro Maintenance Treatment	Silver
088058–00002	Chlorothalonil 720 Fungicide	Chlorothalonil
CA900030	Pest Strip	Amvac Small Insect Strip

Table 2 of this unit includes the names and addresses of record for all registrants 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 in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company name and address
352	E.I. DuPont de Nemours and Company (S300/419) Manager, Registration & Regulatory Affairs, 1007 Market St., Wilmington, DE 19898–0001.
499	Whitmire Micro-Gen Research Laboratories, Inc., Agent: BASF Corporation, 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682.
9404	Sunniland Corporation, P.O. Box 8001, Sanford, FL 32772–8001.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 853668844.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company name and address
10466	Thomas Research Associates, Shenstone Estates, 17804 Braemar Plaza, Leesburg, VA 20176–7046.
10807	Amreo, Inc., 990 Industrial Park Dr., Marietta, GA 30062.
28293	Phaeton Corporation, P.O. Box 1019, Salem, VA 24153.
38167	Helena Chemical Company, D/B/A Setre Chemical Company, 225 Schilling Blvd., Suite 300, Collierville, TN 38017.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company name and address
61483	KMG-Bernuth, Inc., 9555 W. Sam Houston Parkway South, Suite 600, Houston, TX 77099.
62719	Dow Agrosciences, LLC, 9330 Zionsville Rd. 308/2E, Indianapolis, IN 46268–1054.
66222	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
66330	Arysta Lifescience North America, LLC. 15401 Weston Parkway, Suite 150, Cary, NC 27513.
68451	Intervet, Inc., 556 Morris Avenue, S5–2145A. Summit, NJ 07901.
73327	Swiss Farms Products, 3993 Howard Hughs Parkway, Suite 250, Las Vegas, NV 89109–6754
75829	Garrison Dental Solutions, 150 Dewitt Lane, Ispring Lake, MI 49456.
81880	Canyon Group, LLC, C/O Gowan Company, 370 S. Main St., Yuma. AZ 85364.
88058	Orion Ato, LLC, Agent: Source Dynamics, LLC, S122230 E. Del Norte, Yuma, AZ 85377–7355.
CA 900030	California Dept. of Food and Agriculture, 1220 N. St., Room 221, Sacramento, CA 95814.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the December 5, 2012 (77 FR 72343) (FRL–9370–4) **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the 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 canceled. The effective date of the cancellations that are the subject of this notice is February 20, 2013. 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 in the **Federal Register** issue of December 5, 2012. The comment period closed on January 4, 2013.

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 cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until February 20, 2014, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 8, 2013.

Richard P. Keigwin,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–03843 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9378–9]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless a registrant withdraws its request. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in any final cancellation order.

DATES: Comments must be received on or before March 22, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: John W. Pates, Jr.

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

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

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation

Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@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.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 39 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or a registrant withdraws its request, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000279–03153	Firstline Termite Bait Station	Sulfluramid
000279–03170	Firstline Termite Bait Tube Station	Sulfluramid
000279–03171	Firstline Termite Bait Container Station	Sulfluramid
000279–03196	Firstline GT Plus Termite Bait Station	Sulfluramid
000432–01334	Tempo Liquid Concentrate	Cyfluthrin
000432–01358	Tempo 20% Dry Concentrate	Cyfluthrin
000499–00518	Prescription Treatment Brand 2% Propoxur Bait	Propoxur
000499–00532	TC 277	Piperonyl butoxide, Pyrethrins (No Inert Use)
007173–00283	Difethialone Bait Station	Difethialone
007173–00285	Difethialone 6G Paste Place Packs	Difethialone
007946–00010	Inject-A-Cide	Oxydemeton-methyl
009404–00087	Permethrin 0.25% Insecticide Granules	Permethrin
009404–00088	Sunniland Chinch Bug & Mole Cricket Spray	Permethrin
010163–00219	MSR 50% Concentrate Insecticide	Oxydemeton-methyl
010163–00220	MSR Spray Concentrate	Oxydemeton-methyl
39959–00001	A–106	Poly(oxy-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl dichloride)
039959–00002	7618	Poly(oxy-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl dichloride)
039959–00003	7619	Poly(oxy-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl dichloride)
045385–00001	Chem-Tox Roach and Ant Spray with Baygon	Propoxur, Piperonyl butoxide, Pyrethrins (No Inert Use)
045385–00025	Chem-Tox Pyronox Dual 0.1	MGK 264, Piperonyl butoxide, Pyrethrins (No Inert Use)
045385–00082	Cenol Small Animal and Kennel Spray	Piperonyl butoxide, Pyrethrins (No Inert Use)
046043–00031	Suncoast's Pool Algaecide 20	Poly(oxy-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl(dimethylimino)-1, 2-ethanediyl dichloride)
047000–00168	R & M Permethrin Flea & Tick Dip #1	Permethrin
060061–00017	Woodtreat C8 Concentrate	Copper, bis(8-quinolinolato-N1,O8)-
060061–00018	Woodtreat C8 Ready To Use	Copper, bis(8-quinolinolato-N1,O8)-
060061–00022	Woodtreat C81 Ready To Use Water Repellent Fungicide.	Copper, bis(8-quinolinolato-N1,O8)-
064014–00009	Harpoon	Oxydemeton-methyl

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
074601–00001	Chlorothalonil Technical Fungicide	Chlorothalonil
085905–00005	CFL 3% Diflubenzuron Feedthrough	Diflubenzuron
086869–00002	Propiconazole Select	Propiconazole
CA010003	MSR Spray Concentrate	Oxydemeton-methyl
FL960006	Metasystox-R-Spray Concentrate	Oxydemeton-methyl
ID010011	Metasystox-R-Spray Concentrate	Oxydemeton-methyl
ME070001	Devrinol 50–DF	Napropamide
MI070004	Kerb 50–W	Propyzamide
NY030002	Metasystox-R-Spray Concentrate	Oxydemeton-methyl
WA030001	Metasystox-R-Spray Concentrate	Oxydemeton-methyl
WA030002	Metasystox-R-Spray Concentrate	Oxydemeton-methyl
WA060005	MSR Spray Concentrate	Oxydemeton-methyl

Table 2 of this unit includes the names and addresses of record for all registrants 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 in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
279	FMC Corp., Agricultural Products Group, 1735 Market St., Room 1978, Philadelphia, PA 19103.
432	Bayer Environmental Science, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
499	Whitmore Micro-Gen Research Laboratories, Inc. Agent: BASF Corporation, 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682.
7173	Liphatech, Inc., 3600 W. Elm St., Milwaukee, WI 53209.
7946	J.J. Mauget Co., Agent: Scireg, Inc., 12733 Director's Loop, Woodbridge, VA 22192.
9404	Sunniland Corporation, P.O. Box 8001, Sanford, FL 32772–8001.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–8844.
39959	Chemicals, Inc., 13560 Colombard Court, Fontana, CA 92337.
45385	CTX-Cenol, Inc., Agent: H.R. Mclane, Inc., 7210 Red Rd., Suite 206A, Miami, FL 33143.
46043	Suncoast Chemicals Co., 14480 62nd St. N., Clearwater, FL 33760.
47000	Chem-Tech, Ltd., 4515 Fleur Dr. #303, Des Moines, IA.
60061	Kop-Coat, Inc., 3020 William Pitt Way, Pittsburgh, PA 15238.
64014	Florida Silvics, Inc., d/b/a Tree Tech Microinjection Systems, 950 S.E. 215th Ave., Morriston, FL 32668.
74601	Oxon Italia S.P.A., Agent: Lewis & Harrison, LLC, 122 C St., NW., Suite 740, Washington, DC 20001.
81880	Canyon Group, LLC, c/o Gowan Company, 370 S. Main St., Yuma, AZ 85364.
85905	Champion Farmaquimico, LTDA, Agent: J&T Associates, LLC, 4061 North 156th Dr., Goodyear, AZ 85395.
86869	Select Source, LLC, Agent: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
88058	Orion Ato, LLC, Agent: Source Dynamics LLC, S122230 E. Del Norte, Yuma, AZ 85377–7355.
CA010003, FL960006, ID010011, NY030002, WA030001, WA030002, WA060005.	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–8844.
ME070001	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
MI070004	Dow AgroSciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.

III. 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. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.**

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period or,

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

For Products 007173–00283 and 007173–00285:

Because the Agency has identified significant potential risk concerns associated with these pesticide products, upon cancellation EPA intends to issue a cancellation order prohibiting sale or distribution of existing stocks by the registrant, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than the registrant will be allowed to sell or distribute existing stocks of products, until such stocks are exhausted. Users will be allowed to use existing stocks regardless of date of purchase until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product.

For all other products identified in Table 1 of Unit II:

Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 12, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–03844 Filed 2–19–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $500 million direct loan to support the $325 million export of U.S. mining equipment and services to mine copper concentrate in Mongolia. The concentrate contains approximately 30% copper, and significantly less than 1% of gold and silver. The U.S. exports will enable the mine to produce 828,000 metric tons of copper concentrate per annum on average in the early years of production, and 1,796,000 metric tons of copper concentrate per annum on average in the later years. Available information indicates that the foreign buyer's concentrate output will mainly be sold to smelters in China.

Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 442, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2013–03828 Filed 2–19–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Grace Investment Company, Inc., ESOP, and Grace Investment Company, Inc.*, both in Alva, Oklahoma; to merge with First Kiowa Bancshares, Inc., and thereby indirectly acquire The First State Bank, Kiowa, Kansas.

2. *Lexington B & L Financial Corp.*, Lexington, Missouri; to become a bank holding company following the conversion of its subsidiary, B & L Bank, Lexington, Missouri, from a federally chartered savings bank to a state chartered commercial bank.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *One PacificCoast Foundation and One PacificCoast Bancorp, Inc.*, both in Oakland, California; to become bank holding companies by acquiring 100 percent of the voting shares of Albina Community Bank, Portland, Oregon.

Board of Governors of the Federal Reserve System, February 14, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–03831 Filed 2–19–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (Eastern Time), February 25, 2013.

PLACE: 10th Floor Board Meeting Room, 77 K Street, NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the January 28, 2013 Board Member Meeting.

2. Thrift Savings Plan Activity Reports by the Executive Director.

a. Monthly Participant Activity Report.

b. Monthly Investment Performance Report.

c. Legislative Report.

3. Investment Structure Project Review.

4. Investment Options Review.

5. Office of External Affairs Report.

6. Strategic Performance Metric Report.

7. Digital Board Material.

Parts Closed to the Public

8. Approval of the Minutes of the January 28, 2013 Closed Board Meeting.
9. Procurement.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: February 15, 2013.

James Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2013–03973 Filed 2–15–13; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056; Docket 2012–0076; Sequence 53]

Federal Acquisition Regulation; Information Collection; Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning report of shipment.

DATES: Submit comments on or before April 22, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0056, Report of Shipment by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0056, Report of Shipment". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0056, Report of Shipment" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0056, Report of Shipment.

Instructions: Please submit comments only and cite Information Collection 9000–0056, Report of Shipment, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Acquisition Policy, by telephone at (202) 501–1448 or *curtis.glover@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

Per FAR 47.208, military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en-route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. Unless otherwise directed by a contracting officer, a contractor shall send the notice to the consignee transportation office at least twenty-four hours before the arrival of the shipment.

B. Annual Reporting Burden

There is no centralized database in the Federal Government that maintains information regarding advance notice of shipments of classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments en-route from contractor's plants. No public comments were received in prior years that have challenged the validity of the Government's estimates. Based on the number of unique vendors awarded contracts for Fiscal Year 2011 in the Federal Procurement Data System, the estimated respondents required to submit the Report of Shipment notice make up less than one-quarter percent of the total number unique vendors awarded contracts. Additionally, consultation with Government subject matter experts did not yield information to warrant a revision to the estimate. The estimated annual reporting burden remains unchanged.

Respondents: 250.
Responses per Respondent: 4.
Annual Responses: 1,000.
Hours per Response: 167.
Total Burden Hours: 167.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: February 13, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–03871 Filed 2–19–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting will be open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meetings and/or participate in the public comment session should email *acmh@osophs.dhhs.gov*.

DATES: The meeting will be held on Wednesday, March 27, 2013 from 9:00 a.m. to 5:00 p.m. and Thursday, March 28, 2013 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building,

1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882, Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during these meetings will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at this meeting is 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 designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business Monday, March 18, 2013.

Dated: January 29, 2013.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, U.S. Department of Health and Human Services.

[FR Doc. 2013–03782 Filed 2–19–13; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–13–0941]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Dating Matters: Strategies to Promote Healthy Teen Relationships™ (OMB# 0920–0941, Expiration 06/30/2015)—REVISION—National Center for Injury Prevention and Control (NCIPC)—Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Dating Matters: Strategies to Promote Healthy Teen Relationships™ is the Centers for Disease Control and Prevention's new teen dating violence prevention initiative.

To address the gaps in research and practice, CDC has developed Dating Matters, teen dating violence prevention program that includes programming for students, parents, educators, as well as policy development. Dating Matters is based on the current evidence about what works in prevention and focuses on high-risk, urban communities where participants include: Middle school students age 11 to 14 years; middle school parents; brand ambassadors; educators; school leadership; program implementers; community representatives; and local health department representatives in the following communities: Alameda County, California; Baltimore, Maryland; Broward County, Florida; and Chicago, Illinois.

The primary goal of this revision is to expand and add a limited number of instruments to the approved outcome and implementation evaluation of Dating Matters in the four metropolitan cities to determine its feasibility, cost, and effectiveness. In the evaluation, a standard model of TDV prevention (Safe Dates administered in 8th grade) will be compared to a comprehensive model (programs administered in 6th, 7th, and 8th grade as well as parent, educator, policy, and communications interventions).

The current revision request has two aims:

(1) Request to revise follow-up outcome evaluation instruments and drop mid-year outcome evaluation student survey, and

(2) Request to add process evaluation instruments to enhance implementation.

Population. The study population includes students in 6th, 7th and 8th grades at 44 schools in the four participating sites. At most, schools are expected to have 6 classrooms per grade, with an average of 30 students per classroom yielding a population of 23,760 students (44 schools × 3 grades × 6 classrooms per grade × 30 students per classroom). All student evaluation activities will take place during the school year. The sampling frame for parents, given that we would only include one parent per student, is also 23,760 for the three years of data collection covered by this package. If we assume 40 educators per school, the sampling frame for the educator sample is 1,760.

Students: In each year of data collection, we will recruit 11,880 students (30 students per classroom × 3 classrooms per grade × 3 grades × 44 schools). We assume a 95% participation rate (n = 11,286) for the baseline student survey and 90% participation rate (n = 10,692) at follow-up survey. In this revision, we request to drop the mid-term survey to reduce burden on schools.

Parents: We will recruit a sample of 2,020 parents. We expect that 95% of the 2,020 parents will agree to participate at baseline (n = 1,919) and 90% will participate in the follow-up survey (n = 1,818) parents.

Educators: We will attempt to recruit all educators in each school (44 schools × 40 educators per school = 1,760). We expect a 95% participation rate for an estimated sample of 1,672 educators at baseline and 90% participation rate at follow-up for an estimated sample of 1,584.

School data extractors: We will attempt to recruit one data extractor per 44 schools to extract school data to be used in conjunction with the outcome data for the students. Data extractors in each school will access individual school-level data for those students in their school who consented and participated in the baseline student survey (3 × 4 × 30 × 95% = 342).

Implementation Evaluation

For the student focus groups, we will recruit groups of 10 students per group. Two groups will be held per each of the 4 sites (10 × 2 × 4 = 80 total student participants).

Student implementer focus groups will be organized by site, with two annual focus groups per site with 10 implementers in each group (10 × 2 × 4 = 80 total student program implementer participants).

Communications focus groups will be organized by site with up to four groups

per site (4 × 4 × 6 = 96 total student participants).

Parent program implementer focus groups will be organized by site, with two annual focus groups per site with 10 implementers in each group (10 × 2 × 4 = 80 total parent program implementer participants).

School Leadership: Based on the predicted number of two school leadership per comprehensive school (21 schools), the number of respondents will be 42.

Local Health Department representative: Based on the predicted number of four communities/sites and four local health department representatives working on Dating Matters per community, the number of respondents will be 16.

Community Advisory Board Representative: Based on the predicted number of 20 community representatives per 4 communities/sites, the number of respondents will be 80.

Parent Program Manager: With a maximum of one parent program manager per community/site, the number of program manager respondents will be 4. It is anticipated that they will receive up to 50 TA requests per year and complete the form 50 times.

Student Program Master Trainer TA Form: With a maximum of 3 master trainers per community. There will be 12 master trainers. It is anticipated that they will receive up to 50 TA requests per year and complete the form 50 times.

Parent Curricula Implementers: It is expected that each school implementing the comprehensive approach (n = 21) will have two implementers (or 42 parent program implementer respondents).

Please note that on the burden table the number of respondents is multiplied by the number of sessions in each parent program.

Student Curricula Implementers: Based on the predicted number of 20 student curricula implementers per grade per site that will be completing fidelity instruments, the total number of respondents will be 80 per grade (20 × 4).

Brand Ambassadors: The Brand Ambassador Implementation Survey will be provided to each brand ambassador (n = 20) in each community with a maximum of 80 brand ambassadors.

Communications Implementers ("Brand Ambassador Coordinators"): The Communications Campaign Tracking form will be provided to each brand ambassador coordinator in each community. With a maximum of one brand ambassador coordinator per community (n = 4), the feedback form will be collected from a total of 4 brand ambassador coordinators.

Parent Program Participants: The 6th and 7th grade parent satisfaction questionnaires will be completed by parent participating in the parent program in each community. There is a maximum number of parent respondents of 1,890 (18 × 5 × 21) for the 6th grade satisfaction questionnaire and 1,890 for the 7th grade satisfaction questionnaire.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 27923.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Student Program Participant	Student Outcome Survey Baseline	11,286	1	45/60
Student Program Participant	Student Outcome Survey Follow-up	10,692	1	45/60
School data extractor	School Indicators	44	342	15/60
Parent Program Participant	Parent Outcome Baseline Survey	1,919	1	1
Parent Program Participant	Parent Outcome Follow-up Survey	1,818	1	1
Educator	Educator Outcome Survey (baseline)	1,672	1	30/60
Student Brand ambassador	Brand Ambassador Implementation Survey	80	2	20/60
School leadership	School Leadership Capacity and Readiness Survey.	42	1	1
Parent Curricula Implementer	Parent Program Fidelity 6th Grade Session 1–Session 6.	210	3	15/60
Parent Curricula Implementer	Parent Program Fidelity 7th Grade Session 1, 3, 5.	126	3	15/60
Student Curricula Implementer	Student Program Fidelity 6th Grade Session 1–Session 6.	480	1	15/60
Student Curricula Implementer	Student Program Fidelity 7th Grade Session 1–Session 7.	560	1	15/60
Student Curricula Implementer	Student Program Fidelity 8th Grade Session 1–Session 10 (comprehensive).	800	1	15/60
Communications Coordinator	Communications Campaign Tracking	4	4	20/60
Local Health Department Representative	Local Health Department Capacity and Readiness.	16	1	2
Student Program Participant	Student participant focus group guide (time spent in focus group).	80	1	1.5
Student Curricula Implementer	Student curricula implementer focus group guide (time spent in focus group).	80	1	1
Parent Curricula Implementer	Parent curricula implementer focus group guide (time spent in focus group).	80	1	1
Student Curricula Implementer	Safe Dates 8th Grade Session 1–Session 10 (standard).	800	1	15/60
Student Master Trainer	Student program master trainer TA form	12	50	10/60
Educator	Educator Outcome Survey (follow-up)	1584	1	30/60
Community Advisory Board Member	Community Capacity/Readiness Assessment	80	1	1
Students	Communications Focus Groups	96	1	1.5
Parent Program Manager	Parent Program Manager TA Tracking Form	4	50	10/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Parent Program Participant	6th Grade Curricula Parent Satisfaction Questionnaire.	1890	1	10/60
Parent Program Participant	7th Grade Curricula Parent Satisfaction Questionnaire.	1890	1	10/60

Dated: February 12, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–03891 Filed 2–19–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–13–0853]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Asthma Information Reporting System (AIRS) (0920–0853, Expiration 06/30/2013)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is seeking a three-year extension of OMB approval for the AIRS information collection. In 1999, the CDC began developing its National Asthma Control Program, a population-based, public health approach to addressing the burden of asthma. The program supports the goals and objectives of "Healthy People 2020" for asthma and is based on the public health principles of surveillance, partnerships, and interventions. Through AIRS, the information collection request has and will continue to provide NCEH with routine information about the activities and performance of the state and territorial grantees funded under the National Asthma Control Program *http://www.cdc.gov/asthma/nacp.htm*.

The primary purpose of the National Asthma Control Program is to develop program capacity to address asthma from a public health perspective to bring about: (1) A focus on asthma-related activity within states; (2) an increased understanding of asthma-related data and its application to program planning and evaluation through the development and maintenance of an ongoing asthma surveillance system; (3) an increased recognition, within the public health structure of states, of the potential to use a public health approach to reduce the burden of asthma; (4) linkages of state health agencies to other agencies and organizations addressing asthma in the population; and (5) implementation of interventions to achieve positive health impacts, such as reducing the number of deaths, hospitalizations, emergency department visits, school or work days missed, and limitations on activity due to asthma.

The AIRS management information system is comprised of multiple components that enable the electronic reporting of three types of data/information from state asthma control programs: (1) Information that is currently collected as part of interim (semi-annual) and end-of-year progress reporting, (2) Aggregate level reports of surveillance data on long-term program outcomes, and (3) Specific data indicative of progress made on: Partnerships, surveillance, interventions, and evaluation.

Prior to implementation of AIRS, data were collected on an interim (semi-annual) basis from state asthma control programs as part of regular reporting of cooperative agreement activities. States reported information such as progress-to-date on accomplishing intended objectives, programmatic changes, changes to staffing or management, and budgetary information.

Regular reporting this information is a requirement of the cooperative agreement mechanism utilized to fund state asthma control programs. States are asked to submit interim (semi-annual) and year-end progress report information into AIRS, thus this type of programmatic information on activities and objectives will continue to be collected twice per year (interim report and end-of-year report).

The National Asthma Control Program at CDC has access to and analyzes national-level asthma surveillance data (*http://www.cdc.gov/asthma/asthmadata.htm*). With the exception of data from the Behavioral Risk Factor Surveillance System (BRFSS), state level analyses cannot be performed. Therefore, as part of AIRS, state asthma control programs submit aggregate surveillance data to allow calculation of state asthma surveillance indicators across all funded states (where data is available) in a standardized manner. Data requests through this system regularly include: hospital discharges (with asthma as first listed diagnosis), and emergency department visits (with asthma as first listed diagnosis). Under AIRS, participating states annually submit this information to the AIRS system in conjunction with an end-of-year report describing state activities

that meet project objectives described above.

National and state asthma surveillance data provide information useful to examine progress on long-term outcomes of state asthma programs. To identify appropriate indicators of program implementation and short-term outcomes for AIRS, CDC previously convened and facilitated workgroups comprised of state asthma control program representatives to generated specific questions to collect data on key features of state asthma control programs: partnerships, surveillance, interventions, and evaluation.

Since implementation in 2010 AIRS, and technical assistance provided by NCEH staff, has provided states with uniform data reporting methods and linkages to other states' asthma programs and data. Thus, AIRS has saved state resources and staff time when they embark on asthma activities similar to those being done elsewhere. Also, the AIRS system has been similarly helpful in linking states together on occasions when a given state seeks to report their results at national meetings or publish their findings and program results either in scholarly journals. For example, with CDC staff, three state programs co-presented on a panel regarding evaluations of their asthma partnerships at the November, 2012 American Evaluation Association's *Evaluation 2012* conference.

In addition, CDC staff have regularly made requests from AIRS to obtain standardized summaries of state programs to obtain data summaries regarding such activities as the number of states meeting staffing requirements, number and timeliness of state strategic evaluation plans, topics for individual evaluation selected by states, types and targets of interventions, and use of asthma surveillance data in state programs.

Furthermore, access to standardized AIRS surveillance and programmatic data allows CDC to provide timely and accurate responses to the public and Congress regarding the NCEH asthma program (e.g., how many states have asthma interventions targeting schools, how many children are treated in emergency departments, etc.).

There will be no cost for respondents, other than their time, to participate in AIRS. The total estimated annual burden hours are 288.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Health Departments	Interim report on activities and objectives.	36	1	2	72
	End-of-year report on activities, objectives and aggregate surveillance.	36	1	6	216
Total					288

Dated: February 12, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–03894 Filed 2–19–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through February 3, 2015.

For information, contact Dr. Roger Rosa, Executive Secretary, Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, CDC/Washington Office, HHH Building, 200 Independence Ave SW., Room 715H, MS P12, Washington, DC 20201—telephone 202/205–7856 or fax 202/260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–03806 Filed 2–19–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting of the ICD–9–CM Coordination and Maintenance Committee; Correction

SUMMARY: This document corrects a notice that was published in the **Federal Register** on February 7, 2013 (78 FR 9055–9056). The title of the meeting announcement should read as follows: Notice of Meeting of the ICD–9–CM Coordination and Maintenance Committee. The first sentence of the notice should read as follows: National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff announces the following meeting:

Name: ICD–9–CM Coordination and Maintenance Committee (C&M) meeting.

Time and Date: 9:00 a.m.–5:00 p.m., March 5, 2013.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Donna Pickett, Medical Systems

Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2337, Hyattsville, Maryland 20782, email *dfp4@cdc.gov*, telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, email *marilu.hue@cms.hhs.gov*, telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–03794 Filed 2–19–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Support Document Exchange System (CSDES)

OMB No.: New Collection

Description: The federal Office of Child Support Enforcement (OCSE) is implementing a new application, the Child Support Document Exchange System (CSDES), within the Federal Parent Locator Service (FPLS) Child Support Services Portal (CSSP). The CSDES will collect and maintain certain child and spousal support case-related records provided by a state IV–D child support agency to facilitate the dissemination of IV–D child and spousal support information to authorized users acting on behalf of a state IV–D child support agency.

42 U.S.C. 666(c)(1)(A)(B)(C) and (D) and 42 U.S.C. 653(a)(1).

The purpose of the information collection is to provide technical assistance to the states to help them establish effective systems for collecting child and spousal support.

42 U.S.C. 652(a)(7). This will help state IV–D agencies in fulfilling the federal requirement to transmit requests for child support case information and provide requested information electronically to the greatest extent possible.

45 CFR 303.7(a)(5).

It is anticipated that the implementation of the CSDES will reduce delays, costs, and barriers associated with interstate case processing; increase state collections; improve document security; standardize data sharing; and increase state participation; thereby improving overall child and spousal support outcomes.

Respondents: State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Data Entry Screens	52	4,272	.0166667 (60 seconds)	3,702.41
Batch Processing	2	1	40	80.00

Estimated Total Annual Burden Hours: 3,782.41.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–03807 Filed 2–19–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories for FFY 2012–2013 (ACF–118).

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the States' and Territories' child care programs. The ACF–118 is currently approved through December 31, 2013, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2013 Plan Period. However, on July 1, 2011, States and Territories will be required to submit their FY 2014–2015 Plans for approval by September 30, 2013. Consistent with the statute and regulations, ACF requests revision of the ACF–118 with minor corrections and modifications.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received from the 1st Public Notice. OCC has revised the document to reflect some of the changes made to minimize the burden of the collection of information on respondents. The revised document contains revisions to improve the accuracy and clarity of questions in order to improve the quality of information that is collected. This second Public Comment Period provides an opportunity for the public to submit comments to the Office of Management and Budget (OMB). The Tribal Plan (ACF–118a) will be addressed under a separate notice.

Copies of the proposed collection may be obtained by writing to the

Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

Respondents: State and Territory CCDF Lead Agencies (56).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	0.50	162.50	4,550

Estimated Total Annual Burden Hours: 4,550.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–03813 Filed 2–19–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meeting

AGENCY: Administration for Children and Families' Office of Head Start (OHS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of two 1-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, 640(l)(4)].

DATES: March 19, 2013, and June 11, 2013.

ADDRESSES: 2013 Office of Head Start Tribal Consultation Sessions will be held at the following locations: Tuesday, March 19, 2013—Albuquerque, New Mexico—Hotel Albuquerque at Old Town, 800 Rio Grande Boulevard NW., Albuquerque, NM 87104; and Tuesday, June 11, 2013—Spokane, Washington—DoubleTree Spokane City Center, 322 N. Spokane Falls Court, Spokane, WA 99201.

FOR FURTHER INFORMATION CONTACT: Robert Bialas, Regional Program Manager, Region XI, Office of Head Start, email *Robert.Bialas@acf.hhs.gov* or phone (202) 205–9497. Additional information and online meeting registration is available at *eclkc.ohs.acf.hhs.gov/hslc/eclkc_main_calendar/tc-2013*.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) announces Office of Head Start (OHS) Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs. As much as possible, the OHS Tribal Consultations are being scheduled in conjunction with other tribal events. The Consultation in Albuquerque is being held in conjunction with the 32nd Native American Child and Family Conference (NACFC), presented by the Southwest Consortium of Indian Head Start Programs, Inc. The Consultation in Spokane is being held in conjunction with the 23rd Annual National Indian Head Start Directors Association (NIHSDA) Training Conference. Such scheduling is an effort to minimize the burden of travel for tribal participants. Tribal Consultation dates and locations for other parts of the country, including Alaska, will be announced at a later date.

The agenda for the scheduled OHS Tribal Consultations will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian/Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2012 OHS Tribal Consultations.

Tribal leaders and designated representatives interested in submitting written testimony or proposing specific agenda topics for these Consultation Sessions should contact Robert Bialas at *Robert.Bialas@acf.hhs.gov*. Proposals must be submitted at least 3 days in advance of each session and should include a brief description of the topic area, along with the name and contact information of the suggested presenter.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C. 9835, 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the tribe. The letter should be submitted at least 3 days in advance of the Consultation Sessions to Robert Bialas via fax at 866–396–8843. Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of the Consultation Sessions will be prepared and made available within 45 days of the

Consultation Sessions to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Robert Bialas at *Robert.Bialas@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Sessions will be summarized in each report without attribution, along with topics of concern and recommendations. Hotel and logistical information for the Consultation Sessions has been sent to tribal leaders via email and posted on the Early Childhood Learning and Knowledge Center Web site at *eclkc.ohs.acf.hhs.gov/hslc/eclkc_main_calendar/tc-2013*.

Dated: February 11, 2013.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2013–03795 Filed 2–19–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0961]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by March 22, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0322. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Environmental Impact Considerations—(OMB Control Number 0910–0322)—Revision

FDA is requesting OMB approval for the reporting requirements contained in the FDA collection of information "Environmental Impact Considerations."

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4327) states national environmental objectives and imposes upon each Federal Agency the duty to consider the environmental effects of its actions. Section 102(2)(c) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

FDA's NEPA regulations are in part 25 (21 CFR part 25). All applications or petitions requesting Agency action require the submission of a claim for categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (§ 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in significant environmental impact. Sections 25.40(a) and (c) specifies the content requirements for EAs for nonexcluded actions.

This collection of information is used by FDA to assess the environmental impact of Agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statues for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse events cannot be avoided, the Agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a **Federal Register** document also filed for comment at the Environmental Protection Agency. The final EIS, including the comments received, is reviewed by the Agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact.

Any final EIS would contain additional information gathered by the Agency after the publication of the draft EIS, a copy or a summary of the comments received on the draft EIS, and the Agency's responses to the comments, including any revisions resulting from the comments or other information. When the Agency finds that no significant environmental effects are expected, the Agency prepares a finding of no significant impact.

In the **Federal Register** of September 28, 2012 (77 FR 59619), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two comments that were PRA related were received from one commenter.

(Comment 1) The commenter indicated that FDA underestimates the hours required to complete an environmental assessment for tobacco products, and that FDA's 12 hours burden estimate per response is substantially underestimated. The commenter said, based on the commenter's experience, an environmental assessment for tobacco products should take approximately 80 hours to complete.

(Response 1) FDA agrees with this comment. Upon further review of the number of hours required to complete an environmental assessment for tobacco products, FDA has determined that 12 hours is too low an estimate and has revised the burden estimate per response for completing an environmental assessment for tobacco products from 12 to 80 hours. This revision was based upon revisiting this estimate with the Center for Tobacco Products staff and this comment. Rethinking the time to prepare an environmental assessment for tobacco products resulted in revising the burden per response to 80 hours.

(Comment 2) The commenter also encouraged the Agency to establish categorical exclusions for environmental assessments for tobacco product submittals under section 905(j) of the

Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 387e(j)).

(Response 2) FDA has decided to not establish categorical exclusions for tobacco products at this time.

FDA estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden for Human Drugs (Including Biologics in the Center for Drug Evaluation and Research)

Under 21 CFR 312.23(a)(7)(iv)(e), 314.50(d)(1)(iii), and 314.94(a)(9)(i), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 or § 25.31 or an EA under § 25.40. In 2011, FDA received 2,818 INDs from 2,064 sponsors, 99 NDAs from 79 applicants, 3,247 supplements to NDAs from 376 applicants, 5 biologic license applications (BLAs) from 5 applicants, 287 supplements to BLAs from 50 applicants, 895 ANDAs from 195 applicants, and 5,348 supplements to ANDAs from 299 applicants. FDA estimates that it will receive approximately 15,699 claims for categorical exclusions as required under § 25.15(a) and (d), and 10 EAs as required under § 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 3,175 respondents will submit an average of 4 applications for categorical exclusion and 10 respondents will submit an average of 1 EA. Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	3,175	4	12,700	8	101,600
25.40(a) and (c)	10	1	10	3,400	34,000
Total					135,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Human Foods

Under 21 CFR 71.1, 171.1, 170.39, and 170.100, food additive petitions, color additive petitions, requests from exemption from regulation as a food additive, and submission of a food contact notification for a food contact substance must contain either a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. In 2011, FDA received 97 industry submissions. FDA received an annual average of 42 claims of categorical exclusions as required under § 25.15(a) and (d), and 33 EAs as required under § 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 42 respondents will submit an average of 1 application for categorical exclusion and 33 respondents will submit an average of 1 EA. FDA estimates that, on average, it takes petitioners, notifiers, or requestors approximately 3 hours to prepare a claim of categorical exclusion and approximately 210 hours to prepare an EA.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN FOODS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	42	1	42	8	336
25.40(a) and (c)	33	1	33	210	6,930
Total					7,266

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Medical Devices

Under 21 CFR 814.20(b)(11), premarket approvals (PMA) (original PMAs and supplements) must contain a claim for categorical exclusion under § 25.30 or § 25.34 or an EA under § 25.40. In 2011, FDA received approximately 52 claims (original PMAs and supplements) for categorical exclusions as required under § 25.15(a) and (d), and 0 EAs as required under § 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 52 respondents will submit an average of 1 application for categorical exclusion. Based on information provided by less than 10 sponsors, FDA estimates that it takes approximately 6 hours to prepare a claim for a categorical exclusion.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR MEDICAL DEVICES [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	52	1	52	6	312

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Biological Products, Drugs, and Medical Devices in the Center for Biologics Evaluation and Research

BLAs under 21 CFR 601.2(a), as well as INDs (§ 312.23), NDAs (§ 314.50), ANDAs (§ 314.94), and PMAs (§ 814.20), must contain either a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. In 2011, FDA received 14 BLAs from 14 applicants, and 831 BLA supplements to license applications from 153 applicants, 288 INDs from 210 sponsors, 1 NDA from 1 applicant, 37 supplements to NDAs from 9 applicants, 1 ANDA from 1 applicant, 12 supplements to ANDAs from 2 applicants, and 45 PMA supplements from 11 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA estimates that it received approximately 481 claims for categorical exclusion as required under § 25.15(a) and (d), and 2 EAs as required under § 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 247 respondents will submit an average of 2 applications for categorical exclusion and 2 respondents will submit an average of 1 EA. Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim of categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICAL PRODUCTS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	247	2	494	8	3,952
25.40(a) and (c)	2	1	2	3,400	6,800
Total					10,752

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Animal Drugs

Under 21 CFR 514.1(b)(14), new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs), 21 CFR 514.8(a)(1) supplemental NADAs and ANADAs, 21 CFR 511.1(b)(10) investigational new animal drug applications (INADs), and 21 CFR 571.1(c), food additive petitions must contain a claim for categorical exclusion under § 25.30 or § 25.33 or an EA under 25.40. In 2011, FDA's Center for Veterinary Medicine has received approximately 698 claims for categorical exclusion as required under § 25.15(a) and (d), and 10 EAs as required under § 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 70 respondents will submit an average of 10 applications for categorical exclusion and 10 respondents will submit an average of 1 EA. FDA estimates that it takes sponsors/applicants approximately 3 hours to prepare a claim of categorical exclusion and an average of 2,160 hours to prepare an EA.

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN FOR ANIMAL DRUGS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	70	10	700	3	2,100
25.40(a) and (c)	10	1	10	2,160	21,600
Total					23,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Tobacco Products

Under sections 905, 910, and 911 of the FD&C Act (21 U.S.C. 387j and 387k), premarket tobacco applications (PMTAs), applications for substantial equivalence (SEs), Exemption from SEs, and modified risk tobacco products must contain a claim for categorical exclusion under § 25.30 or § 25.34 or an EA under § 25.40. When estimating the burden for tobacco products, FDA considered the environmental impacts associated with different applications. Specifically, in 2011, FDA estimated it will receive approximately 20 PMTAs and supplements from 20 respondents, 150 reports intended to demonstrate the SE of a new tobacco product from 150 respondents, 500 exemptions from SE requirements applications from 500 respondents, and 3 modified risk tobacco product applications from 3 respondents. FDA is also not accepting claims for categorical exclusions at this time, and estimates that there will be 135 EAs from 135 respondents as required under § 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 135 respondents will submit an average of 1 application for environmental assessment. Part of the information in the EA will be developed while writing other parts of a PMTA, SE., exemption from SE, or modified risk tobacco product application. Based on FDA's experience, previous information provided by potential sponsors, information provided by a commenter to this collection of information, and knowledge that part of the EA information has already been produced in one of the tobacco product applications, FDA estimates that it takes approximately 80 hours to prepare an EA.

TABLE 6—ESTIMATED ANNUAL REPORTING BURDEN FOR TOBACCO PRODUCTS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.40(a) and (c)	135	1	135	80	10,800
Total					10,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 7—ESTIMATED ANNUAL TOTAL REPORTING BURDEN FOR ALL CENTERS [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	3,586		13,998		108,300
25.40(a) and (c)	190		190		80,130
Total					188,430

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03836 Filed 2–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of MUC–1 Tumor Associated Antigens as Cancer Vaccines for Bladder Cancer, Breast Cancer, Colorectal Cancer, Gastric Cancer, Kidney Cancer, Liver Cancer, Lung Cancer, Ovarian Cancer, Prostate Cancer and Pancreatic Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to Bavarian Nordic Immunotherapeutics ("BNIT") located in Mountain View, CA, USA:

Intellectual Property: U.S. provisional patent application no. 61/582, 723 filed January 3, 2012 entitled "Native and Agonist CTL Epitopes of the MUC–1 Tumor Antigen" [HHS Ref. No. E–001–2012/0–US–01] as well as all international applications, continuation applications and divisional applications.

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use will be limited to the use of Licensed Patent Rights for development of Pox-virus based vaccines for bladder cancer, breast cancer, colorectal cancer, gastric cancer, kidney cancer, liver cancer, lung cancer, ovarian cancer, prostate cancer and pancreatic cancer."

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before March 22, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D., M.B.A. Licensing and Patenting Manager, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5587; Facsimile: (301) 435–4013; Email: *chatterjeesa@od.nih.gov.*

SUPPLEMENTARY INFORMATION: Cancer immunotherapy is a recent approach where tumor associated antigens (TAAs), which are primarily expressed in human tumor cells, and not expressed or minimally expressed in normal tissues, are employed to generate a tumor-specific immune response. Specifically, these antigens serve as targets for the host immune system and elicit responses that results in tumor destruction. The initiation of an effective T-cell immune response to antigens requires two signals. The first one is antigen-specific via the peptide/major histocompatibility complex and the second or "co-stimulatory" signal is required for cytokine production, proliferation, and other aspects of T-cell activation.

Dr. Jeffrey Schlom et al. at NCI have identified 7 new agonist epitopes of the MUC–1 tumor associated antigen. Compared to their native epitope counterparts, peptides reflecting these agonist epitopes have enhanced ability to generate cytotoxic T-lymphocytes (CTL), which in turn have a greater ability to kill MUC–1 expressing human tumor cells. The agonist epitopes span both the VNTR region of MUC–1 and the C-terminus region. The epitopes encompass two major MHC alleles reflecting the majority of the population.

Along with the method of use, the technology encompasses the use of these agonist epitopes in peptide- and protein-based vaccines, with dendritic cells or other antigen presenting cells, or encoding sequences in DNA, viral, bacterial, yeast, or other types of vectors, or to stimulate T-cells in vitro for adoptive immunotherapy protocols.

The MUC–1 tumor associated antigen has been shown to be overexpressed and/or underglycosylated in a wide range of human cancers. The C-terminus region of MUC–1 (MUC–1C) has been shown to be an oncogene and has been associated with a more aggressive phenotype in several different cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 13, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–03799 Filed 2–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational Research in Diabetes, Obesity and Endocrinology Disorders.

Date: March 13, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Computational, and Molecular Biology.

Date: March 13, 2013.

Time: 10:00 a.m. to 6:00 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Population Studies and Epidemiology AREA Review.

Date: March 13, 2013.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1D12A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA: Endocrinology, Metabolism Nutrition and Reproduction.

Date: March 13, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154 *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Biophysical and Biomechanical Aspects of Embryonic Development.

Date: March 13, 2013.

Time: 1:30 p.m. to 5:30 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: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Diabetes, Metabolism and Obesity.

Date: March 13, 2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–234: Bioengineering Research Partnership (BRP).

Date: March 13, 2013.

Time: 12:00 p.m. to 4:00 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: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03802 Filed 2–19–13; 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 Initial Review Group Training and Workforce Development Subcommittee D.

Date: March 14–15, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.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: February 13, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03805 Filed 2–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting 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: Recombinant DNA Advisory Committee.

Date: March 12, 2013.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. Please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) for more information.

Place: National Institutes of Health, Rockledge II, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *george@od.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

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.

Dated: February 12, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03800 Filed 2–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, 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; "NIAID Investigator-Initiated Program Project Applications (P01)".

Date: March 8, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "NIAID Peer Review Meeting".

Date: March 11–12, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard W. Morris, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MSC–7616, Room 3251, Bethesda, MD 20892–7616, 301–451–2663, *rmorris@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "NIAID Peer Review Meeting".

Date: March 25–26, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard W. Morris, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3251, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *rmorris@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "NIAID Investigator-Initiated Program Project Applications (P01)".

Date: March 28, 2013.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@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: February 12, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03801 Filed 2–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 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 Inherited Disease Research Access Committee.

Date: March 7, 2013.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 13, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03803 Filed 2–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Specialized Neuroscience Research Program (SNRP).

Date: April 2–3, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 402–0288, *Natalia.Strunnikova@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Wellstone Review.

Date: April 10–11, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *saavedrr@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 13, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03804 Filed 2–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0054]

Agency Information Collection Activities: Notice of Naturalization Oath Ceremony, Form N–445; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The November 8, 2012, at 77 FR 67018, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 22, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0055 or via email at *uscisfrcomment@uscis.dhs.gov*. All submissions received must include the agency name and the OMB Control Number 1615–0054.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make

to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–445; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application. USCIS will use this information to determine if any changes to the respondent's prior statements affect the decisions the agency has made in regards to the respondent's ability to be naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 900,000.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 149,400.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: February 12, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–03788 Filed 2–19–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings; correction.

SUMMARY: The Department of the Interior published a document in the **Federal Register** of February 11, 2013, concerning a notice of public meetings of the Invasive Species Advisory Committee. The document contained incorrect dates. This document corrects those errors.

DATES: ISAC New Member Orientation (CLOSED): Wednesday, March 6, 2013; 9 a.m. to 1:45 p.m. Meeting of the Invasive Species Advisory Committee (OPEN): Thursday, March 7, 2013 through Friday, March 8, 2013; 8 a.m. to 5 p.m.

ADDRESSES: Sheraton Pentagon City, 900 South Orme Street, Arlington, VA 22204–4520. The general session on Thursday, March 7, 2013 and Friday, March 8, 2013 will be held in the Galaxy Ballroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, 202–513–7243.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 11, 2013, in FR Doc. 2013–03062, make the following corrections:

1. On page 9724, in the second column, correct paragraph 2 in the "Purpose of Meeting" caption to read:

"The full committee meeting on Thursday, March 7, 2013 and Friday, March 8, 2013 is open to the public. An orientation session will be held on Wednesday, March 6, 2013 for the 14 new ISAC members appointed by Secretary Ken Salazar on January 22, 2013. Note: There will be no business conducted during the orientation session, which is closed to the public."

2. On page 9724, in the second column, the **DATES** caption is corrected to read as shown in this document's **DATES** caption.

3. In the **Federal Register** of February 11, 2013, in FR Doc. 2013–03062, on page 9724, in the second and third columns, the **ADDRESSES** caption is corrected to read as shown in this document's **ADDRESSES** caption.

Dated: February 14, 2014.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 2013–03916 Filed 2–19–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC930000.L1430000.EU0000. CACA 053519]

Notice of Realty Action: Direct Sale of Public Land in San Mateo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Hollister Field Office, proposes to sell two separate parcels of public land totaling approximately 80 acres in San Mateo County, California. The public lands would be sold to the Sempervirens Fund, a California Nonprofit Corporation, for the appraised fair market value. The total appraised value of both parcels is $870,000.

DATES: Comments regarding the proposed sale must be received by the BLM on or before April 8, 2013.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, or phone (831) 630–5022. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following public lands are proposed for direct sale in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian

Parcel No. 1

T. 8 S., R. 3 W.,
Sec. 23, NW¼NW¼.

The area described contains 40 acres in San Mateo County and is proposed for sale to the Sempervirens Fund for the appraised fair market value of $420,000.

Parcel No. 2

T. 8 S., R. 4 W.,
Sec. 9, NE¼SW¼.

The area described 40 acres and is proposed for sale to the Sempervirens Fund for the appraised fair market value of $450,000.

The areas described aggregate 80 acres, more or less, in Santa Mateo County, California.

The public land was first identified as suitable for disposal in the 1984 BLM Hollister Resource Management Plan (RMP) and remains available for sale under the 2007 Hollister RMP revision and is not needed for any other Federal purpose. The purpose of the sale is to dispose of public lands which are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. The lands proposed for sale are considered to be difficult and uneconomic to manage because they lack legal access and are isolated from other public lands in the region. The public lands proposed for sale contain old growth Redwood forest and have been designated as critical habitat for the California red-legged frog. The BLM is proposing a direct sale to the Sempervirens Fund, whose mission is to protect and preserve redwood forests in California's Santa Cruz Mountains. The BLM has concluded that a competitive sale is not appropriate and that the public interest would best be served by a direct sale to the Sempervirens Fund. The BLM has completed a mineral potential report which concluded that, with the exception of oil and gas resources in parcel one, there are no known mineral values on the lands proposed for sale. The BLM proposes to reserve all mineral interests in parcel one and to convey all mineral interests in parcel two. The conveyance of all Federal mineral interests in parcel two would occur simultaneously with the sale of the land. The purchaser would be required to pay a $50 nonrefundable filing fee for processing the conveyance of the mineral interests.

On February 20, 2013, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The segregation terminates upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on February 20, 2015, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The land would not be sold until at least April 22, 2013. Any conveyance document issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation of all mineral resources to the United States, together with the right by itself, its permittees, licensees and lessees to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe (applies to parcel one only).

3. A condition that the conveyance be subject to all valid existing rights of record.

4. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands.

5. Additional terms and conditions that the authorized officer deems appropriate.

Detailed information concerning the proposed sale including the appraisal, planning and environmental documents, and mineral report are available for review at the location identified in **ADDRESSES** above.

Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Hollister Field Manager (see **ADDRESSES** above) on or before April 8, 2013. Comments received in electronic form, such as email will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c)

Cynthia Staszak,

Associate Deputy State Director for Natural Resources.

[FR Doc. 2013–03810 Filed 2–19–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–PAGR–12275; PPNEPAGR00, PMP00UP05.YP0000]

Meeting Notice for the Paterson Great Falls National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice announces a schedule of upcoming meetings for the Paterson Great Falls National Historical Park (NHP) Federal Advisory Commission.

DATES: The Commission meeting is scheduled for March 7, 2013.

Time: This meeting will begin at 2:00 p.m. and will end by 5:00 p.m.

Location: The meeting will be held at the Paterson Museum, 2 Market Street (intersection of Market and Spruce Streets), Paterson, NJ.

FOR FURTHER INFORMATION CONTACT: Darren Boch, Superintendent, Paterson Great Falls National Historical Park, 72

McBride Avenue, Paterson, NJ 07501, telephone (973) 523–2630.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Paterson Great Falls NHP Federal Advisory Commission. The Paterson Great Falls NHP Federal Advisory Commission was authorized by Congress and signed by the President on March 30, 2009. (Pub. L. 111–11, Title VII, Subtitle A, Section 7001, Subsection e) "to advise the Secretary in the development and implementation of the management plan." Topics to be discussed include Advisory Commission comments and suggestions for draft alternatives for the Paterson Great Falls NHP General Management Plan.

The meetings will be open to the public and time will be reserved during each meeting for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim, they must submit them in writing. Written comments and requests for agenda items may be sent to: Federal Advisory Commission, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501.

Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: February 13, 2013.

Amanda Jones,

Community Planner, Park Planning and Special Studies, National Park Service, Northeast Region.

[FR Doc. 2013–03863 Filed 2–19–13; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–12319; PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of March 12, 2013 Meeting for Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the first meeting of the Fort Hancock 21st Century Advisory Committee.

DATES: The public meeting of the Fort Hancock 21st Century Advisory Committee will be held on March 12, 2013, at 9:00 a.m. (Eastern).

ADDRESSES: The committee members will meet at Ocean Place Resort and Spa, 1 Ocean Boulevard, Long Branch, NJ 07740. Please check *www.forthancock21stcentury.org* for additional information.

Agenda: Committee meeting will consist of the following:

1. Welcome and Introductory Remarks
2. Finalize Operating Procedures
3. Discussion of Factors Affecting Reuse of the Historic Buildings at Fort Hancock
4. Selection of Co-Chairs
5. Potential Frameworks and Reuse Scenarios
6. Committee Work Plan
7. Future Committee Activities, Meeting Schedule, Work Plan
8. Public Comment
9. Adjournment

The final agenda will be posted on *www.forthancock21stcentury.org* prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from John Warren, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10305, at (718) 354–4608 or email: *forthancock21stcentury@yahoo.com*, or visit the Advisory Committee Web site at *www.forthancock21stcentury.org*.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), The purpose of the committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings at Fort Hancock within Gateway National Recreation Area.

The meeting is open to the public. Interested members of the public may present, either orally or through written comments, information for the committee to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. The public will be able to comment on March 12, 2013, from 4:00 p.m. to 4:45 p.m. Written comments will be accepted prior to, during or after the meeting. Due to time constraints during the meeting, the committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public committee meeting will be limited to no more than 5 minutes per speaker.

Before including your address, telephone number, email address, or other personal indentifying information in your written comments, you should be aware that your entire comment including your personal identifying information may be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments will be made part of the public record and will be electronically distributed to all committee members.

Dated: February 12, 2013.

Linda Canzanelli,

Superintendent, Gateway National Recreation Area.

[FR Doc. 2013–03864 Filed 2–19–13; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–405, 406, and 408 and 731–TA–899–901 and 906–908 (Second Review)]

Hot-Rolled Steel Products From China, India, Indonesia, Taiwan, Thailand, and Ukraine; Notice of Commission Determination To Conduct Full Five-year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on hot-rolled steel products from India, Indonesia, and Thailand and the revocation of the antidumping duty orders on hot-rolled steel products from China, India, Indonesia, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part

201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 4, 2013.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On February 4, 2013, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (77 FR 66078, November 1, 2012) was adequate and that the respondent interested party group responses with respect to Taiwan and Thailand were adequate, and decided to conduct full reviews of the antidumping duty orders on hot-rolled steel products from Taiwan and Thailand and countervailing duty order on hot-rolled steel products from Thailand. The Commission found that the respondent interested party group response with respect to China, India, Indonesia, and Ukraine was inadequate. However, the Commission determined to conduct full reviews concerning the orders on hot-rolled steel products from China, India, Indonesia, and Ukraine to promote administrative efficiency in light of its decision to conduct full reviews with respect to the orders on subject imports from Taiwan and Thailand. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 13, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–03798 Filed 2–19–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1615]

Review of Gun Safety Technologies

AGENCY: National Institute of Justice, JPO, DOJ.

ACTION: Notice.

SUMMARY: Following the President's Plan to reduce gun violence released on January 16, 2013, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) is conducting a review of existing and emerging gun safety technologies and plans to issue a report on the availability and use of those technologies. NIJ seeks input from all interested stakeholders to help inform its technology assessment and market research of existing and emerging gun safety technologies that would be of interest to the law enforcement and criminal justice communities and others with an interest in gun safety. Representative stakeholders include, but are not limited to, law enforcement, gun safety subject matter experts, firearms manufacturers, firearms experts, manufacturing engineers, biometrics specialists, radio frequency identification (RFID) engineers, microelectronics experts, or others with relevant training and experience. Those individuals wishing to provide relevant comments or information are directed to the following Web site: *https://www.justnet.org/gun_safety_technology/*. Relevant comments or information may also be emailed to the following address: *gunsafetytechnology@usdoj.gov*.

DATES: Relevant comments or information must be received by 5 p.m. Eastern Time on April 8, 2013.

FOR FURTHER INFORMATION CONTACT: National Institute of Justice, by telephone at (202) 307–2942 [**Note:** This is not a toll-free telephone number].

Gregory K. Ridgeway,

Acting Director, National Institute of Justice.

[FR Doc. 2013–03884 Filed 2–19–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AB73

Pattern of Violations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of OMB approval of information collection requirements.

SUMMARY: The Paperwork Reduction Act (PRA) requires this notice to set forth the effectiveness of information collection requirements contained in the final rule on Pattern of Violations.

DATES: The Office of Management and Budget (OMB) authorization for this information collection expires on February 29, 2016.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *triebsch.george@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: On February 8, 2013, the Office of Management and Budget (OMB) approved, under Control Number 1219–0150, the Department of Labor's information collection request under the PRA for provisions associated with 30 CFR 104.2(a) for the final rule published in the **Federal Register** on January 23, 2013 (78 FR 5055). The final rule revised the Agency's existing regulation for pattern of violations. The effective date of the final rule is March 25, 2013.

Under the PRA, an agency may not conduct an information collection unless it has a currently valid OMB approval. OMB had not provided a PRA-required approval for the revised information collection provisions associated with 30 CFR 104.2(a) at the time the final rule was published (44 U.S.C. 3507(a)(2)). Therefore, in accordance with the PRA, the effective date of the information collection provisions associated with the revised rule was delayed until OMB approved the collection (44 U.S.C. 3506(c)(1)(B)(iii)(V)) on February 8, 2013. This OMB authorization expires on February 29, 2016.

Dated: February 13, 2013.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2013–03797 Filed 2–19–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at the University of Wisconsin—Madison by NSF Division of Materials Research (DMR) #1203.

Dates & Times: March 15, 2013, 7:45 a.m.–5:00 p.m.

Place: University of Wisconsin—Madison, Madison, WI.

Type of Meeting: Part-open.

Contact Person: Dr. Sean L. Jones, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–2986.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at the University of Wisconsin at Madison.

Agenda: Friday, March 15, 2013

7:45 a.m.–9:00 a.m. Closed—Executive Session
9:00 a.m.–4:15 p.m. Open—Review of the Wisconsin MRSEC
4:15 p.m.–5:00 p.m. Closed—Executive Session

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–03811 Filed 2–19–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at Northwestern University, also called the Multifunctional Nanoscale Material Structures Materials Research Science and Engineering Center, by NSF Division of Materials Research (DMR) #1203.

Dates & Times: March 14, 2013, 7:45 a.m.–5:00 p.m.

Place: Northwestern University, Evanston, IL.

Type of Meeting: Part-open.

Contact Person: Dr. Sean L. Jones, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–2986.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Northwestern University.

AGENDA

Thursday, March 14, 2013

7:45 a.m.–9:00 a.m. Closed—Executive Session
9:00 a.m.–4:15 p.m. Open—Review of the Northwestern MRSEC
4:15 p.m.–5:00 p.m. Closed—Executive Session

Reason For Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–03812 Filed 2–19–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Public Availability of the National Science Foundation Analysis of the 2011 Service Contract Inventory and the Plan for Analyzing the 2012 Service Contract Inventory

AGENCY: National Science Foundation.

ACTION: Notice of Public Availability of the Analysis of the 2011 Service Contract Inventory and the Plan for Analyzing the 2012 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Science Foundation is publishing this notice to advise the public of the availability of the Analysis of the 2011 Service Contract Inventory and the Plan for Analyzing the 2012 Service Contract Inventory. The inventory has been developed in accordance with guidance issued on November 5, 2010, and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf* and *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf*. The National Science Foundation has posted its Analysis of the 2011 Service Contract Inventory and the Plan for Analyzing the 2012 Service Contract Inventory on the National Science Foundation homepage at the following links: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf13055http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf13056*.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Richard Pihl in the BFA/DACS at 703–292–7395 or *rpihl@nsf.gov*.

Dated: February 14, 2013.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–03823 Filed 2–19–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0033]

Acceptability of Corrective Action Programs for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft NUREG–2154 "Acceptability of Corrective Action Programs for Fuel Cycle Facilities." The draft NUREG provides guidance to the NRC staff on how to determine whether a Corrective Action Plan (CAP) submitted by the licensee of a fuel cycle facility is acceptable.

DATES: Comments may be submitted by April 22, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0033. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search

for Docket ID NRC–2013–0033. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Sabrina Atack, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3204; email *Sabrina.Atack@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0033 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0033.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft NUREG is available under ADAMS Accession No. ML13036A029.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0033 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC staff has revised Section 2.3.2 of the NRC Enforcement Policy (ADAMS Accession No. ML12340A295) to disposition Severity Level IV violations for Fuel Cycle Facilities as non-cited violations if the NRC determines that the licensee's CAP is effective, the licensee enters the violation in its CAP, and other criteria in Section 2.3.2 of the Enforcement Policy are met. The purpose of draft NUREG–2154 "Acceptability of Corrective Action Programs for Fuel Cycle Facilities," is to provide guidance to the NRC staff on how to determine, from a licensee's CAP licensing submittal, that a CAP is acceptable. After the NRC staff determines that the CAP is acceptable, the CAP licensing submittal will be incorporated into the license and implementation of the CAP will be verified by an NRC inspection using a CAP inspection procedure. After the NRC inspection verifies that the licensee has implemented its CAP in accordance with the license and the licensee's CAP implementing procedures, then the NRC will consider the CAP to be effective for the purposes of Section 2.3.2 of the Enforcement Policy.

Proposed Action

By this action, the NRC is requesting public comments on the draft NUREG. The draft NUREG provides guidance to the NRC staff on how to determine whether a CAP submitted by the licensee of a fuel cycle facility is acceptable. The NRC staff will consider any public comments prior to developing the final NUREG.

Dated at Rockville, Maryland, this 11th day of February 2013.

For the Nuclear Regulatory Commission.

Marissa G. Bailey,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–03862 Filed 2–19–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304; NRC–2013–0034]

Zion Nuclear Power Station, Units 1 and 2; ZionSolutions, LLC; Consideration of Indirect Transfer

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for license transfer; opportunity to comment; opportunity to request a hearing and petition for leave to intervene; order.

DATES: Comments must be filed by March 22, 2013. A request for a hearing must be filed by March 12, 2013.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0034. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0034. Address questions about NRC dockets to Carol Gallagher 301–492–3668; email *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John B. Hickman, Project Manager, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017; or email at: *john.hickman@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0034 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0034.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The application dated January 10, 2013, is under ADAMS Accession No. ML13014A007.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0034 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an Order under section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), approving the indirect transfer of Facility Operating License Nos. DPR–39 and DPR–48 for Zion Nuclear Power Station Units 1 and 2 (Zion), including the General License for the Zion Independent Spent Fuel Storage Installation ("Zion ISFSI"), currently held by ZionSolutions, LLC (ZS).

III. Introduction

By Order dated May 4, 2009, the NRC approved the transfer of control of Zion from Exelon Generation Company, LLC ("Exelon") to ZS, and on September 1, 2010, the NRC issued license amendments to reflect the transfer of the Zion licenses from Exelon to ZS on that date. The decommissioning of Zion is actively underway, and pursuant to 10 CFR 50.82(a)(2), the operation of the Zion Units is no longer authorized under the 10 CFR Part 50 licenses.

ZS, a wholly owned subsidiary of EnergySolutions LLC (ES), was established solely for the purpose of acquiring the Zion Units and causing the Zion site (except for the Zion ISFSI where the spent fuel and Greater than Class C radioactive waste will be stored) to be decommissioned and released for unrestricted use, while maintaining the spent nuclear fuel and Greater than Class C radioactive waste safely stored in the ZNPS ISFSI. ES LLC and ES guaranteed the performance of ZS's decommissioning obligations and obtained a $200 million letter of credit, payable to a back-up nuclear decommissioning trust ("Back-Up NDT"). In addition, ES LLC has granted an irrevocable easement to disposal capacity at its Clive, Utah facility for the disposal of Class A low level waste from the Zion site, and this disposal capacity asset, together with related contractual rights, are held by the Back-Up NDT.

According to an application for approval dated January 10, 2013 (ADAMS Accession No. ML13014A007), ZS is requesting that the NRC consent to the indirect transfer of control of Facility Operating License Nos. DPR–39 and DPR–48 for Zion held by ZS, including the General License for the Zion ISFSI, to the extent required. The indirect transfer of control would result from a proposed transaction whereby the ultimate parent holding company of ZS, ES, would be acquired by Rockwell Holdco, Inc., a Delaware corporation that was formed for the purpose of acquiring ES and is held by certain investment fund entities organized by controlled affiliates of Energy Capital Partners II, LLC.

While the proposed transaction will result in an indirect transfer of control of ZS and the Zion Licenses held by ZS, no changes to the current technical qualifications, financial assurances, or operations, of ZS as the NRC's licensee for Zion are being proposed in the application. Further, the closing of the transaction and the indirect upstream change of control resulting therefrom will not result in any change in personnel responsible for conducting licensed activities.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the indirect transfer will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto.

Before issuance of the proposed order, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (The Act), and the Commission's regulations.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

III. Opportunity To Request a Hearing; Petition for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions." Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at O1–F21,

One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 800–397–4209 or 301–415–4737). The NRC's regulations are available online in the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene via electronic submission through the NRC's E-Filing system. As required by the Commission's rules of practice at 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of the transfer of control of the license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 20-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 12, 2013. The petition must be filed in accordance with the filing instructions in section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance under 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings, unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-*

submittals.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Attorney for applicant: John E. Matthews, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW., Washington, DC 20004, 202.739.5524, *jmatthews@morganlewis.com*.

Dated at Rockville, Maryland this 11th day of February 2013.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–03859 Filed 2–19–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0035]

Notice of Forthcoming Workshop To Discuss Revisions to NUREG/BR–0204, Rev. 2 "Instructions for Completing NRC's Uniform Low-Level Waste Manifest"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to conduct a public workshop to discuss possible revisions to NUREG/BR–0204, Rev. 2 "Instructions for Completing NRC's Uniform Low-Level Radioactive Waste Manifest." Information will be gathered from subject matter experts and other interested members of the public regarding NUREG/BR–0204 and how it can best be revised. Specifically, the NRC staff is interested in gaining a better understanding of the issues associated with reporting certain difficult-to-measure (DTM) radionuclides on shipping waste manifests as required by Appendix G of part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR). In particular based on their experience some involved members of the public would like the NRC to update NUREG/BR–0204 to address the manifesting of Technecium-99 (Tc–99), Carbon-14 (C–14), Tritium (H–3), and Iodine-129 (I–129) to minimize over-estimation of activity. These isotopes are key contributors to groundwater dose and can lead to premature closure of low-level radioactive waste disposal facilities if over-estimated. Additionally, the NRC staff received comments from involved members of the public recommending that the NRC staff consider Chlorine-36 (Cl–36) during this effort so staff will also address the reporting of Cl–36 in the update to NUREG/BR–0204.

DATES: The public workshop will be held on March 1, 2013, from 8:00 a.m. to 1:00 p.m. (registration begins at 7:30 a.m.) at the Sheraton Downtown Phoenix Hotel in Phoenix, Arizona. The

public workshop will be held immediately following the 2013 WM Symposia. The workshop is being held in conjunction with the Symposia and being broadcast as a Webinar to draw in as many participants as possible.

ADDRESSES: Please refer to Docket ID NRC–2013–0035 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0035. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Don Lowman, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5452; email: *Donald.Lowman@nrc.gov*.

I. Further Information

The public workshop will be held at the Sheraton Downtown Phoenix Hotel, 340 N. 3rd Street; West Building, Meeting Room Phoenix A, Phoenix, Arizona 85004. The phone number for the hotel is 1–602–262–2500. The NRC will accept written comments at the public workshop and welcomes active participation from those attending.

II. Background

Part 20, Appendix G, "Requirements for Transfers of Low-Level Radioactive Waste (LLRW) Intended for Disposal at Licensed Land Disposal Facilities and Manifests" requires that an NRC Uniform Waste Manifest (Shipping Paper and Container and Waste Description) be prepared for LLRW intended for ultimate disposal at a licensed LLRW land disposal facility. The waste generator, collector, or processor who transports, or offers for transportation, LLRW must prepare the manifest reflecting information requested on applicable NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and if necessary, on an applicable NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). NRC Forms 540 and 540A must be completed and must physically accompany the pertinent LLRW shipment. Per Appendix G of 10 CFR Part 20, the shipper of the waste must include, on the uniform manifest for the waste shipment, "[t]he activity of each of the radionuclides H–3, C–14, Tc–99, and I–129 contained in the shipment." These isotopes are of concern because they were found to be especially important to safety from groundwater migration in the 10 CFR Part 61 Draft Environmental Impact Statement (ADAMS Accession No. ML060930564).

In SECY–13–0001, "Staff Recommendations for Improving the Integration of the Ongoing 10 CFR Part 61 Rulemaking Initiatives" (ADAMS Accession No. ML12199A412), staff noted that involved members of the public have recommended that the earlier assumptions concerning the above isotopes cited in the 10 CFR Part 20, Appendix G should be revisited.

Unfortunately, the activities of H–3, C–14, Tc–99, and I–129 are DTM in the radioactive waste that is generated. Involved members of the public suggest that H–3, C–14, Tc–99, and I–129 are being over-estimated in current site inventory dose assessments because of a reliance on a default value when the amount of the physical isotope in question is below some lower limit of detection threshold for these isotopes. If true, the cumulative effect of this over reporting results in an over-estimation of the site inventory, thus, if reporting requirements are not updated, disposal sites may have to close prematurely due to over-estimation in site inventory dose assessments.

Additionally, the State of Texas required the performance assessment for the Waste Control Specialists (WCS) LLRW disposal facility in Andrews County to address Cl–36 because it is also a key contributor to the groundwater dose and was analyzed in NUREG–1573, "A Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities" (ADAMS Accession No. ML053250352). Cl–36 may also be over-reported because of minimum detection reporting criteria, thus it is included in the effort to update NUREG/BR–0204.

Involved members of the public would like the NRC to address the manifesting of these isotopes. The NRC staff believes it is possible to revise NUREG/BR–0204, Rev. 2 to provide improved reporting guidance for the DTM radionuclides rather than making changes to 10 CFR Part 20. The NRC staff will also evaluate inclusion of Cl–36 in the update to NUREG/BR–0204, Rev. 2.

III. NRC Public Workshop

The purpose of this public workshop is to gather information from interested members of the public concerning possible revisions to NUREG/BR–0204, Rev. 2 "Instructions for Completing NRC's Uniform Low-Level Waste Manifest." This overall approach is consistent with the NRC's openness policy. The March 1, 2013, public workshop will have a panel of invited subject matter experts to discuss questions and comments regarding DTM isotope reporting issues.

Following the panel session, interested members of the public will have an opportunity to pose questions and comment directly to the panelists.

Pre-registration for this workshop is not necessary. Members of the public choosing to participate in this workshop remotely can do so in one of two ways—online or via a telephone (audio) connection.

Interested members of the public can also participate in this workshop remotely via Webinar.

The Webinar workshop registration link can be found at: *https://www1.gotomeeting.com/register/909493521*. The Webinar ID is 909–493–521. After registering, instructions for joining the Webinar (including a teleconference number and pass code) will be provided via email. All participants will be in "listen-only" mode during the presentation. Participants will have a chance to pose questions either orally after the presentation or in writing during the Webinar.

To receive a call back, provide your phone number when you join the workshop, or call the following number and enter the access code:

Call-in toll-free number (US/Canada): 1–888–455–9355. The Webinar access code is 9515574.

The agenda for the public workshop will be noticed no fewer than 10 days

prior to the workshop on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Questions about participation in the public workshops should be directed to the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated at Rockville, Maryland this 12th day of February 2013.

For the Nuclear Regulatory Commission.

Aby Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–03850 Filed 2–19–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30382; 812–14117]

Emerging Global Advisors, LLC, et al.; Notice of Application

February 13, 2013.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Emerging Global Advisors, LLC ("EGA"), EGA Emerging Global Shares Trust (the "Trust"), and ALPS Distributors, Inc. (the "Distributor").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on January 25, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: EGA and the Trust: Robert C. Holderith, Emerging Global Advisors, LLC, 155 W. 19th Street, 3rd Floor, New York, NY 10011; Distributor: ALPS Distributors, Inc., 1290 Broadway, Suite 110, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Attorney-Advisor, at (202) 551–6882 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Trust is registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust initially will offer one series, the EGShares Emerging Markets Active ETF (the "Initial Fund"), which applicants state will seek to seek to invest in leading companies representative of all industries domiciled in emerging market countries. The Initial Fund will seek to achieve its investment goal by investing primarily in a non-diversified portfolio of equity securities traded in non-U.S. markets.

2. EGA, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as investment adviser to the Initial Fund. The Advisor (as defined below) may in the future retain one or more sub-advisors (each a "Sub-Advisor") to manage the portfolios of the Funds (as defined below). Any Sub-Advisor will be registered under the Advisers Act. The Distributor, a Colorado corporation, is a registered broker-dealer ("Broker") under the Securities Exchange Act of 1934 ("Exchange Act") and will act as the distributor and principal underwriter of the Funds.

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of any other open-end management companies that may utilize active management investment strategies ("Future Funds"). Any Future Fund will (a) be advised by EGA or an entity controlling, controlled by, or under common control with EGA (each, an "Advisor"), and (b) comply with the terms and conditions of the application.[1] The Initial Fund and Future Funds together are the "Funds".[2] Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and other assets ("Portfolio Instruments").[3] Funds may invest in "Depositary Receipts".[4] Each

[1] Any Advisor to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Applicants further request that the order apply to any future distributor and principal underwriter of the Funds, which would be a registered broker-dealer under the Exchange Act and would comply with the terms and conditions of the Application. The distributor and principal underwriter of any Fund may be an affiliated person of the Advisor and/or Sub-Advisors.

[3] If a Fund invests in derivatives, then (a) the board of trustees ("Board") of the Fund will periodically review and approve the Fund's use of derivatives and how the Advisor assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[4] Depositary Receipts are typically issued by a financial institution, a "depositary", and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Advisor or Sub-Advisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund or any Sub-Advisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

Fund will operate as an actively managed exchange-traded fund ("ETF").

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, "Investing Management Companies," such unit investment trusts, "Investing Trusts," and Investing Management Companies and Investing Trusts together, "Investing Funds"). Investing Funds do not include the Funds.[5]

5. Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund ("Authorized Participant") with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (b) a participant in the DTC (such participant, "DTC Participant").

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[6] On any given Business Day[7] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the "Creation Basket." In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[8] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots[9] or (c) TBA Transactions,[10] short positions and other positions that cannot be transferred in kind[11] will be excluded from the Creation Basket.[12] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investments ("Global Funds"), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act ("Stock Exchange"), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

[5] An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

[6] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[7] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a "Business Day").

[8] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value ("NAV") for that Business Day.

[9] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[10] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[11] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[12] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[13] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (c)(i) or (e)(ii).

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the "Transaction Fee"). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Advisor to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[14] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus ("Prospectus") to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists or market makers ("Market Makers") will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[15] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[16] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (including any short positions held in securities ("Short Positions")) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[17]

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

[14] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[15] If Shares are listed on The NASDAQ Stock Market LLC ("Nasdaq") or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[17] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[18]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information ("SAI") will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

[18] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company ("Investing Fund Advisor"), sponsor of an Investing Trust ("Sponsor"), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company ("Investing Fund Sub-Advisor"), any person controlling,

controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor ("Investing Fund's Sub-Advisory Group").

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [19] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[20]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an "Affiliated Fund").

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[21] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[22]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of

[19] An "Investing Fund Affiliate" is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[20] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[21] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[22] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[23] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions:

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (including Short Positions) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Sub-Advisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment

[23] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03822 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933, Release No. 9384/ February 13, 2013; Securities Exchange Act of 1934, Release No. 68921/February 13, 2013]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2013

The Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"),[1] established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Securities and Exchange Commission (the "Commission").

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital and accrued items. The PCAOB's annual budget and accounting support fee is subject to approval by the Commission.

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[2] amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P facilitates the Commission's review and approval of PCAOB budgets and annual accounting support fees.[3] This budget rule provides, among other things, a timetable for the preparation and

[1] 15 U.S.C. 7201 *et seq.*

[2] Pub. L. 111–203, 124 Stat. 1376 (2010).

[3] 17 CFR 202.190.

submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2012 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2013 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2013 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief Accountant and Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2012 actual spending; and attended several meetings with management and staff of the PCAOB to further develop an understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter to the PCAOB. On November 28, 2012, the PCAOB approved its 2013 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2013 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2013 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2013. The Commission also acknowledges the PCAOB's updated strategic plan and is supportive of the Board's plans to begin work on its six new near-term priority projects. The Commission encourages the PCAOB to keep the Commission and its staff apprised of developments throughout the implementation of these near-term projects and looks forward to providing views to the PCAOB as future updates are made to the plan.

The Commission understands that over the past year, the PCAOB has taken significant and productive steps to improve its information technology ("IT") program. These steps include IT staffing changes, implementing stronger IT governance structures, and strengthening Board oversight over its IT program. Based upon updates provided by the PCAOB, the Commission also understands that these efforts are ongoing; and directs the Board to continue to provide in its quarterly reports to the Commission detailed information about the state of the PCAOB's IT program, including planned, estimated, and actual costs for IT projects, and the level of involvement of consultants. These reports also should continue to include: (a) A discussion of the Board's assessment of the progress and implementation of the Board actions mentioned above; and (b) the quarterly IT report that will be prepared by PCAOB staff and submitted to the Board.

The Commission also directs the PCAOB during the 2013 budget cycle to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) Statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2013, including by location and by year the inspections that are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget ("OMB") has determined the 2013 budget of the PCAOB to be sequestrable under the Budget Control Act of 2011.[1] Unless legislation occurs that avoids sequestration, the PCAOB's 2013 spending level could be reduced by an amount that would be determined by OMB. In the event that sequestration is not avoided and OMB does not alter its determination that the PCAOB's 2013 budget is sequestrable, we expect the PCAOB to work with the Commission and Commission staff as appropriate regarding implementation of sequestration. In that event, the Commission also directs the PCAOB to provide the Commission with reports detailing the PCAOB's plans for implementation of sequestration, including how it will impact the PCAOB's 2013 spending for each of the PCAOB's program areas and cost categories.

The Commission has determined that the PCAOB's 2013 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2013 are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–03791 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

[1] See "OMB Report Pursuant to the Sequestration Transparency Act of 2012" (Pub. L. 112–155), page 218 of 224 at: *http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf*.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68924; File No. SR–Phlx–2013–13]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to its Customer Rebate Program and Other Technical Amendments

February 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 1, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section A, entitled "Customer Rebate Program." The Exchange also proposes technical amendments to the Preface, Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," Section II, entitled "Multiply

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Listed Options Fees"[3] and Section IV entitled "PIXL[4] Pricing" of the Pricing Schedule.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxphlx.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

The purpose of the proposed rule change is to amend the Customer Rebate Program to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange. The Exchange also proposes to amend and add certain rule text in the Pricing Schedule to provide additional clarity to the Pricing Schedule.

Customer Rebate Program

Currently, the Exchange pays Customer Rebates by calculating an Average Daily Volume Threshold. The Exchange calculates the Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) ("Threshold Volume"). Rebates are paid on Threshold Volume.

The Exchange is proposing to base the Customer Rebate Program on certain "Rebate Tiers." The Exchange proposes to replace the current three tier structure, which pays rebates based on the number of contracts transacted in a month based on four Categories (A, B, C and D) of transactions, with a four tier structure. The four tier structure would pay rebates based on percentage thresholds of national customer multiply-listed options volume by month based on the same four Categories (A, B, C and D) of transactions. Specifically, the Exchange would base a market participant's qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx. The Exchange proposes to establish a four tier Customer rebate structure with a column entitled "Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)." The Exchange proposes the following Customer Rebate Tiers by percentages:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Category A	Category B	Category C	Category D
Tier 1	0.00%–0.75%	$0.00	$0.00	$0.00	$0.00
Tier 2	Above 0.75%–1.60%	0.11	0.12	0.13	0.08
Tier 3	Above 1.60%–2.60%	0.13	0.13	0.14	0.08
Tier 4	Above 2.60%	0.15	0.15	0.15	0.09

The Exchange believes that replacing the current tiers which require market participants to qualify for Customer Rebates based on a certain number contracts transacted in a month with a tier structure based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx would serve to control and account for industry-wide movements.

The Exchange is not proposing to amend the criteria to qualify for a certain rebate Category (A, B, C or D). These will remain the same pursuant to this proposal.[5] In addition, the Exchange would continue to total Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in the same manner.[6] The Exchange proposes to remove references to the Average Daily Volume Threshold and replace those references with Customer Rebate Tier references. The Exchange also proposes to permit members and member organizations under common ownership to aggregate their volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership, which the Exchange is proposing to define in the Preface to the Pricing Schedule as described in more detail below, shall mean 75% common ownership or control.

The Exchange is proposing to amend the rebates paid to market participants with this proposal. Currently, Categories A, B, C and D receive no rebate for volume between 0 to 99,999 contracts in a month. The Exchange proposes to pay Categories A, B, C and D no rebate with proposed Tier 1 which is between 0.00% to 0.75% of national customer volume in multiply-listed options classes. Currently, the Exchange pays the following rebates for Tier 2 volume which is between 100,000 and 349,999 contracts in a month: Category A: $0.10, Category B: $0.12, Category C: $0.13 and Category D: $0.05. The Exchange would pay the following rebates for new Tier 2 for a percentage of national customer volume in multiply-listed options

[3] Multiply Listed Options Fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[4] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Rule 1080(n).

[5] Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest. Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I. Category D rebates will be paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

[6] For clarity, the Exchange will calculate volume and pay rebates based on a member organization's Phlx house account numbers.

classes above 0.75% to 1.60%: Category A: $0.11, Category B: $0.12, Category C: $0.13 and Category D: $0.08. Currently, the Exchange pays the following rebates for Tier 3 volume which is over 350,000 contracts in a month: Category A: $0.15, Category B: $0.15, Category C: $0.15 and Category D: $0.07. The Exchange would pay the following rebates for new Tier 3 for a percentage of national customer volume in multiply-listed options classes above 1.60% to 2.60%: Category A: $0.13, Category B: $0.13, Category C: $0.14 and Category D: $0.08. The Exchange would pay the following rebates for new Tier 4 for a percentage of national customer volume in multiply-listed options classes above 2.60%: Category A: $0.15, Category B: $0.15, Category C: $0.15 and Category D: $0.09. By way of example, a market participant that executes 3,000,000 electronically-delivered Customer Simple Order contracts in Select Symbols, which are Multiply Listed Options, in a given month where 150,000,000 national customer multiply-listed options contracts were executed would receive a credit of $240,000. The market participant would have qualified for this rebate because the number of qualifying contracts [7] executed on Phlx represents 2% of the total national customer multiply-listed options volume and because the Customers orders were Simple Orders in Select Symbols, the Category D rate in Tier 3 of $0.08 per contract would be applied to the 3,000,000 Customer contracts.

Finally, today, member organizations qualifying for either a Tier 2 or Tier 3 rebate are entitled to receive a credit of $0.04 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NASDAQ OMX BX, Inc. ("BX Options") or the NASDAQ Options Market ("NOM"). Today, a member organization qualifying for either a Tier 2 or Tier 3 rebate is entitled to receive a credit of $0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM.

The Exchange proposes to amend the qualifying tiers from Tier 2 or 3 to Tiers 2, 3 or 4 to receive credits to the various away markets. The Exchange also proposes to amend the credit that will be paid per contract to $0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and $0.05 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options. A member organization qualifying for a Tier 2, 3 or 4 rebate is entitled to a credit of $0.16 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM, unless the away market transaction fee is $0.00 or a rebate is paid by the away market, in which case the credit would be reduced to $0.11 per contract. The Exchange believes that offering credits toward Routing Fees will continue to incentivize market participants to transact a greater number of Customer orders on the Exchange.

Technical Amendments

First, the Exchange utilizes the term "common ownership" throughout the Pricing Schedule and defines common ownership as 75% common ownership or control among members and member organizations.[8] The Exchange proposes to amend the Preface of the Pricing Schedule to define "Common Ownership" for purposes of pricing. The Exchange also proposes to revise Sections II, IV and VI of the Pricing Schedule to simply refer to the defined term "Common Ownership" and eliminate the definitions throughout the rule text which reflect the same 75% common ownership or control language.

Second, the Exchange proposes to amend Section I of the Pricing Schedule to add the words "Complex Order" prior to the language discussing the Pilot Program related to the $0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them. The Exchange received approval for a Pilot Program which commenced on December 1, 2012.[9] The Exchange believes the addition of the words "Complex Order" further clarifies the Pricing Schedule. The fee differential for directed orders applies to Complex Orders and does not apply to Simple Orders.

Third, the Exchange proposes to amend the Section II Monthly Market Maker Cap rule text to specify that the Monthly Market Maker Cap applies to electronic and floor transactions. The Exchange proposes to remove the word "equity" from this paragraph as that word is not necessary. Also, the Exchange proposes to refer to Options Transaction Charges instead of "fees" in that same paragraph for consistency.

Fourth, the Exchange proposes to remove the rule text describing the common ownership in Section IV because the Exchange has proposed herein to permit members and member organization under common ownership to aggregate Customer Rebate volume in Section A. The Exchange proposes to include rule text to permit any member or member organization under common ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section A to receive the discounted PIXL Initiating Order discount as proposed herein. For example, if Phlx member A qualifies for a Tier 5 [sic] Customer Rebate pursuant to Section A of the Pricing Schedule, Phlx member B, an affiliate of member A and 75% commonly owned by the same parent, would be entitled to the discounted Initiating Order Fee of $0.05 per contract. The Exchange would utilize the proposed defined term "Common Ownership" in this section.

Fifth, the Exchange proposes to clarify in Section IV of the Pricing Schedule that with respect to PIXL Order executions in Section I Select Symbols,[10] the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate. The Exchange makes a similar statement in Section IV, Part A with respect to Section II PIXL fees and proposes this additional language for consistency and clarity.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing 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.

Customer Rebate Program

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx

[7] Presuming the contracts are not electronic QCC Orders as defined in Rule 1080(o).

[8] *See* Sections II, IV and VI of the Pricing Schedule.

[9] *See* Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR–Phlx–2012–27and SR–Phlx–2012–54). *See also* Securities Exchange Act Release No. 68376 (December 6, 2012), 77 FR 74039 (December 12, 2012) (SR–Phlx–2012–139).

[10] Select Symbols are defined in Section I of the Pricing Schedule.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

is reasonable because it allows the Exchange to control and account for changes in the national industry-wide customer multiply-listed options volume. Further, it will still allow market participants to receive rebates on Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as is the case today. The Exchange believes that the amended Customer Rebate Program should incentivize market participants to increase the amount of Customer orders that are transacted on the Exchange to obtain a rebate. In addition, other exchanges employ similar incentive programs.[13]

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume. The Exchange is merely amending the measuring stick that it utilized to determine the amount of qualifying volume. The Exchange would account for changes in industry-wide volume with the amendment.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is reasonable because with respect to Tier 1, the Exchange would continue to not offer a rebate to market participants. The Exchange is also adding several new tiers which allow market participants the opportunity to achieve higher rebates in Category A and substantially the same and higher rebates in Categories B, C and D. With respect to Tiers 2, 3, and 4, the Exchange believes that it is providing market participants the opportunity to earn higher rebates. Proposed Tier 2 rebates are the same or higher than the Tier 2 rebates today. Proposed Tier 3 rebates are slightly lower than the current Tier 3 rebates. Proposed Tier 4 rebates are the same or higher than the current Tier 3 rebates, which today are the highest rebates that a market participant can achieve under the program. The Exchange is unable to specify with certainty which tier would apply to participants that are executing a certain amount of Customer volume today. The Exchange believes that the rebates proposed herein are reasonable because market participants may be able to obtain higher rebates beyond Tier 1 if they are able to qualify for a higher tier as compared to today's tiers with the proposed method of percentages of national customer volume.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is equitable and not unfairly discriminatory because the rebates will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership, defined as 75% common ownership or control, is reasonable because the Exchange desires to provide all market participants the ability to obtain Customer Rebates. The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate for purposes of receiving the Customer Rebate even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.[14]

The Exchange's proposal to further reduce Routing Fees[15] in Section V of the Exchange's Pricing Schedule for member organizations that qualify for Tiers 2, 3 or 4 in the Customer Rebate Program in Section A of the Pricing Schedule is reasonable because the Exchange proposes to provide an additional incentive for transacting Customer orders on the Exchange. By offering member organizations a credit toward the cost of routing to an away market, the Exchange is seeking to encourage market participants to transact a greater number of Customer orders on Phlx which liquidity benefits all market participants. In addition, the Exchange is offering the credit toward Customer Routing Fees in addition to the Customer rebate received for the qualifying Customer Rebate Tier.

The Exchange believes that providing a credit of $0.10 per contract toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and a $0.05 per contract credit toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options is equitable and not unfairly discriminatory because NOM does not pay a Customer Rebate to Remove Liquidity and BX Options pays a Rebate to Remove Liquidity.[16] The Exchange believes that paying a $0.16 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a member organization qualifies for a Tier 2, 3 or 4 rebate if the Customer order is routed to away market other than BX Options or NOM unless the away market transaction fee is $0.00 or a rebate is paid by the away market, in which case $0.11 per contract would be paid, is equitable and not unfairly discriminatory because the Exchange assesses an $0.11 per contract fixed cost in addition to the away market transaction fee to route to an away market other than NOM or BX Options. The Exchange is offering a credit of $0.16 per contract in those cases where there is an away market transaction fee or a rebate is not offered by the away market. When no transaction fee is assessed by the away market, the

[13] *See* the Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule. CBOE offers each Trading Permit Holder ("TPH") a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program.

[14] *See* Section II of the Pricing Schedule. Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of $550,000 for: (i) Equity option transaction fees; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. *See also* Section IV of the Pricing Schedule. For purposes of the PIXL Initiating Order members and member organizations under common ownership may aggregate their Customer Rebate Program volume.

[15] Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS that are assessed on the Exchange, membership fees at away markets, and technical costs associated with routing options. The Routing Fees enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market.

[16] BX Options pays a $0.32 per contract Customer Rebate to Remove Liquidity in Penny Pilot Options, a $0.70 Customer Rebate to Remove Liquidity in Non-Penny Pilot Options (other than IWM, QQQ and SPY) and a $0.42 per contract Customer Rebate to Remove Liquidity in IWM, QQQ and SPY. *See* Chapter XV, Section 2(1) of the BX Options Rules.

Exchange would only assess the $0.11 per contract fixed fee and thus the member organization would recoup the fee assessed by the Exchange. If the away market pays a rebate to remove liquidity, the Exchange assesses the member organization the fixed fee of $0.11 per contract, the away market transaction fee and then credits the member organization the rebate offered by the Exchange. In that case, the Exchange would pay the reduced $0.11 per contract credit because the member organization has the benefit of the rebate from the away market. The Exchange also believes that the proposed credits are equitable and not unfairly discriminatory because any market participant that transacts Customer orders may qualify for the credit.

Finally, the Exchange believes that offering member organizations a lower credit for Routing to NOM and BX Options as compared to other away markets is equitable and not unfairly discriminatory because the fixed cost associated with Routing Fees in Section V of the Pricing Schedule are lower for a Customer order routed to NOM or BX Options ($0.05 per contract) as compared to the fixed cost to route to an away market other than BX Options or NOM ($0.11 per contract).[17]

Technical Amendments

The Exchange's proposal to amend certain rule text in the Pricing Schedule to provide additional clarity, such as defining Common Ownership in the Preface to the Pricing Schedule and adding and amending other language to indicate the Monthly Market Maker Cap applies to electronic and floor transactions, and clarifying that the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate, is reasonable, equitable and not unfairly discriminatory because the amendments further clarify the Pricing Schedule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to amend Section I of the Pricing Schedule to add the words "Complex Orders" prior to the language discussing the Pilot Program related to the $0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them because the addition of the words "Complex Order" further clarifies the Pricing Schedule.

Finally, the Exchange believes that amending Section IV to permit a member or member organization under common ownership, defined as 75% common ownership or control, with another member or member organization that qualifies for a Customer Rebate Tier in Section A to receive discounted PIXL fees is reasonable because the Exchange desires to provide all market participants the ability to obtain discounted PIXL pricing. The Exchange currently permits aggregation under common ownership in Section IV for purposes of calculating the Threshold Volume. The Exchange believes that permitting members and member organizations that are affiliated and under common ownership to realize discounted pricing by allowing one firm to qualify for a Customer Rebate Tier and another affiliated member or member organization under common ownership to realize the discount is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate the benefits of their trading activity for purposes of the Customer Rebate, as is the case today, even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.[18]

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. The Exchange believes that the Customer Rebate Program will encourage Customer order flow to be directed to the Exchange, which will benefit all market participants. By incentivizing members to route Customer orders, the Exchange desires to attract Customer orders which benefits all market participants by increasing liquidity on the Exchange. All market participants are eligible to qualify for a Customer Rebate. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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.[19] 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

[17] The Exchange assesses a fixed fee of $0.11 per contract for non-NASDAQ OMX exchanges and a $0.05 per contract fee for BX Options and NOM. These fixed costs represent overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which are in addition to the transaction fee assessed by the away market. Also, market participants whose orders routed to away markets are entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. As explained in a previous rule change, the actual cash outlays for the Exchange to route to BX Options and NOM is lower as compared to routing to other non-NASDAQ OMX exchanges. *See* Securities Exchange Act Release Nos. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR–Phlx–2012–129) and 68698 (January 18, 2013), 78 FR 5530 (January 25, 2013) (SR–Phlx–2013–04). *See also* Section V of the Pricing Schedule.

[18] *See supra* note 14.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–13 *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–2013–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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–2013–13 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03821 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68919; File No. SR–ISE–2013–08]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend the Minimum Trading Increments for Mini Options

February 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2013, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

The Exchange proposes to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. The text of the proposed rule change is available on the Exchange's Web site *www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its rules to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. Mini Options overlie 10 equity or ETF shares, rather than the standard 100 shares.[3] Mini Options are currently approved on the following five (5) underlying securities: SPDR S&P 500 ETF ("SPY"), Apple Inc. ("AAPL"), SPDR Gold Trust ("GLD"), Google Inc. ("GOOG"), and Amazon.com, Inc. ("AMZN"). Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program.[4] Under the Penny Pilot Program, with the exception of three classes,[5] the minimum price variation for all participating options classes is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. Therefore, the minimum trading increment for AAPL, GLD, and AMZN is $0.01 for option series under $3 and $0.05 for options quoted at $3 or greater, while the minimum trading increment for SPY, which is not subject to a price test, is $0.01 across all option series. The Exchange notes that GOOG is not in the Penny Pilot Program and therefore, standard options in GOOG have a minimum increment of $0.05 and $0.10

[3] Mini Options were approved for trading on September 28, 2012. *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (Approving SR–ISE–2012–58). The Exchange expects to begin trading Mini Options on March 18, 2013.

[4] The Penny Pilot Program, which permits certain options series to be quoted and traded in increments of $0.01, began on January 26, 2007. *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007). The Penny Pilot Program has since been extended a number of times and is currently in place through June 30, 2013. *See* Securities Exchange Act Release Nos. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007); 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007); 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008); 59633 (March 26, 2009), 74 FR 15018 (April 2, 2009); 60222 (July 1, 2009), 74 FR 32994 (July 9, 2009); 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009); 63437 (December 6, 2010), 75 FR 77032 (December 10, 2010); 65968 (December 15, 2011), 76 FR 79723 (December 22, 2011); 67323 (June 29, 2012), 77 FR 40121 (July 6, 2012); and 68424 (December 13, 2012), 77 FR 75241 (December 19, 2012).

[5] The three classes are the Nasdaq–100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 ETF ("SPY") and the iShares Russell 2000 Index Fund ("IWM"). QQQQ, SPY and IWM are quoted in $0.01 increments for all options series.

per contract depending on the price at which the standard option in this class is quoted.

This proposed rule change will permit the minimum trading increment for Mini Options to be identical to the minimum trading increment applicable to standard options on the same underlying security. The Exchange believes having different trading increments for Mini Options than those permitted for standard options on the same underlying security would be detrimental to the success of this new product offering and would also lead to investor confusion. The Exchange notes that the Commission approved Mini Options on SPY, AAPL, GLD, GOOG and AMZN because of their high price and current volume levels and because of the level of retail investor participation in trading options in these classes. Mini Options are a natural extension to the options overlying these securities and therefore should retain the most important characteristic, *i.e.*, trading increments. The Exchange believes that by reducing the minimum trading increments for Mini Options, the proposed rule change will provide market participants with meaningful trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade Mini Options with greater precision as to price. Providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers. Therefore, ISE proposes to amend its rules to permit the listing and trading of Mini Options in the same increment permitted for standard options on the same underlying security.

With this proposed rule change, although Mini Options would be trading in narrower increments, they would not be considered part of the Penny Pilot Program.

The Exchange's proposal to quote and trade certain option classes that are outside of the Penny Pilot Program in $0.01 increments is not novel. Specifically, the Commission has permitted ISE to set the minimum increment for all Foreign Currency Options traded on the Exchange at $0.01 regardless of the price at which the option is quoted.[6] The Commission has also previously approved a proposal by NASDAQ OMX PHLX, Inc. permitting that exchange to also trade its foreign currency options in $0.01 increments.[7]

In support of this proposed rule change, ISE proposes to amend ISE Rules 504 and 710. As so [sic] ISE Rule 710, ISE proposes to add new Supplementary Material .03 which provides that the minimum trading increment for Mini Options shall be determined in accordance with new Supplementary Material .13(d) to Rule 504. Proposed Supplementary Material .13(d) provides that the minimum trading increment for Mini Options shall be the same as the minimum trading increment permitted for standard options on the same underlying security.

With regard to the impact of this proposal on system capacity, the Exchange represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is found in Section 6(b)(5), in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will assure that standard options and Mini Options on the same underlying security will trade in similar increments and therefore provide market participants meaningful trading opportunities and enable them to trade Mini Options with greater precision as to price. The Exchange also believes the proposed rule change will avoid investor confusion if both standard options and Mini Options on the same underlying security are permitted to trade in similar trading increments. The Exchange further believes that investors and other market participants will benefit from this proposed rule change because it proposes to clarify and establish the minimum trading increment for Mini Options prior to the commencement of trading. The Exchange believes that investors generally will be expecting the minimum trading increment for Mini Options to be the same as the minimum trading increment for standard options on the same underlying security. This proposed rule change will therefore lessen investor confusion because Mini Options and standard options on the same underlying security will have the same minimum trading increment.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. ISE believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. Mini Options are currently approved for trading on multiple options exchanges and all of these exchanges will have the opportunity to establish minimum trading increment for Mini Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] *See* Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 710, Minimum Trading Increments) (SR–ISE–2007–120).

[7] *See* Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007) (Approving SR–PHLX–2007–70).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2013–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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–ISE–2013–08 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03819 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68917; File No. SR–NASDAQ–2013–026]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Certain NMS Stocks

February 13, 2013.

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 February 1, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I 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 extend the trading pause pilot in certain individual NMS stocks when the price moves ten percent or more in the preceding five minute period, so that the pilot will now expire on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The Exchange will implement the proposed changes on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4120. Trading Halts

(a) Authority to Initiate Trading Halts or Pauses

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

(1)–(10) No change.

(11) shall, between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading, immediately pause trading for 5 minutes in any Nasdaq-listed security, other than rights and warrants, when the price of such security moves a percentage specified below within a 5-minute period.

(A) The price move shall be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(B) The price move shall be 30% or more with respect to all NMS stocks not subject to section (a)(11)(A) of this Rule with a price equal to or greater than $1; and

(C) The price move shall be 50% or more with respect to all NMS stocks not subject to section (a)(11)(A) of this Rule with a price less than $1.

The determination that the price of a stock is equal to or greater than $1 under paragraph (a)(11)(B) above or less than $1 under paragraph (a)(11)(C) above shall be based on the last reported closing price on Nasdaq.

At the end of the trading pause, Nasdaq will re-open the security using the Halt Cross process set forth in Nasdaq Rule 4753. In the event of a significant imbalance at the end of a trading pause, Nasdaq may delay the re-opening of a security.

Nasdaq will issue a notification if it cannot resume trading for a reason other than a significant imbalance.

Price moves under this paragraph will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously. Only regular way in-sequence transactions qualify for use in calculations of price moves. Nasdaq can exclude a transaction price from use if it concludes that the transaction price resulted from an erroneous trade.

If a trading pause is triggered under this paragraph, Nasdaq shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. If a primary listing market issues an individual stock trading pause, Nasdaq will pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen within 10 minutes of notification of a trading pause, Nasdaq may resume trading the security.

The provisions of this paragraph shall be in effect during a pilot set to end on *the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or* February 4, 2014[3].

(b)–(c) No change.

* * * * *

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 10, 2010, the Commission granted accelerated approval for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT") (formerly, NYSE Amex LLC), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[5] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[6] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[7] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[8] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[9] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[10] On January 23, 2012, the Commission approved an extension of the pilot to July 31, 2012.[11]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility (the "Plan").[12] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, with a planned implementation date of February 4, 2013. Once implemented, the limit up/limit down mechanism to address extraordinary market volatility will render the current stock trading pause pilot duplicative and unnecessary. The Exchange filed a rule change proposal to extend the single stock trading pause pilot so that it will now expire on February 4, 2013, when the limit up/limit down mechanism to address extraordinary market volatility is to be implemented.[13]

The Exchange, in conjunction with the Exchanges and FINRA, recently filed an amendment to the Plan to change the date of initial operations of the Plan from February 4, 2013 to April 8, 2013. Accordingly, the Exchange is proposing to extend the expiration of the trading pause pilot to the earlier of the initial date of operations of the Plan or February 4, 2014 to allow adequate time for the Plan's implementation. The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to apply the circuit breaker to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the limit up/limit down mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[14] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until the earlier of the initial date of operations of the Plan or February 4, 2014 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed changes are being made to extend the operation of the trading pause pilot until the earlier of the initial date of operations of the Plan or February 4, 2014 would allow the pilot to continue to operate without interruption until implementation of the Plan, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NASDAQ–2010–061).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE MKT, NYSE Arca, and the Exchange.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NASDAQ–2010–079).

[6] Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162).

[7] Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR–NASDAQ–2011–042).

[8] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–NASDAQ–2011–067 *et al.*).

[9] Securities Exchange Act Release No. 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–115).

[10] Securities Exchange Act Release No. 65814 (November 23, 2011), 76 FR 74084 (November 30, 2011) (SR–NASDAQ–2011–154).

[11] Securities Exchange Act Release No. 66214 (January 23, 2012), 77 FR 4593 (January 30, 2012) (SR–NASDAQ–2012–010).

[12] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[13] Securities Exchange Act Release No. 67535 (July 30, 2012), 77 FR 46543 (August 3, 2012) (SR–NASDAQ–2012–087).

[14] 15 U.S.C. 78f(b)(5).

the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[19]

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b-4(f)(6).

[18] 17 CFR 240.19b-4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–026 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–2013–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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–NASDAQ–2013–026 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03817 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68918; File No. SR–FINRA–2013–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the General Securities Sales Supervisor (Series 9/10) Registration Category

February 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal 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

FINRA is proposing to amend NASD Rule 1022(g) (Limited Principal—General Securities Sales Supervisor) and NASD IM–1022–2 (Limited Principal—General Securities Sales Supervisor) to remove the restriction on General Securities Sales Supervisors from approving advertisements as defined in NASD Rule 2210 (Communications with the Public).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to NASD Rule 1022(g), if a principal's supervisory activities are limited solely to securities sales activities, the principal may register and qualify as a General Securities Sales Supervisor (Series 9/10) rather than separately register and qualify in multiple principal registration categories as may be applicable, such as registering and qualifying as a General Securities Principal (Series 24) and Registered Options Principal (Series 4) to supervise sales of corporate securities and options, respectively. A person registering as a General Securities Sales Supervisor must satisfy the General Securities Representative (Series 7) prerequisite registration and pass the appropriate qualification examinations for General Securities Sales Supervisors. In addition, General Securities Sales Supervisors are eligible to supervise security futures activities if they complete a firm-element continuing education program that addresses security futures products.[4] NASD IM–1022–2 explains the purpose of the General Securities Sales Supervisor registration category.

NASD Rule 1022(g) expressly prohibits a General Securities Sales Supervisor from performing any of the following activities: (1) Supervision of the origination and structuring of underwritings; (2) supervision of market making commitments; (3) final approval of advertisements as defined in NASD Rule 2210; (4) supervision of the custody of firm or customer funds or securities for purposes of SEA Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities);[5] or (5) supervision of overall compliance with financial responsibility rules.[6]

While General Securities Sales Supervisors are currently prohibited from approving "advertisements" as defined in NASD Rule 2210, they may approve "sales literature"[7] relating to most types of securities.[8]

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[9] FINRA adopted NASD Rule 2210 as FINRA Rule 2210 (Communications with the Public).[10] Among other changes from NASD Rule 2210, FINRA Rule 2210 combines the definitions of advertisement, sales literature and independently prepared reprint into a single category—retail communications,[11] and it no longer defines advertisements as a separate category of communications. FINRA made this change because modes of communication have largely rendered obsolete the distinction between sales literature and advertisements. For example, information in a blast email sent to a thousand prospective customers currently would be considered sales literature, but the same information posted to a firm's Web site would be considered an advertisement. Sales literature and advertisements generally are subject to the same content standards under NASD Rule 2210. Because FINRA has removed the distinction between advertisements and sales literature in FINRA Rule 2210, FINRA is proposing to amend NASD Rule 1022(g) and NASD IM–1022–2 to remove the restriction on approving advertisements.[12] Thus, the proposed rule change will allow General Securities Sales Supervisors to approve most types of retail communications.[13]

FINRA has filed the proposed rule change for immediate effectiveness. The

[4] *See* NASD Rule 1022(g)(3).

[5] 17 CFR 240.15c3–3.

[6] In addition, General Securities Sales Supervisors cannot be included for purposes of satisfying the two-principal requirement under NASD Rule 1021(e)(1). *See* NASD Rule 1022(g)(2)(B).

[7] NASD Rule 2210 currently defines the term "advertisement" as any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings). *See* NASD Rule 2210(a)(1). NASD Rule 2210 currently defines the term "sales literature" as any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member's products or services. *See* NASD Rule 2210(a)(2). The Commission notes that NASD Rule 2210 was replaced by FINRA Rule 2210 (Communications with the Public), effective February 4, 2013. *See infra* note 10.

[8] General Securities Sales Supervisors may not approve sales literature relating to options and security futures unless they have additional registrations or qualifications. A Registered Options Principal must approve sales literature relating to options. *See* FINRA Rule 2220(b)(1) (Options Communications) (currently in effect). Further, as discussed above, General Securities Sales Supervisors must complete a firm-element continuing education program that addresses security futures products to approve sales literature relating to security futures. *See* NASD Rule 1022(g)(3). In addition, the content of any equity research report that constitutes sales literature must be approved by a Research Principal or a Supervisory Analyst. *See Notices to Members* 04–81 (November 2004) and 07–04 (January 2007).

[9] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[10] FINRA Rule 2210 was approved by the Commission, but it is not yet effective. *See* Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR–FINRA–2011–035). FINRA Rule 2210 will become effective on February 4, 2013. *See Regulatory Notice* 12–29 (June 2012).

[11] The term "retail communication" is defined as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. *See* FINRA Rule 2210(a)(5).

[12] FINRA had originally proposed to make these changes as part of the proposed consolidated registration and qualification rules. *See Regulatory Notice* 09–70 (December 2009).

[13] General Securities Sales Supervisors may not approve retail communications relating to options or security futures unless they have additional registrations or qualifications. A Registered Options Principal must approve retail communications relating to options. *See* FINRA Rule 2220(b)(1) (Options Communications) (effective February 4, 2013). Further, as discussed above, General Securities Sales Supervisors must complete a firm-element continuing education program that addresses security futures products to approve retail communications relating to security futures. *See* NASD Rule 1022(g)(3). In addition, the content of any equity research report that constitutes a retail communication must be approved by a Research Principal or a Supervisory Analyst. *See Notices to Members* 04–81 (November 2004) and 07–04 (January 2007). Finally, pursuant to MSRB Rule G–21 (Advertising), advertisements relating to municipal securities must be approved by a Municipal Securities Principal or a General Securities Principal.

implementation date will be February 4, 2013.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with the provisions of Section 15A(g)(3) of the Act,[15] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed rule change will further these purposes by maintaining consistency between the communications with the public rules and the registration and qualification rules, which will assist members and their associated persons in complying with these rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change will reduce the burden on firms that may employ a General Securities Sales Supervisor by allowing such firms to more efficiently review and approve retail communications that do not require a specialized registration. The proposed rule change further will streamline the approval process by eliminating any need for a General Securities Principal to review some or all of a retail communication that a General Securities Sales Supervisor is competent to review.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

FINRA has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow FINRA to implement the proposed rule change on February 4, 2013, the same date that FINRA Rule 2210 became effective. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2013–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–014 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03818 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78*o*–3(g)(3).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68923; File Nos. SR–NYSE–2012–57; SR–NYSEMKT–2012–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes Deleting NYSE Rules 95(c) and (d) and NYSE MKT Rules 95(c) and (d)—Equities and Related Supplementary Material

February 13, 2013.

I. Introduction

On October 26, 2012, the New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") (collectively, the "Exchanges"), each filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] proposed rule changes ("Proposals") to delete NYSE Rules 95(c) and (d) and related Supplementary Material and NYSE MKT Rules 95(c) and (d)—Equities and related Supplementary Material, respectively. The Proposals were published for comment in the **Federal Register** on November 15, 2012.[3] The Commission received no comment letters on the Proposals.

On December 21, 2012, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to disapprove the Proposals, to February 13, 2013.[4] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the Proposals.

II. Description of the Proposals

The Exchanges propose to delete NYSE Rules 95(c) and (d) and related Supplementary Material, and NYSE MKT Rules 95(c) and (d)—Equities and related Supplementary Material concerning restrictions on the ability of a Floor broker to engage in intra-day trading.[5] Currently, NYSE Rule 95(c) states that if a Floor broker acquires a position for an account during a particular trading session, while at the same time on behalf of that same account, representing market or limit orders at the minimum variation on both sides of the market, the Floor broker may liquidate or cover the position only pursuant to a new order, which must be time-recorded upstairs and upon receipt on the Floor.[6]

NYSE Rule 95(d) defines an account as any account in which the same person or persons is directly or indirectly interested.[7] NYSE Rule 95(d) further states that a Floor broker representing an order to liquidate or cover a position, which was established during the same trading session at a time when the broker represented orders at the minimum variation on both sides of the market for the same account, must execute that liquidating or covering order before any other order on the same side of the market for that account.[8] NYSE Rule 95 Supplementary Material .20 and .30 sets forth examples applicable to NYSE Rule 95(c) and (d).

NYSE adopted NYSE Rule 95(c) and (d) and related Supplementary Material .20 and .30 in 1994 to address "intra-day trading" by Floor brokers.[9] Intra-day trading occurs when a market participant places orders on both sides of the market and attempts to garner the spread by buying at the bid and selling at the offer. According to NYSE, NYSE Rule 95(c) was meant to address situations where a Floor broker may have been perceived as having an advantage over other market participants, such as individual investors, because the Floor broker could trade on both sides of the market without leaving the Crowd.[10] NYSE stated that requiring the Floor broker to obtain a new liquidating order was designed to reduce the immediacy with which a Floor broker could react to changing market conditions on behalf of an intra-day trading account by requiring him or her to leave the Crowd in order to receive a new liquidating order.[11] The restriction was meant to "enhance investors' confidence in the fairness and orderliness of the Exchange market."[12] In approving this proposal, the Commission noted that the intra-day trading strategy employed by professionals "provide[d] the perception that public customer orders [were] being disadvantaged by the time and place advantage of intra-day traders."[13]

NYSE contends that NYSE Rules 95(c) and (d) and related Supplementary Material are outdated in today's market structure and an unnecessary restriction on the ability of Floor brokers to represent orders on behalf of their customers and, therefore, should be deleted.[14]

According to NYSE, in 1994, orders entered in the NYSE specialist's book experienced greater latency than did orders handled by Floor brokers. At that time, the NYSE specialist's book orders could not be executed until the specialist manually executed them, and Floor brokers could stand at the point of sale and trade more quickly than specialists.[15] NYSE represents that with the current marketplace, incoming electronic orders are executed automatically in microseconds, and "book" orders receive immediate limit order display. As a result, NYSE argues that the rationale for NYSE Rules 95(c) and (d) with respect to how Floor broker customers could "crowd out small

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68185 (November 8, 2012), 77 FR 68188 (November 15, 2012) (SR–NYSE–2012–57) ("NYSE Notice"); Release No. 68186 (November 8, 2012), 77 FR 68191 (SR–NYSEMKT–2012–58) ("NYSE MKT Notice").

[4] *See* Securities Exchange Act Release No. 68522 (December 21, 2012), 77 FR 77160 (December 31, 2012) (SR–NYSE–2012–57); Release No. 68521 (December 21, 2012), 77 FR 77152 (SR–NYSEMKT–2012–58).

[5] As noted by NYSE MKT, NYSE MKT Rule 95—Equities is an almost identical version of NYSE Rule 95, and was adopted at the time of acquisition of The Amex Membership Corporation by NYSE Euronext. *See* NYSE MKT Notice, 77 FR at 68191. NYSE MKT stated that the rationale for the adoption of NYSE MKT Rules 95(c)—Equities and (d)—Equities was the same as the rationale for the adoption of NYSE Rules 95(c) and (d) in 1994. *Id.* Given that the NYSE and NYSE MKT rules are virtually identical, and that the rationale for the adoption of the rules is the same, references to the text of NYSE Rule 95 in this order and the rationale for its adoption, unless otherwise noted, apply equally to NYSE MKT Rule 95—Equities.

[6] *See* NYSE Rule 95(c). NYSE Rule 95(c) further provides that all liquidating orders must be marked as "BC" when covering a short position, or "SLQ" when liquidating a long position.

[7] *See* NYSE Rule 95(d).

[8] *See* NYSE Rule 95(d).

[9] *See* Securities Exchange Act Release No. 34363 (July 13, 1994), 59 FR 36808 (July 19, 1994) ("Rule 95(c) Adopting Release"). NYSE Rule 95(c) provides that, "[i]f a Floor broker acquires a position for an account during a particular trading session while representing at the same time, on behalf of that account, market or limit orders at the minimum variation on both sides of the market, the broker may liquidate or cover the position established during that trading session only pursuant to a new order (a liquidating order) which must be time recorded upstairs and upon receipt on the trading Floor." As a related matter, NYSE Rule 95(d) requires that a Floor broker must execute the liquidating order entered pursuant to Rule 95(c) before the Floor broker can execute any other order for the same account on the same side of the market as that liquidating order. The Supplementary Material sets forth examples illustrating the operation of Rules 95(c) and (d) along with examples indicating the type of buy and sell orders that a member may and may not represent for the same customer at the same time pursuant to Rule 95.

[10] *See* NYSE Notice, 77 FR at 68189. The NYSE states that Rule 95(c)'s requirement that a liquidating order be "new" effectively required that a Floor broker leave the Crowd before entering a liquidating order (selling what had been bought, for example) because there was no way for the Floor broker to receive the new order (or otherwise communicate with a customer) from the Crowd. *See id.*, 77 FR at 68189 n.6.

[11] *See* NYSE Notice, 77 FR at 68189.

[12] Rule 95(c) Adopting Release at 36809.

[13] *Id.* at 36810.

[14] *See* NYSE Notice, 77 FR 68189.

[15] *See id.*

customer limit orders and delay or prevent their execution," [16] no longer applies in the current market structure.[17]

NYSE also argues that the market structure and trading strategies have evolved since the enactment of NYSE Rule 95(c). For example, off-Floor participants regularly engage in buy and sell side trading strategies (*i.e.*, "intra-day trading)" so that, according to NYSE, in today's micro-second market there is no longer a competitive advantage to being on the Floor when engaging in the type of intra-day trading addressed by NYSE Rules 95(c) and (d).[18] Rather, in the view of NYSE, due to the increase in the speed of trading, the increased fragmentation of the equity markets, and the dissemination of market information available to off-Floor participants, many off-Floor participants are able to synthesize market information across multiple markets faster than a Floor broker could while located on the Floor.[19] Accordingly, NYSE claims, to the extent there may still be a time and place advantage for Floor brokers by virtue of their presence on the Floor, the type of information available to Floor brokers is no longer the type of information that would provide Floor brokers with an advantage in connection with intra-day trading.[20]

As a result of these changes, NYSE contends that NYSE Rules 95(c) and (d) are no longer operating to place Floor brokers on equal footing with other market participants, but instead are placing them at a disadvantage in the largely automatic market that has developed in the almost twenty years since the restrictions were put in place.[21] NYSE believes that deleting NYSE Rules 95(c) and (d) and the related Supplementary Materials would place Floor brokers on a more equal footing with other market participants utilizing automatic executions.

[16] Rule 95(c) Adopting Release at 38611.

[17] *See* NYSE Notice, 77 FR 68189. NYSE also argues that, since adopting the rule, the equities markets in general, and NYSE in particular, have undergone market structure changes that obviate the need for this rule-based restriction on how a Floor broker represents orders on behalf of customers. For example, the NYSE adopted its "Hybrid Market" structure in part to meet the requirements of Regulation NMS that were implemented in July 2007. The NYSE states that, since it has undergone a dramatic shift "from a floor-based auction market with limited automated order interaction to a more automated market with limited floor-based auction market availability." *See id.*

[18] *See id.*

[19] *See* NYSE Notice, 77 FR at 68189.

[20] *See id.* at 68189–68190.

[21] *See id.*, 77 FR at 68190.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2012–57 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposals should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposals that are discussed below. Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment to inform the Commission's analysis of whether to approve or disapprove the Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act [22] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act [23] requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

The Proposals would delete rules originally designed to ensure that Floor brokers, and by extension their customers, did not have an unfair advantage over other market participants through "intra-day trading," where the trader seeks to garner the spread by both buying at the bid and selling at the offer. If the Exchanges were to eliminate Rule 95(c), there would no longer be a requirement that, when a Floor broker is representing orders at the minimum variation on both sides of the market for the same account and acquires a position for that account, the Floor broker obtain a new order to liquidate or cover a position established during that trading session. One of the original justifications for adopting this "speed bump" in 1994 was that Floor brokers, by virtue of their presence on the NYSE Floor, could have a time and place advantage over other market participants because they could trade on both sides of the market without leaving the Crowd.

In their Proposals, the Exchanges argue, among other things, that the automation of the markets in the intervening years, including the increased speed of trading on the Exchanges and elsewhere, along with the fragmentation of the equity markets and the wide dissemination of market information to off-Floor participants, have substantially reduced Floor brokers' time and place advantage and left the rationale underlying Rules 95(c) and (d) obsolete. In fact, the Exchanges take the position that, "[i]n today's micro-second market, there is no longer a competitive advantage to being on the trading Floor when engaging in the type of intra-day trading" that is addressed by Rules 95(c) and (d).[24] Accordingly, in the Exchanges' view, the Proposals would "serve to place Floor brokers on a more equal footing with other market participants utilizing automatic executions."[25]

Although the Commission acknowledges that increased automation and other market structure changes are likely to have substantially reduced the time and place advantage historically enjoyed by those on the floor of the Exchanges, the Commission is concerned that elimination of the Rule 95(c) restriction on Floor brokers in connection with intra-day trading, as contemplated by the Proposals, may not be consistent with the Act in light of other benefits currently conferred by the Exchanges upon Floor brokers. For example, under the Exchanges' rules, a Floor broker is entitled to a potentially preferential "parity" allocation of shares of an Exchange execution, as compared with off-Floor market participants that place orders on the Exchanges' respective books.[26] Accordingly, a customer of a Floor broker engaged in intra-day trading, through an algorithmic proprietary trading strategy or otherwise, may have an advantage over market participants pursuing

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] *See* NYSE Notice, 77 FR at 68189; NYSE MKT Notice, 77 FR at 68192.

[25] *See* NYSE Notice, 77 FR at 68190; NYSE MKT Notice, 77 FR at 68192.

[26] *See* NYSE Rule 72(c)(ii) ("For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to herein as "Book Participant") shall constitute individual participants. The orders represented in the Book Participant in aggregate shall constitute a single participant and will be allocated shares among such orders by means of time priority with respect to entry."); *see also* NYSE MKT Rule 72(c)(ii) (same).

similar strategies directly on the Exchanges' respective books, by virtue of the Floor broker's parity status. The restrictions contained in Rules 95(c) and (d) today may serve to help counterbalance those advantages.

The Commission therefore believes that questions are raised as to whether the Proposals are consistent with (1) the requirements of Section 6(b)(5) of the Act, including whether they would not be designed to permit unfair discrimination, or would promote just and equitable principles of trade, or protect investors and the public interest; and (2) the requirements of Section 6(b)(8) of the Act, including whether they would impose an unnecessary or inappropriate burden on competition.

IV. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the Preposals. In particular, the Commission invites the written views of interested persons concerning whether the Proposals are inconsistent with Section 6(b)(5), Section 6(b)(8) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[27]

Interested persons are invited to submit written data, views and arguments regarding whether the Proposals should be disapproved by March 13, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 27, 2013.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–57 and SR–NYSEMKT–2012–58 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–NYSE–2012–57 and SR–NYSEMKT–2012–58. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposals that are filed with the Commission, and all written communications relating to the Proposals 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 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. 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–NYSE–2012–57 and SR–NYSEMKT–2012–58 and should be submitted on or before March 13, 2013. Rebuttal comments should be submitted by March 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03820 Filed 2–19–13; 8:45 am]

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[27] Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular Proposals by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[28] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68916; File No. SR–BX–2013–012]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Certain NMS Stocks

February 13, 2013.

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 February 1, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 extend the trading pause pilot in certain individual NMS stocks when the price moves ten percent or more in the preceding five minute period, so that the pilot will now expire on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

IM–4120–3. Circuit Breaker Securities Pilot

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on *the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or* February 4, 2014[3]. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks except rights and warrants.

* * * * *

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

On June 10, 2010, the Commission granted accelerated approval for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC ("NASDAQ"), New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT") (formerly, NYSE Amex LLC), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[4] The rules require the Listing Markets[5] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[6] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[7] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[8] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[9] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[10] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[11] On January 23, 2012, the Commission approved an extension of the pilot to July 31, 2012.[12]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[13] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, with a planned implementation date of February 4, 2013. Once implemented, the limit up/limit down mechanism to address extraordinary market volatility will render the current stock trading pause pilot duplicative and unnecessary. The Exchange filed a rule change proposal to extend the single stock trading pause pilot so that it will now expire on February 4, 2013, when the limit up/limit down mechanism to address extraordinary market volatility is to be implemented.[14]

The Exchange, in conjunction with the Exchanges and FINRA, recently filed an amendment to the Plan to change the date of initial operations of the Plan from February 4, 2013 to April 8, 2013. Accordingly, the Exchange is proposing to extend the expiration of the trading pause pilot to the earlier of the initial date of operations of the Plan or February 4, 2014 to allow adequate time for the Plan's implementation. The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to apply the circuit breaker to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the limit up/limit down mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[15] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until the earlier of the initial date of operations of the Plan or February 4, 2014 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed changes are being made to

[4] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BX–2010–037).

[5] The term "Listing Markets" refers collectively to NYSE, NYSE MKT, NYSE Arca, and NASDAQ.

[6] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BX–2010–044).

[7] Securities Exchange Act Release No. 63527 (December 10, 2010), 75 FR 78781 (December 16, 2010) (SR–BX–2010–088).

[8] Securities Exchange Act Release No. 64176 (April 4, 2011), 76 FR 19821 (April 8, 2011) (SR–BX–2011–018).

[9] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BX–2011–025, *et al.*).

[10] Securities Exchange Act Release No. 65093 (August 10, 2011), 76 FR 50781 (August 16, 2011) (SR–BX–2011–055).

[11] Securities Exchange Act Release No. 65815 (November 23, 2011), 76 FR 74109 (November 30, 2011) (SR–BX–2011–079).

[12] Securities Exchange Act Release No. 66215 (January 23, 2012), 77 FR 4387 (January 27, 2012) (SR–BX–2012–003).

[13] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[14] Securities Exchange Act Release No. 67571 (August 2, 2012), 77 FR 47448 (August 8, 2012) (SR–BX–2012–055).

[15] 15 U.S.C. 78f(b)(5).

extend the operation of the trading pause pilot until the earlier of the initial date of operations of the Plan or February 4, 2014 would allow the pilot to continue to operate without interruption until implementation of the Plan, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[19]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2013–012 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03816 Filed 2–19–13; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68910; File No. SR–NYSEArca–2013–16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the WisdomTree Euro Debt Fund

February 12, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 4, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 reflect a change to the means of achieving the investment objective applicable to the WisdomTree Euro Debt Fund (the "Fund"). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares ("Shares") of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[4] The Shares are offered by the WisdomTree Trust ("Trust"), which was established as a Delaware statutory trust on December 15, 2005 and registered with the Commission as an open-end investment company.[5]

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund. Mellon Capital Management serves as sub-adviser for the Fund ("Sub-Adviser").

In this proposed rule change, the Exchange proposes to reflect a change to the description of the measures the Sub-Adviser will utilize to obtain the Fund's investment objectives.[6] Under the July 2011 Order, the Fund's exposure to any single country generally is limited to 20% of the Fund's assets.

In this proposed rule change, the Exchange seeks to make a change to this representation reflected in the July 2011 Order. Going forward, the Exchange proposes that the Fund's exposure to any single country generally would be limited to 30% of Fund assets, rather than its existing general limit of 20% of the Fund's assets. The Adviser represents that the purpose of this change is to provide flexibility to the Sub-Adviser to meet the Fund's investment objective by providing a limited increase in the Fund's permitted concentration of investments originating in any single country to 30% of Fund assets. Such an increase would permit the Fund to include a broader range of issuers in its portfolio from a single country, while allowing the Fund to seek additional investment opportunities to achieve its investment objective.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the change noted above, all other facts presented and representations made in the Rule 19b–4 filing underlying the July 2011 Order remain unchanged. The Adviser represents that the proposed rule change would be consistent with the Exemptive Order and the 1940 Act and the rules thereunder.

All term referenced but not defined herein are defined in the July 2011 Order.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are 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 of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Fund will limit its investments in securities originated in any one country to 30%. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Adviser represents that the purpose of the proposed rule change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by providing a limited increase in the concentration of Fund assets in securities originating in any single country. The Adviser represents that the proposed rule change would be consistent with the Exemptive Order and the 1940 Act and the rules thereunder. Except for the change noted above, all other representations made in

[4] The Commission originally approved the listing and trade of the Shares on the Exchange on May 8, 2008 as Shares of the WisdomTree Dreyfus Euro Fund. *See* Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving listing and trading of twelve actively managed exchange-traded funds of the WisdomTree Trust) ("May 2008 Order"); *see also* Securities Exchange Act Release No. 57670 (April 15, 2008), 73 FR 21397 (April 21, 2008) (SR–NYSEArca–2008–31) (notice of proposal to list twelve actively managed exchange-traded funds of the WisdomTree Trust). The original investment objectives of the Fund were to (1) earn current income reflective of money market rates available to foreign investors in the specified country or region, and (2) maintain liquidity and preserve capital measures in the currency of the specified country or region. See May 2008 Order. On July 20, 2011, the Commission approved a proposed rule change relating to the Fund to change the name of the Fund to the "WisdomTree Dreyfus Euro Debt Fund," to change the Fund's investment objective to seeking "a high level of total returns consisting of both income and capital appreciation," and to change the Fund's investment strategies, as described in the May 2008 Order. *See* Securities Exchange Act Release No. 64935 (July 20, 2011), 76 FR 44966 (July 27, 2011) (SR–NYSEArca–2011–31) ("July 2011 Order"). *See also* Securities Exchange Act Release No. 64608 (June 6, 2011), 76 FR 34112 (June 10, 2011) (SR–NYSEArca–2011–31) (notice of proposal to change name, investment objective and investment strategy of Fund). The name of the Fund was changed to the WisdomTree Euro Debt Fund as of December 31, 2011. (See amendment, dated December 29, 2011, to the Trust's "Registration Statement," as defined in note 5 below.)

[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (File Nos. 333–132380 and 811–21864) ("Registration Statement") under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). On April 14, 2011 the Trust filed with the Commission an amendment to the Registration Statement. *See* Form 497, Supplement to Registration Statement on Form N–1A for the Trust. The descriptions of the Fund and the Shares contained herein are based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812–13458) ("Exemptive Order"). In compliance with Commentary .04 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act.

[6] The change described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement. *See* note 5, *supra*. The Adviser represents that the Adviser and the Sub-Adviser have managed and will continue to manage the Fund in the manner described in the July 2011 Order, and will not implement the change described herein until the instant proposed rule change is operative.

[7] 15 U.S.C. 78f(b)(5).

the Rule 19b–4 filing underlying the July 2011 Order remain unchanged.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 purpose of the Act. The Exchange believes the proposed rule change will permit the Adviser and Sub-Adviser additional flexibility in achieving the Fund's investment objective, thereby offering investors additional investment options.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay period to allow the proposed rule change to become operative upon filing.[9] The Commission believes that it is consistent with the public interest to waive the 30-day operative delay. The proposed rule change would result in a limited expansion of the existing 20% single-country concentration limit to a 30% single-country concentration limit. The Commission has already approved a 30% single-country concentration for other exchange-traded funds.[10] Further, the Exchange has represented that the proposed rule change would be consistent with the Exemptive Order and with the 1940 Act and the rules thereunder. The Exchange has also represented that there is no change to the Fund's investment objective and that, except for the change noted herein, all other facts and representations on which the July 2011 Order is based remain unchanged. The Commission notes that the Fund must continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange. Based on the limited nature of the proposed rule change and the Exchange's representations made herein, the Commission believes that the proposal presents no novel regulatory issues and that the waiver of the operative delay will allow the Exchange to continue to list and trade the Shares of the Fund without interruption. Therefore, the Commission grants such waiver and designates the proposal operative upon filing.[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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2013–16 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–NYSEArca–2013–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 10:00 a.m. and 3:00 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–NYSEArca–2013–16 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03753 Filed 2–19–13; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. *See* 17 CFR 240.19b–4(f)(6)(iii).

[10] *See, e.g.,* Securities Exchange Act Release Nos. 68073 (October 19, 2012), 77 FR 65237 (October 25, 2012); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68783; File No. SR–EDGA–2013–02]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to EDGA Rule 13.9

January 31, 2013.

Correction

In notice document 2013–02624, appearing on pages 8657–8659 in the issue of Wednesday, February 6, 2013, make the following correction:

On page 8657, in the third column, the Release No. and File No., which were inadvertently omitted from the document heading, are added to read as set forth above.

[FR Doc. C1–2013–02624 Filed 2–19–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68909; File No. SR–BX–2013–011]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify BX's Fee Schedule Governing Order Execution

February 12, 2013.

Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934 (ldquo;Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2013, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 the Substance of the Proposed Rule Change

BX proposes to modify BX's fee schedule governing order execution. BX will implement the proposed change on February 1, 2013. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III [sic] 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

BX is amending its fee schedule governing order execution. All of the changes pertain to securities priced at $1 or more per share. Currently, BX pays no credit with respect to orders that execute against a midpoint pegged order; a credit of $0.0014 per share executed for routable orders that access liquidity in BX (other than orders that execute against a midpoint pegged order); a credit of $0.0014 per share executed for orders that access liquidity if entered through a BX MPID through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity during the month, or (ii) provides an average daily volume of 25,000 or more shares of liquidity during the month (other than orders that execute against a midpoint pegged order); and a credit of $0.0005 per share executed for all other orders that access liquidity in BX. BX is making the following changes to these fees:

- Modifying the pricing tier that currently requires providing an average daily volume of 25,000 or more shares of liquidity, such that providing an average daily volume of 1 million or more shares of liquidity would be required;
- Instituting a new pricing tier under which a member would receive a credit of $0.0010 per share executed for an order (other than an order that executes against a midpoint pegged order) entered through an MPID through which the member provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month;
- Decreasing the credit applicable to orders to which no special credit applies from $0.0005 to $0.0004 per share executed.

As a result of the changes, the requirements for one of the means by which a member may receive a credit of $0.0014 per share executed will be increased. However, the remaining means of receiving this credit, including use of routable orders, will remain unchanged. Moreover, a new pricing tier is being created so that members that have received this credit due to their levels of liquidity provision but that do not qualify for the higher requirements will still receive a credit of $0.0010 per share executed, a credit that is more than twice as high as the base credit of $0.0004 per share executed.

Second, with respect to orders that provide liquidity, BX currently charges $0.0015 per share executed for a displayed order entered by a Qualified Liquidity Provider through a Qualified MPID;[3] and $0.0018 per share executed for all other orders. BX is making the following changes to these fees:

- For a midpoint pegged order that provides liquidity, BX will charge $0.0015 per share executed. Midpoint pegged orders are non-displayed orders that execute at the midpoint between the national best bid and offer ("NBBO"), thereby providing price improvement to orders that execute against them.
- For other types of non-displayed orders, BX will charge $0.0025 per share executed.

This change is similar in structure to pricing on The NASDAQ Stock Market, where members that provide liquidity using midpoint pegged orders receive a higher credit than with respect to other forms of non-displayed orders. This pricing approach reflects the view that although displayed orders are generally preferred to non-displayed orders because they assist in price discovery, the use of midpoint orders should also be encouraged through pricing incentives because they provide price improvement.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and (5) of the Act,[5] 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 BX operates or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Qualified Liquidity Provider is required to meet certain standards with regard to volumes of liquidity accessed and provided. A Qualified MPID is an MPID through which a Qualified Liquidity Provider achieves certain requirements with respect to quoting at the NBBO. *See* Rule 7018(a)(1) and (2).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

BX believes that the modifications to pricing for members providing significant liquidity (*i.e.*, the creation of a new $0.0010 per share executed credit tier and the increase in the requirements for participation in the $0.0014 per share executed tier) are reasonable because the resulting decrease in credits for a member that provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity will be a modest $0.0004 per share executed, and a member affected by the change may still qualify for the $0.0014 per share executed credit through other means. BX believes that the change is consistent with an equitable allocation of fees because the change is consistent with a goal of encouraging liquidity provision through pricing incentives, because it provides a credit that is more than twice as high as the base credit for members that provide a relatively modest level of liquidity (an average daily volume of at least 25,000 shares) and a credit more than three times higher than the base credit for members that provide a significant level of liquidity (an average daily volume of at least 1 million shares). Finally, BX believes that the change is not unreasonably discriminatory, because liquidity provision benefits all market participants by dampening price volatility and because alternative means of earning a $0.0014 per share credit remain available.

BX believes that the decrease in the credit for orders not qualifying for any pricing tier is reasonable because it is a decrease of only $0.0001 per share executed. BX further believes that it is consistent with an equitable allocation of fees and is not unreasonably discriminatory, because it is consistent with the practice of all national securities exchanges of providing financial incentives to members to provide liquidity or make significant use of an exchange's facilities, while charging higher fees and/or providing lower credits to less committed users.

BX believes that the proposed fee decrease for midpoint pegged orders and price increase for other forms of non-displayed orders is reasonable because in the first instance, fees are being reduced, and in the second instance, the increase is only $0.0007 per share executed. Moreover, the increase is reasonable because members may readily avoid it by using displayed orders or midpoint pegged orders. BX believes that the changes are consistent with an equitable allocation of fees, and are not unreasonably discriminatory, because the fees reflect a policy of using fees to encourage greater use of displayed orders, which benefit all market participants by promoting greater price discovery, as well as the use of midpoint pegged orders, which benefit other market participants by providing price improvement. Accordingly, BX believes that it is equitable to charge the highest fees to non-displayed, non-midpoint orders, which provide the least benefits to other market participants, while charging lower fees to displayed orders, which benefit the entire market by revealing the price and size of trading interest, and midpoint orders, which benefit other participants by offering price improvement. This approach is not unfairly discriminatory because the variation in fees is reasonably related to valid market structure goals.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The changes reflect this environment because although they reflect price increases, the price increases are minor and are designed to incentivize changes in market participant behavior (*i.e.*, encouraging greater use of BX's router, increased liquidity provision, and more use of displayed and/or midpoint pegged orders) rather than to impose significantly higher costs on market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. Although the proposed changes increase fees or decrease credits in certain respects, BX believes that these changes do not impose any burden on competition, since members may readily favor other trading venues if they wish to avoid these pricing changes. Moreover, within the context of BX pricing schedule, members may also readily avoid the effect of the changes by modifying the order types that they use. Accordingly, the impact on the fees actually paid by members is expected to be minimal, and the change will not impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act[6] and paragraph (f) of Rule 19b-4 thereunder,[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–011 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–2013–011. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[6] 15 U.S.C. 78s(b)(3)(a).

[7] 17 CFR 240.19b–4(f).

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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–BX–2013–011, and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03752 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68915; File No. SR–Phlx–2013–14]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Certain NMS Stocks

February 13, 2013.

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 February 1, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12).

[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 extend the trading pause pilot in certain individual NMS stocks when the price moves ten percent or more in the preceding five minute period, so that the pilot will now expire on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 3100. Trading Halts on PSX

(a) Authority to Initiate Trading Halts or Pauses

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, and pursuant to the procedures set forth in paragraph (c):

(1)–(3) No change.

(4) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on *the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or* February 4, 2014*[3]*. During the pilot, the term "Circuit Breaker Securities" shall mean any NMS stock except rights and warrants.

(b)–(c) No change.

* * * * *

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

On June 10, 2010, the Commission granted accelerated approval for a pilot period to end December 10, 2010 of proposed rule changes submitted by the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC ("NASDAQ"), New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT") (formerly, NYSE Amex LLC), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to securities comprising the Russell 1000® Index and specified Exchange Traded Products.[5]

In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX system, the Exchange adopted Rule 3100(a)(4) so that it could participate in the pilot program.[6] On September 29, 2010, the Exchange amended Rule 3100(a)(4) to include stocks comprising the Russell 1000® Index and specified Exchange

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE MKT, NYSE Arca, and NASDAQ.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010).

[6] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

Traded Products.[7] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[8] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[9] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[10] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[11] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[12] On January 23, 2012, the Commission approved an extension of the pilot to July 31, 2012.[13]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[14] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, with a planned implementation date of February 4, 2013. Once implemented, the limit up/limit down mechanism to address extraordinary market volatility will render the current stock trading pause pilot duplicative and unnecessary. The Exchange filed a rule change proposal to extend the single stock trading pause pilot so that it will now expire on February 4, 2013, when the limit up/limit down mechanism to address extraordinary market volatility is to be implemented.[15]

The Exchange, in conjunction with the Exchanges and FINRA, recently filed an amendment to the Plan to change the date of initial operations of the Plan from February 4, 2013 to April 8, 2013. Accordingly, the Exchange is proposing to extend the expiration of the trading panse pilot to the earlier of the initial date of operations of the Plan or February 4, 2014 to allow adequate time for the Plan's implementation. The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to apply the circuit breaker to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the limit up/limit down mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act, which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until the earlier of the initial date of operations of the Plan or February 4, 2014 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed changes are being made to extend the operation of the trading pause pilot until the earlier of the initial date of operations of the Plan or February 4, 2014 would allow the pilot to continue to operate without interruption until implementation of the Plan, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the

[7] Securities Exchange Act Release No. 63004 (September 29, 2010), 75 FR 61547 (October 5, 2010) (SR–Phlx–2010–126).

[8] Securities Exchange Act Release No. 63504 (December 9, 2010), 75 FR 78304 (December 15, 2010) (SR–Phlx–2010–174).

[9] Securities Exchange Act Release No. 64175 (April 4, 2011), 76 FR 19823 (April 8, 2011) (SR–Phlx–2011–044).

[10] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–Phlx–2011–064, *et al.*).

[11] Securities Exchange Act Release No. 65083 (August 10, 2011), 76 FR 50801 (August 16, 2011) (SR–Phlx–2011–113).

[12] Securities Exchange Act Release No. 65813 (November 23, 2011), 76 FR 74113 (November 30, 2011) (SR–Phlx–2011–158).

[13] Securities Exchange Act Release No. 66216 (January 23, 2012), 77 FR 4385 (January 27, 2012) (SR–Phlx–2012–07).

[14] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[15] Securities Exchange Act Release No. 67537 (July 30, 2012), 77 FR 46546 (August 3, 2012) (SR–Phlx–2012–99).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[20]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–14 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–2013–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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–Phlx–2013–14 and should be submitted on or before March 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03793 Filed 2–19–13; 8:45 am]

BILLING CODE 8011–01–P

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0006]

Social Security Ruling, SSR 13–2p.; Titles II and XVI: Evaluating Cases Involving Drug Addiction and Alcoholism (DAA)

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are giving notice of SSR 13–2p, in which we explain our policies for how we consider whether "drug addiction and alcoholism" (DAA) is material to our determination of disability in disability claims and continuing disability reviews. This SSR rescinds and replaces SSR 82–60, Titles II and XVI: Evaluation of Drug Addiction and Alcoholism. This SSR obsoletes EM 96–200.

DATES: *Effective Date:* March 22, 2013.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Disability Programs, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020, or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

SSRs make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. SSRs may be based on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1).

This SSR will be in effect until we publish a notice in the **Federal Register** that rescinds it or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income.)

Dated: February 12, 2013.

Michael J. Astrue,

Commissioner of Social Security.

POLICY INTERPRETATION RULING

TITLES II AND XVI: EVALUATING CASES INVOLVING DRUG ADDICTION AND ALCOHOLISM (DAA)

This Social Security Ruling (SSR) rescinds and replaces SSR 82–60: "Titles II and XVI: Evaluation of Drug Addiction and Alcoholism."

PURPOSE: This SSR explains our policies for how we consider whether "drug addiction and alcoholism" (DAA) is a contributing factor material to our determination of disability in disability claims and continuing disability reviews.[1]

[1] For simplicity, we refer in this SSR only to initial adult claims for disability benefits under titles II and XVI of the Social Security Act, and to the steps of the sequential evaluation process we use to determine disability in those claims. 20 CFR 404.1520 and 416.920. The policy interpretations in this SSR apply to all other cases in which we must make determinations about disability, including claims of children (that is, people who have not attained age 18) who apply for benefits based on disability under title XVI of the Act, redeterminations of the disability of children who were receiving benefits under title XVI when they attained age 18, and continuing disability reviews of adults and children under titles II and XVI of the Act. 20 CFR 404.1594, 416.924, 416.987, 416.994, and 416.994a.

CITATIONS: Sections 216(i), 223(d), 223(f), 1614(a), and 1614(e) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508, 404.1509, 404.1512, 404.1513, 404.1517, 404.1519a, 404.1520, 404.1521, 404.1523, 404.1527, 404.1528, 404.1530, 404.1535, 404.1560, 404.1594, and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908, 416.909, 416.912, 416.913, 416.917, 416.919a, 416.920, 416.921, 416.923, 416.924, 416.924a, 416.926a, 416.927, 416.928, 416.930, 416.935, 416.960, 416.987, 416.994, and 416.994a.

INTRODUCTION: In this SSR, we consolidate information from a variety of sources to explain our DAA policy. We include information from our regulations, training materials, and question-and-answer (Q&A) responses. We also base the SSR on information we obtained from individual medical and legal experts, the Substance Abuse and Mental Health Services Administration in the U.S. Department of Health and Human Services, and our adjudicative experience.

POLICY INTERPRETATION:

General

a. Sections 223(d)(2)(C) and 1614(a)(3)(J) of the Social Security Act (Act) provide that a claimant "shall not be considered to be disabled * * * if alcoholism or drug addiction would * * * be a contributing factor material to the Commissioner's determination that the individual is disabled." When we adjudicate a claim for disability insurance benefits (DIB), Supplemental Security Income (SSI) payments based on disability, or concurrent disability claims include evidence from acceptable medical sources as defined in 20 CFR 404.1513 and 20 CFR 416.913 establishing that DAA is a medically determinable impairment(s) (MDI) *and* we determine that a claimant is disabled considering all of the claimant's medically determinable impairments (MDIs), we must then determine whether the claimant would continue to be disabled if he or she stopped using drugs or alcohol; that is, we will determine whether DAA is "*material*" to the finding that the claimant is disabled. 20 CFR 404.1535 and 416.935. See Question 2 for additional information.

b. The information that follows, presented in question and answer (Q&A) format with illustrative scenarios, provides specific detail and examples to explain our DAA policy. Question 1 specifies the MDIs we consider under our DAA policy. Different Q&As will apply during the adjudication of a specific claim based upon the evidence in that case. All adjudicators must provide sufficient information in their determination or decision that explains the rationale supporting their determination of the materiality of DAA so that a subsequent reviewer considering all of the evidence in the case record is able to understand the basis for the materiality finding and the determination of whether the claimant is disabled. Question 14 specifies what information adjudicators must include in a determination or decision that requires a finding of the materiality of DAA to the determination that the claimant is disabled.

List of Questions

1. How do we define the term "DAA"?

a. Although the terms "drug addiction" and "alcoholism" are medically outdated, we continue to use the terms because they are used in the Act.[2]

i. With one exception—nicotine use disorders—we define the term *DAA* as *Substance Use Disorders;* that is, *Substance Dependence* or *Substance Abuse* as defined in the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association.[3] See Question 4. In general, the DSM defines *Substance Use Disorders* as maladaptive patterns of substance use that lead to clinically significant impairment or distress.[4]

ii. There are two Substance-Induced Disorders that we consider under the definition of DAA because they may be long lasting or permanent. Substance-Induced Persisting Dementia and Substance-Induced Persisting Amnestic Disorder last beyond the usual duration of substance intoxication and withdrawal. Substance-Induced Persisting Dementia refers to the development of multiple cognitive deficits that include memory impairment and at least one of the following cognitive disturbances: aphasia, apraxia, agnosia, or a disturbance in executive functioning. To document this condition, there must be evidence from the medical history, physical examination, or laboratory findings showing that the deficits are due to the persisting effects of substance use. Substance-Induced Persisting Amnestic Disorder refers to a combination of multiple memory deficits that significantly impair social or occupational functioning and represent a significant decline from a previous level of functioning. To document this condition, the evidence must establish that the deficits are clearly due to the persisting effects of substance abuse.

b. *Substance Use Disorders* are diagnosed in part by the presence of maladaptive use of alcohol, illegal drugs, prescription medications, and toxic substances (such as inhalants).[5] For this reason, *DAA* does not include:

- Fetal alcohol syndrome,
- Fetal cocaine exposure, or

[2] See sections 223(d)(2)(C) and 1614(a)(3)(J) of the Act.

[1] American Psychiatric Association (APA). *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM–IV–TR).* Washington, DC (2000). When we published this SSR, the APA used the term "dependence." The APA was considering changing the term "dependence" to "addiction" in the forthcoming DSM–V. For this SSR, there is no substantive difference between the two terms.

[4] See DSM–IV–TR p. 197, Criteria for Substance Dependence and p. 199 for Substance Abuse.

[5] We do not consider Caffeine-Induced Disorders under *DAA.* "Some individuals who drink large amounts of coffee display some aspects of dependence on caffeine and exhibit tolerance and perhaps withdrawal. However, the data are insufficient at this time to determine whether these symptoms are associated with clinically significant impairment that meets the criteria for Substance Dependence or Substance Abuse." *DSM–IV–TR* p. 231. Thus, it is not appropriate to make a determination of materiality because a claimant drinks coffee to excess and may have been diagnosed with a Caffeine-Induced Disorder. The DSM–IV–TR does not include diagnoses for Caffeine Dependence or Caffeine Abuse.

• Addiction to, or use of, prescription medications taken as prescribed, including methadone and narcotic pain medications.

A claimant's occasional maladaptive use or a history of occasional prior maladaptive use of alcohol or illegal drugs does not establish that the claimant has a medically determinable *Substance Use Disorder*. See Questions 4 and 8.

c. Although the DSM includes a category for nicotine-related disorders, including nicotine dependence, we will not make a determination regarding materiality based on these disorders.[6]

2. What is our DAA policy?

The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find a claimant disabled if he or she stopped using drugs or alcohol.

a. *DAA* is not *material* to the determination that the claimant is under a disability if the claimant *would still meet our definition of disability*[7] if he or she were not using drugs or alcohol. If *DAA* is not *material*, we find that the claimant is disabled.[8]

b. *DAA* is *material* to the determination of disability if the claimant *would not meet our definition of disability* if he or she were not using drugs or alcohol. If *DAA* is *material*, we find that the claimant is not disabled.

3. When do we make a DAA materiality determination?

a. Under the Act and our regulations, we make a *DAA materiality* determination only when:

i. We have medical evidence from an acceptable medical source establishing that a claimant has a *Substance Use Disorder*, and

ii. We find that the claimant is disabled considering all impairments, including the *DAA*.[9]

b. We do not make a determination regarding *materiality* if a claimant has a history of *DAA* that is not relevant to the period under consideration.

4. How do we determine whether a claimant has DAA?

Subject to the exception regarding nicotine use disorders in Question 1 above, a claimant has DAA only if he or she has a medically determinable *Substance Use Disorder*. The DSM includes all medically determinable *Substance Use Disorders;* therefore, we do not require adjudicators to identify a specific DAA diagnosis in the DSM. We use the same rules for determining whether a claimant has a *Substance Use Disorder* as we use for any other medically determinable physical or mental impairment. See Question 8.

5. How do we determine materiality?

a. *Burden of Proof.* The claimant has the burden of proving disability throughout the sequential evaluation process. Our only burden is limited to producing evidence that work the claimant can do exists in the national economy at step 5 of the sequential evaluation process. See 20 CFR 404.1512, 404.1560, 416.912, and 416.960. When we apply the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol, it is our longstanding policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. There does not have to be evidence from a period of abstinence for the claimant to meet his or her burden of proving disability. See Question 9, section (d) (i).

b. *DAA Evaluation Process.* We describe various considerations that may apply when we decide whether we must consider the issue of *materiality* and, if so, whether *DAA* is material to the determination of disability. In this SSR, we address these considerations as a "*DAA* evaluation process" in a series of six steps. Although the steps are in a logical order from the simplest to the most complex cases, we do not require our adjudicators to follow them in the order we provide. For example, when DAA is the only impairment adjudicators can go directly to step three and deny the claim because DAA is material.

In the sections that follow, we provide more details about the DAA Evaluation Process.

1. Does the claimant have *DAA*?	a. No—No *DAA* materiality determination necessary. b. Yes—Go to step 2.
2. Is the claimant disabled considering all impairments, including *DAA*?	a. No—Do not determine *DAA* materiality. (Denial.) b. Yes—Go to step 3.
3. Is *DAA* the only impairment?	a. Yes—*DAA* material. (Denial.) b. No—Go to step 4.
4. Is the other impairment(s) disabling by itself while the claimant is dependent upon or abusing drugs or alcohol?	a. No—*DAA* material. (Denial.) b. Yes—Go to step 5.
5. Does the *DAA* cause or affect the claimant's medically determinable impairment(s)?	a. No—*DAA* not material. (Allowance.) b. Yes, but the other impairment(s) is irreversible or could not improve to the point of nondisability—*DAA* not material. (Allowance.) c. Yes, and *DAA* could be material—Go to step 6.
6. Would the other impairment(s) improve to the point of nondisability in the absence of *DAA*?	a. Yes—*DAA* material. (Denial.) b. No—*DAA* not material (Allowance.)

The following are detailed explanations of each step.

a. *Step 1: Does the claimant have DAA?* If the evidence does not establish *DAA*, there can be no issue of *DAA materiality*. See Questions 3 and 8. Apply the appropriate sequential evaluation process only once to determine whether the claimant is disabled.

b. *Step 2: Is the claimant disabled considering all of his or her impairments, including DAA?* Apply the appropriate sequential evaluation process to determine whether the

[6] We have further considered our policy in this area and have found no indication in the statutory language or the legislative history of the DAA provisions of the Act that Congress intended the DAA provisions to apply to people who use tobacco products.

See Section 223(d)(1) of the Act.

[8] 20 CFR 404.1535 and 416.935.

[9] Under title XVI, "blindness" is a separate category from "disability," and section 1614(a)(3)(D) of the Act applies only to determinations of disability. For this reason, we do not consider the issue of *materiality* in cases of claimants with blindness under title XVI. 20 CFR 416.935(a).

claimant is disabled considering all of his or her impairments, including *DAA*.[10] If the claimant is not disabled, deny the claim.[11]

c. *Step 3: Is DAA the claimant's only impairment?* Find that *DAA* is material to the determination of disability and deny the claim if the claimant's only MDI is a *Substance Use Disorder*.[12] As in all *DAA* materiality determinations, apply the appropriate sequential evaluation process twice. First, apply the sequential evaluation process to show how the claimant is disabled. Then, apply the sequential evaluation process a second time to document materiality and deny the claim.[13]

d. *Step 4: Is the claimant's other MDI(s) disabling by itself while the claimant is dependent upon or abusing drugs or alcohol?*

i. A second application of the sequential evaluation process may demonstrate that the claimant's other physical or mental impairment(s) is not sufficiently severe to establish disability by itself while the claimant is dependent upon or abusing drugs or alcohol. In this case, deny the claim because *DAA* is material. The claimant would not be disabled regardless of whether the other impairment(s) would improve if he or she stopped using the substance(s) he or she is dependent upon or abusing. For example:

- The other impairment(s) may not be severe while the claimant is still dependent upon or abusing the substance(s).[14] For example, if a claimant has osteoarthritis of the hip with minimal changes on imaging along with *DAA*, *DAA* is generally material to the determination of disability. We would generally deny the claimant at step 2 of the sequential evaluation process based on osteoarthritis of the hip with minimal changes on imaging alone, regardless of whether the osteoarthritis would improve absent the *DAA*, because it would not significantly limit the claimant's ability to do basic work activities.[15]
- The other impairment(s) may be severe but not disabling by itself. For example, a claimant may have a severe back impairment that does not meet or medically equal a listing and does not preclude a claimant from doing past relevant work. We would deny the claim at step 4 of the sequential evaluation process based on the back impairment alone because *DAA* is material.

ii. When the claimant's other impairment(s) is not disabling by itself, adjudicators must still apply the sequential evaluation twice, first to show that the claimant is disabled considering all MDIs, including *DAA*, and a second time to show that the claimant would not be disabled absent *DAA*. However, we do not require adjudicators to determine whether the other impairment would improve if the claimant stopped using drugs or alcohol he or she is dependent upon or abusing because *DAA materiality* is established without this additional analysis.

e. *Step 5: Does the DAA cause or affect the claimant's other MDI(s)?*

i. If the claimant has another physical or mental impairment(s) that results in disability [16] and *DAA* is not causing or does not affect the other impairment(s) to the point where the other impairment(s) could be found nondisabling in the absence of *DAA*, *DAA* is not material to the determination of disability. The claim should be allowed. There are three basic scenarios:

- The claimant has a disabling impairment independent of DAA; for example, a degenerative neurological disease, a hereditary kidney disease that requires chronic dialysis, or intellectual disability (mental retardation) since birth. See 20CFR 404.1535(b)(2)(ii) and 416.935(b)(2)(ii).
- The claimant *acquired a separate disabling impairment(s) while* using a substance(s). One example is the claimant has quadriplegia because of an accident while driving under the influence of alcohol. A second example is the claimant acquired listing-level human immunodeficiency virus (HIV) infection from sharing a needle for intravenous drug use. In each example, the claimant acquired the impairment because of an activity related to substance use, but the *Substance Use Disorder* did not medically cause or exacerbate the impairment.
- The claimant's *DAA medically caused* the other disabling impairment(s) *but the other impairment(s) is irreversible or could not improve to the point of nondisability* in the absence of *DAA*. Examples of such impairments could include peripheral neuropathy, permanent encephalopathy, cirrhosis of the liver, Substance-Induced Persisting Dementia, and Substance-Induced Persisting Amnestic Disorder that result from long-term alcohol or drug use.

ii. As in any determination regarding materiality, adjudicators must apply the sequential evaluation process twice even when the other impairment(s) is irreversible or could not improve to the point of nondisability.

f. *Step 6: Would the claimant's other impairment(s) improve to the point of nondisability in the absence of DAA?*

i. This step includes some of the most complex cases for the *DAA materiality* analysis. At this point, we have determined that:

- The claimant has DAA and at least one other medically determinable physical or mental impairment,
- The other impairment(s) could be disabling by itself, and
- The other impairment(s) might improve to the point of nondisability if the claimant were to stop using drugs or alcohol.

ii. At this step, we must project the severity of the claimant's other impairment(s) in the absence of *DAA*. We make this finding based on the evidence in the claimant's case record. In some cases, we may also consider medical judgments about the likely remaining medical findings and functional limitations the claimant would have in the absence of *DAA*. How we make this finding differs somewhat depending on whether the claimant's other impairment(s) is physical or mental. See Questions 6 and 7, respectively.

iii. *DAA* is material if the claimant's other impairment(s) would improve to the point that the claimant would not be disabled in the absence of *DAA*. On these findings, we deny the claim. However, if the claimant's other

[10] 20 CFR 404.1520 and 416.920.

[11] For all initial claims under title II and claims of adults under title XVI, this means that the impairment(s) must prevent the claimant from doing any substantial gainful activity and meet the duration requirement; that is, the impairment(s) must be expected to result in death or must have lasted or be expected to last for a continuous period of at least 12 months.

[12] Adjudicators should be cautious when making this finding because there is a high prevalence of physical and co-occurring mental impairments associated with long-term drug and alcohol use. If there is any indication in the record that the claimant has another physical or mental impairment(s), it is essential to request evidence regarding the other impairment(s). If there is no evidence of another physical or mental impairment(s), however, we will not develop for the mere possibility that the claimant might have another impairment(s).

[13] We consider two issues at step 2: whether the claimant has a medically determinable impairment and whether any medical determinable impairment the claimant has is "severe" and meets the duration requirement. *See* 20 CFR 404.1520(a)(4)(ii) and 416.920(a)(4)(ii); SSR 96–4p.

[14] *See* 20 CFR 404.1520(c), 404.1521, 416.920(c), and 416.921; SSR 85–28.

[15] In some cases, people use drugs or alcohol to lessen the symptoms of their other impairment(s). Adjudicators should be alert to any evidence in the case record that suggests that a claimant's symptoms may worsen in the absence of drugs or alcohol at this or any other step in this section. We do not require adjudicators to seek evidence of this possibility, but adjudicators should follow up when there is an indication in the case record that the claimant's symptoms worsen in the absence of substance use.

[16] Inherent in this finding is that the other impairment(s) meets the duration requirement in addition to preventing the claimant from working.

impairment(s) would not improve to the point that the claimant would not be disabled in the absence of *DAA*, we allow the claim. In this instance, the DAA is not material to the determination of disability.

6. What do we do if the claimant's other physical impairment(s) improve in the absence of DAA?

a. *DAA* can cause or exacerbate the effects of physical impairments. In some cases, the impairments and their effects may resolve or improve in the absence of *DAA*.

b. Usually, evidence from a period of abstinence [17] is the best evidence for determining whether a physical impairment(s) would improve to the point of nondisability. The period of abstinence should be relevant to the period we are considering in connection with the disability claim.[18] This evidence need not always come from an acceptable medical source. If we are evalnating whether a claimant's work-related functioning would improve, we may rely on evidence from "other" medical sources, such as nurse practitioners, and other sources, such as family members, who are familiar with how the claimant has functioned during a period of abstinence. See Question 8.

c. We expect some physical impairments to improve with abstinence from drugs or alcohol.

i. Examples of such impairments that drugs or alcohol may cause or exacerbate include alcoholic hepatitis, fatty liver, and alcoholic cardiomyopathy.

ii. When a claimant has a physical impairment(s) that is likely to improve with abstinence, we may consider medical opinions from treating or nontreating sources about the likely effects that abstinence from drugs or alcohol would have on the impairment(s).[19] Treating sources, especially specialists, may have the best understanding of the specific clinical course of a claimant's *DAA* and other impairment(s), as well as whether, and the extent to which the other impairment(s) would likely improve absent *DAA*. If the treating source does not give supporting evidence for his or her opinion, the adjudicator should consider contacting the treating source before considering purchasing a consultative exam (CE). If we purchase a CE to evaluate the physical impairment(s), we may ask the CE provider for an opinion about whether and the extent to which the impairment(s) would be expected to improve. We will not purchase a CE solely to obtain such an opinion. In any case, we will not adopt a medical opinion about whether the impairment(s) would improve unless the medical source provides some support for the opinion. The opinion may be supported by the medical source's knowledge and expertise.

iii. At the State agency levels of the administrative review process, a State agency medical or psychological consultant (MC/PC) may use his or her knowledge and expertise to project improvement of a physical impairment(s). At the hearing and appeals levels, Administrative Law Judges (ALJs) and the Appeals Council (when the Appeals Council makes a decision) must consider such MC/PC findings as medical opinion evidence and may base their findings about *materiality* on these opinions. ALJs and the Appeals Council may also base their findings on testimony from medical experts. As we provide in our regulations on considering nonexamining source opinion evidence, ALJs and the Appeals Council will give weight to these opinions to the extent that they are supported and consistent with other relevant evidence in the case record.[20] Medical source knowledge and expertise are factors that may support the finding.

iv. Some claimants who have been diagnosed with a Substance Use Disorder do not have a period of abstinence. If a claimant does not have a period of abstinence, an acceptable medical source can provide a medical opinion regarding whether the claimant's impairments would be severely limiting even if the claimant stopped abusing drugs or alcohol. We consider the opinion of an acceptable medical source sufficient evidence regarding materiality as long as the acceptable medical source provides support for their opinion. The determination or decision must include information supporting the finding. See Question 14.

v. Adjudicators should generally not rely on a medical opinion to find that *DAA* is *material* if the case record contains credible evidence from an acceptable medical source from a relevant period of abstinence indicating that the impairment(s) would still be disabling in the absence of *DAA*. In cases in which it is appropriate to rely on a medical opinion to find that *DAA* is material despite evidence indicating the impairment(s) may not improve, adjudicators must provide an appropriate rationale to resolve the apparent conflict in the evidence.

d. We will find that *DAA* is not material to the determination of disability and allow the claim if the record is fully developed and the evidence (including medical opinion evidence) does not establish that the claimant's physical impairment(s) would improve to the point of nondisability in the absence of *DAA*.

7. What do we do if the claimant's co-occurring mental disorder(s) improve in the absence of DAA?

a. Many people with *DAA* have co-occurring mental disorders; that is, a mental disorder(s) diagnosed by an acceptable medical source in addition to their *DAA*. We do not know of any research data that we can use to predict reliably that any given claimant's co-occurring mental disorder would improve, or the extent to which it would improve, if the claimant were to stop using drugs or alcohol.

b. To support a finding that *DAA* is material, we must have evidence in the case record that establishes that a claimant with a co-occurring mental disorder(s) would not be disabled in the absence of *DAA*. Unlike cases involving physical impairments, we do not permit adjudicators to rely exclusively on medical expertise and the nature of a claimant's mental disorder.

c. We may purchase a CE in a case involving a co-occurring mental disorder(s). We will purchase CEs primarily to help establish whether a claimant who has no treating source records has a mental disorder(s) in addition to *DAA*. See Question 8. We will provide a copy of this evidence, or a summary, to the CE provider.

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[17] In this SSR, we use the term *period of abstinence* to describe a period in which a claimant who has, or had, been dependent upon or abusing drugs or alcohol and stopped their use.

[18] The period of abstinence does not have to occur during the period we are considering in connection with the claim as long as it is medically relevant to the period we are considering. For example, a claimant for title XVI payments has a permanent physical impairment(s) that in some people improves when they stop abusing alcohol. However, there is evidence from a year before the date of the application showing that when this claimant stopped drinking, the impairment(s) improved only minimally. In this case, we may conclude that the impairment(s) would not improve to the point of nondisability in the absence of DAA. See also Question 9.

[19] The finding about materiality is an opinion on an issue reserved to the Commissioner under 20 CFR 404.1527(e) and 416.927(e). Therefore, we will not ask a treating source, a CE provider, a medical expert, or any other source for an opinion about whether DAA is material. We will instead ask for medical opinions about the nature, severity, and functional effects of a claimant's impairment(s). In cases involving physical impairments, we may ask for medical opinions that project the nature, severity, and functional effects if the claimant were to stop using drugs or alcohol. In cases involving mental impairment(s) we will not ask for projections, as we explain in Question 7.

[20] See 20 CFR 404.1527(f) and 416.927(f); SSR 96-6p.

d. We will find that *DAA* is not material to the determination of disability and allow the claim if the record is fully developed and the evidence does not establish that the claimant's co-occurring mental disorder(s) would improve to the point of nondisability in the absence of *DAA*.

8. What evidence do we need in cases involving DAA?

a. General.

We follow our usual case development rules and procedures for any impairment in cases in which *DAA materiality* is, or may be, an issue.[21] We will ask for evidence regarding DAA in any case in which there is an allegation or other indication that the claimant has a *Substance Use Disorder*, such as evidence that a claimant is currently receiving treatment for a *Substance Use Disorder* or evidence of multiple emergency department admissions due to the effects of substance(s) use. If we do not initially receive sufficient evidence to evaluate *DAA*, we may or may not continue to develop evidence of *DAA*, as follows:

i. We will not continue to develop evidence of *DAA* if the evidence we obtain about a claimant's other impairment(s) is complete and shows that the claimant is *not disabled*. We will not complete development of *DAA* only to determine whether the claimant is disabled considering *DAA* because the additional evidence could only change the reason for our denial.

ii. We will not continue to develop evidence of *DAA* if the claimant is disabled by another impairment(s) and *DAA could not be material to* the determination of disability. For example, if the claimant has a disabling impairment(s) that is unrelated to, and not exacerbated by *DAA*, or that is irreversible, we would find that *DAA* is not material to the determination of disability even if we completed the development.

iii. We will attempt to complete development of *DAA* in all other cases, including cases in which *DAA* is a claimant's only alleged impairment. We generally require our adjudicators to make every reasonable effort to develop a complete medical history. Moreover, many claimants with *DAA* have other physical and mental impairments, and complete development ensures that we do not overlook any impairments.

b. *Establishing the existence of DAA.*

i. As for any medically determinable impairment, we must have objective medical evidence—that is, signs, symptoms, and laboratory findings—from an acceptable medical source that supports a finding that a claimant has *DAA*.[22] This requirement can be satisfied when there are no overt physical signs or laboratory findings with clinical findings reported by a psychiatrist, psychologist, or other appropriate acceptable medical source based on examination of the claimant. The acceptable medical source may also consider any records or other information (for example, from a third party) he or she has available, but we must still have the source's own clinical or laboratory findings.

ii. Evidence that shows only that the claimant uses drugs or alcohol does not in itself establish the existence of a medically determinable Substance Use Disorder. The following are examples of evidence that by itself does not establish *DAA*:

- Self-reported drug or alcohol use.
- An arrest for "driving under the influence".
- A third-party report.

Although these examples may suggest that a claimant has *DAA*—and may suggest the need to develop medical evidence about *DAA*—they are not objective medical evidence provided by an acceptable medical source. In addition, even when we have objective medical evidence, we must also have evidence that establishes a maladaptive pattern of substance use and the other requirements for diagnosis of a Substance Use Disorder(s) in the DSM. This evidence must come from an acceptable medical source.

c. *Other evidence.*

i. Many claimants with *Substance Use Disorders* receive care from "other" non-medical and medical sources that are not acceptable medical sources. Evidence from these sources can be helpful to the adjudicator in determining the severity of DAA and whether DAA is material to the finding of disability.[23] Examples of "other" nonmedical sources include, but are not limited to: Non-clinical social workers, caseworkers, vocational rehabilitation specialists, family members, school personnel, clergy, friends, licensed chemical dependency practitioners, and the claimant. Examples of "other" medical sources include but are not limited to: nurse practitioners, physicians' assistants and therapists.

ii. When we have information from "other" sources, we may consider it together with objective medical findings from a treating or nontreating acceptable medical source to document that a claimant has *DAA*. Information from "other" sources can describe a claimant's functioning over time and can also be especially helpful in documenting the severity of *DAA because it supplements the medical evidence of record*. "Other" source opinions can assist in our determination whether *DAA* is material to a finding of disability because it can document how the well the claimant is performing activities of daily living in the presence of a comorbid impairment. In many cases, evidence from "other" sources may be the most important information in the case record for these documentation issues.[24]

d. *Consultative examinations.*

i. We may purchase a CE if there is no existing medical evidence or the evidence as a whole, both medical and nonmedical, is insufficient for us to make a determination or decision. The type and number of CEs we purchase will depend on the claimant's allegations and the other information in the case record. For instance, claimants who have a history of multiple emergency department visits for mental symptoms are often diagnosed with Substance-Induced Disorders. Some receive a Substance Dependence or Substance Abuse diagnosis. Many of these individuals—especially those who do not have an ongoing treatment relationship with a medical source, as is frequently the case with homeless claimants—may have undiagnosed co-occurring mental disorders. We may purchase CEs to help us determine whether such claimants have co-occurring mental disorder(s). Whenever possible, we will try to purchase CEs from individuals who specialize in treating and examining people who have *Substance Use Disorders* or dual diagnoses of *Substance Use Disorders* and co-occurring mental disorders. See Questions 6 and 7 for more specific information about purchasing CEs for physical and mental impairments.

ii. We will not purchase drug or alcohol testing. A single drug or alcohol test is not sufficient to establish *DAA* as a medically determinable impairment, nor does it provide pertinent information that can help us determine whether *DAA* is material to a finding of disability.[25]

[21] See 20 CFR 404.1512, 404.1513, 416.912, and 416.913.

[22] *See* 20 CFR 404.1502, 404.1508, 404.1513(a), and 404.928, and 20 CFR 416.902, 416.908, 416.913(a), and 416.928.

[23] 20 CFR 404.1513(d)(1) and 416.913d(1) and 20 CFR 1513(d)(4) and 416.913(d)(4).

[24] See SSR 06–3p.

[25] We will not purchase drug screening or testing to determine the validity of psychological testing. The examining psychologist or other professional who performs the test should be able to provide an opinion on the validity of the psychological test findings without drug testing.

9. How do we consider periods of abstinence?

a. Each substance of abuse, including alcohol, has different intoxication and long-term physiologic effects. In addition, there is a wide variation in the duration and intensity of substance use among claimants with *DAA*, and there are wide variations in the interactions of *DAA* with different types of physical and mental disorders. For these reasons, we are unable to provide exact guidance on the length and number of periods of abstinence to demonstrate whether *DAA* is material in every case. In some cases, the acute and toxic effects of substance use or abuse may subside in a matter of weeks, while in others it may take months or even longer to subside. For some claimants, we will be able to make a judgment about *materiality* based on evidence from a single, continuous period of abstinence, while in others we may need to consider more than one period.[26]

b. In all cases in which we must consider periods of abstinence, the claimant should be abstinent long enough to allow the acute effects of drug or alcohol use to abate. Especially in cases involving co-occurring mental disorders, the documentation of a period of abstinence should provide information about what, if any, medical findings and impairment-related limitations remained after the acute effects of drug and alcohol use abated. Adjudicators may draw inferences from such information based on the length of the period(s), how recently the period(s) occurred, and whether the severity of the co-occurring impairment(s) increased after the period(s) of abstinence ended. To find that *DAA* is *material*, we must have evidence in the case record demonstrating that any remaining limitations were not disabling during the period.[27]

In the sections that follow, we provide more detail about these general principles.

c. In addition to the length of the period, we must consider when the period of abstinence occurred

d. We may also consider the circumstances under which a period(s) of abstinence takes place, especially in the case of a claimant with a co-occurring mental disorder(s).

i. Improvement in a co-occurring mental disorder in a highly structured treatment setting, such as a hospital or substance abuse rehabilitation center, may be due at least in part to treatment for the co-occurring mental disorder, not (or not entirely) the cessation of substance use. We may find that *DAA* is not material depending on the extent to which the treatment for the co-occurring mental disorder improves the claimant's signs and symptoms. If the evidence in the case record does not demonstrate the separate effects of the treatment for *DAA* and for the co-occurring mental disorder(s), we will find that *DAA* is not material, as we explain in Question 7.[28]

ii. A co-occurring mental disorder may appear to improve because of the structure and support provided in a highly structured treatment setting. As for any mental disorder, we may find that a claimant's co-occurring mental disorder(s) is still disabling even if increased support or a highly structured setting reduce the overt symptoms and signs of the disorder.[29]

iii. Given the foregoing principles, a single hospitalization or other inpatient intervention is not sufficient to establish that *DAA* is material when there is evidence that a claimant has a disabling co-occurring mental disorder(s). We need evidence from outside of such highly structured treatment settings demonstrating that the claimant's co-occurring mental disorder(s) has improved, or would improve, with abstinence.[30] In addition, a record of multiple hospitalizations, emergency department visits, or other treatment for the co-occurring mental disorder—with or without treatment for *DAA*—is an indication that *DAA* may not be material even if the claimant is discharged in improved condition after each intervention.

10. How do we evaluate a claimant's credibility in cases involving DAA?

We do not have special rules for evaluating a claimant's credibility in cases involving *DAA*. Adjudicators must not presume that all claimants with *DAA* are inherently less credible than other claimants. We will apply our policy in SSR 96–7p and our regulations as in any other case, considering the facts of each case. In addition, adjudicators must consider a claimant's co-occurring mental disorder(s) when they evaluate the credibility of the claimant's allegations.

11. How do we establish onset in DAA cases?

We do not have special rules for establishing onset in *DAA* cases. In general, disability onset is the earliest date on which the evidence shows that the claimant became disabled due to a medically determinable impairment and that *DAA* was not material.

12. Can failure to follow prescribed treatment be an issue in DAA cases?

Yes, but it will rarely be necessary to consider the issue, and we will apply the policy only to a claimant's other physical or mental impairment(s), not the *DAA*.

a. The requirement to determine *DAA materiality* is similar to our policy on failure to follow prescribed treatment. Like that policy, it considers whether a claimant would be disabled if *DAA* improved. However, the claimant does not need to have been prescribed treatment for the *DAA* or to follow it.[31] Therefore:

- When we find that *DAA is* material to our determination of disability, we do not consider whether a treating source has prescribed treatment for the *DAA* that is clearly expected to restore the claimant's ability to work. We have already determined that the claimant *is not* disabled because *DAA* is material, and we consider the issue of failure to follow prescribed treatment only when we find that a claimant *is* disabled.
- A finding that *DAA is not* material also implies that there is no treatment for the *DAA* that is "clearly expected" to restore the claimant's ability to work since the claimant would still be disabled in the absence of *DAA*. Moreover, we know of no treatments for *DAA* that are so sufficiently and uniformly effective that they could satisfy our requirement that the prescribed treatment be clearly expected to restore the ability to work.

[26] If, however, a claimant is abstinent and remains disabled throughout a continuous period of at least 12 months, DAA is not material even if the claimant's impairment(s) is gradually improving.

[27] The DSM–IV–TR provides "specifiers" describing the length and nature of remissions. For example, the specifier for a sustained full remission applies if the claimant has not evidenced any of the criteria for dependence or abuse at any time for at least 12 months. We do not require that a period of abstinence satisfy the criteria for sustained full remission or any of the other specifiers in the DSM.

[28] At the hearings and appeals levels of the administrative review process, ALJs and the Appeals Council may seek assistance from medical experts in interpreting the medical evidence regarding the separate effects of treatment for DAA and a co-occurring mental disorder(s).

[29] See, for example, section 12.00*F* in the mental disorders listings for adults, 20 CFR part 404, subpart P, appendix 1.

[30] The symptoms and signs of a co-occurring mental disorder or even symptoms of some physical impairments will not necessarily abate with abstinence. Sometimes, withdrawal of the substance(s) may result in a worsening of the symptoms and signs attributable to the other impairment(s); for example, increased anxiety or pain.

[31] See SSR 82–59. Our rules provide in part that, for failure to follow prescribed treatment to apply, the claimant must be "disabled" and a treating source must have prescribed treatment that is "clearly expected" to restore the claimant's capacity to do substantial gainful activity. The claimant must also not have good cause for failing to follow the prescribed treatment.

b. There are cases in which we can deny a claim for failure to follow prescribed treatment for an impairment(s) *other than* the *DAA*. In a case in which a claimant has both *DAA* and at least one other impairment, we may determine that:

- *DAA* is not material to our determination of disability; that is the claimant would still be disabled in the absence of DAA, but
- The claimant would not be disabled by his or her *other* impairment(s) if he or she followed treatment prescribed by a treating source for that impairment(s) that is clearly expected to restore the ability to work. The claimant must also not have good cause for failing to follow the treatment.

The prescribed treatment in this case must be treatment that is specifically for the other impairment(s), not for the *DAA*, even if the treatment might also have beneficial effects on the *DAA*. For example, we cannot find that a claimant has failed to follow prescribed treatment for liver disease based on a failure to follow treatment prescribed for alcohol dependence. If the cessation of drinking would clearly be expected to improve the claimant's functioning to the point that he or she is not disabled, we would find that *DAA* is material to the determination of disability and deny the claim for that reason.

13. Who is responsible for determining materiality?

The following adjudicators are responsible for determining materiality:

a. At the initial and reconsideration levels of the administrative review process (except in disability hearings), a State agency disability examiner makes the finding whether *DAA* is material to the determination of disability. A State agency MC/PC is responsible for determining the medical aspects of the *DAA* analysis, such as what limitations a claimant would have in the absence of *DAA*.

b. In disability hearings conducted by a disability hearing officer at the reconsideration level, the disability hearing officer determines whether *DAA* is material to the determination of disability.

c. At the ALJ and Appeals Council levels (when the Appeals Council makes a decision), the ALJ or Appeals Council determines whether *DAA* is material to the determination of disability.

14. What explanations does the determination or decision need to contain?

a. Adjudicators must provide sufficient information so that a subsequent reviewer considering all of the evidence in the case record can understand the reasons for the following findings whenever *DAA* materiality is an issue:

- The finding that the claimant has *DAA*;
- The finding that the claimant is disabled at step 3 or step 5 of the sequential evaluation process considering all of his or her impairments, including *DAA*.
- The finding that the claimant would still be disabled at step 3 or 5 of the sequential evaluation process in the absence of *DAA*, or the finding that the claimant would not be disabled at step 2, 4, or 5 of the sequential evaluation process in the absence of *DAA*.

A single statement that *DAA* is or is not material to the determination of disability by an adjudicator is not sufficient.

b. As we have already indicated in answering other questions, an adjudicator is not always required to address every issue related to materiality in detail. For example, an adjudicator need not determine what a claimant's remaining limitations would be absent DAA if the claimant's other impairment(s) does not prevent the claimant from doing past relevant work even with DAA. See Question 5.

c. Disability hearing officers, ALJs, and the Appeals Council (when the Appeals Council makes a decision) must provide their rationales in their determinations and decisions. State agency adjudicators may provide explanations in their determinations or on other appropriate documents, such as residual functional capacity assessment forms.

15. How should adjudicators consider Federal district and circuit court decisions about DAA?

Our policies for considering Federal court decisions are set out in SSR 96–1p and 20 CFR 404.1585 and 416.985.

a. *General.* We require adjudicators at all levels of administrative review to follow agency policy, as set out in the Commissioner's regulations, SSRs, Social Security Acquiescence Rulings (ARs), and other instructions, such as the Program Operations Manual System (POMS), Emergency Messages, and the Hearings, Appeals and Litigation Law manual (HALLEX). Under sections 205(a) and (b) and 1631(c) and (d) of the Act, the Commissioner has the power and authority to make rules and regulations and to establish procedures, not inconsistent with the Act, which are necessary or appropriate to carry out the provisions of the Act. The Commissioner also has the power and authority to make findings of fact and decisions as to the rights of any individual applying for payment under the Act. Because of the Commissioner's delegated authority to implement the provisions of the Act, we may, from time to time, issue instructions that explain the agency's policies, regulations, rules, or procedures. All adjudicators must follow our instructions.

b. *District court decisions.* Under our longstanding policy, when a district court decision conflicts with our interpretation of the Act or our regulations, adjudicators must apply our nationwide policy when they adjudicate other claims within that district court's jurisdiction unless the court directs otherwise, such as in a class action.[32]

c. *Circuit courts.* If we determine that a circuit court's holding conflicts with our interpretation of the Act or our regulations, we will issue an AR explaining the court's holding, how it differs from our national policy, how adjudicators must apply the holding, and the situations in which the AR applies. Unless and until we issue an AR, adjudicators must follow our nationwide policy in adjudicating other claims within the circuit court's jurisdiction.

DATES: *Effective Date:* This SSR is effective on March 22, 2013.

CROSS REFERENCES: SSR 82–59, "Titles II and XVI: Failure To Follow Prescribed Treatment"; SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe"; SSR 96–1p, Application by the Social Security Administration (SSA) of Federal Circuit Court and District Court Decisions; SSR 96–4p, Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations; SSR 96–6p, Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence; SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements"; SSR 06–3p: Titles II and XVI: Considering Opinions and Other Evidence From Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering

[32] *See* SSR 96–1p. In a class action decided by a district court, we will issue instructions to adjudicators on how to apply the court's decision. Even in this circumstance, adjudicators must not interpret the decision for themselves because their interpretation may conflict with the agency's interpretation.

Decisions on Disability by Other Governmental and Nongovernmental Agencies; and Program Operations Manual System (POMS) DI 23010.005, DI 24505.001, DI 24505.005, DI 24515.013, DI 24515.065, DI 24515.066, DI 26515.001, DI 28005.035-.050, DI 32701.001, DI 90070.050.

[FR Doc. 2013–03751 Filed 2–19–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 8188]

60-Day Notice of Proposed Information Collection: Directorate of Defense Trade Controls Information Collection: Export Declaration of Defense Technical Data or Services

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to 60 days from February 20, 2013.

ADDRESSES: Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

- *Internet:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov*. You can search for the document by selecting "Notice" under Document Type, entering the Public Notice number as the "Keyword or ID," checking the "Open for Comment" box, and then clicking "Search." If necessary, use the "Narrow by Agency" option on the Results page.
- *Email: memosni@state.gov.*
- *Mail:* Nicholas Memos, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collections listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2829, or via email at *memosni@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection: Export Declaration of Defense Technical Data or Services.*
- *OMB Control Number: 1405–0157.*
- *Type of Request: Extension of Currently Approved Collection.*
- *Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.*
- *Form Number: DS–4071.*
- *Respondents: Business and Nonprofit Organizations.*
- *Estimated Number of Respondents: 12,000.*
- *Estimated Number of Responses: 18,000.*
- *Average Hours per Response: 30 minutes.*
- *Total Estimated Burden: 9,000 hours.*
- *Frequency: On Occasion.*
- *Obligation to Respond: Mandatory.*

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: Actual export of defense technical data and defense services must be reported directly to the Directorate of Defense Trade Controls (DDTC). DDTC administers the International Traffic in Arms Regulations (ITAR) and Section 38 of the Arms Export Control Act (AECA). The actual exports must be in accordance with requirements of the ITAR and Section 38 of the AECA. DDTC monitors the information to ensure there is proper control of the transfer of sensitive U.S. technology.

Methodology: This information collection may be sent to the Directorate of Defense Trade Controls via the following methods: electronically or mail.

Dated: February 5, 2013.

Kevin Maloney,

Acting Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2013–03872 Filed 2–19–13; 8:45 am]

BILLING CODE 4710–25–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: December 1, 2012, through December 31, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) for the time period specified above:

Approvals by Rule Issued Under 18 CFR § 806.22(e)

1. SWEPI LP, Pad ID: Brumwell 657, ABR–201212001, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 4, 2012.

2. SWEPI LP, Pad ID: Kuhl 532, ABR–201212002, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 4, 2012.

3. Southwestern Energy Production Company, Pad ID: RACINE PAD, ABR–201212003, New Milford Township, Susquehanna County, Pa.; Consumptive

Use of Up to 4.999 mgd; Approval Date: December 7, 2012.

4. Southwestern Energy Production Company, Pad ID: PLATUS PAD, ABR–201212004, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 7, 2012.

5. Southwestern Energy Production Company, Pad ID: SWEENEY PAD, ABR–201212005, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 7, 2012.

6. Cabot Oil & Gas Corporation, Pad ID: TeddickM P3, ABR–201212006, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: December 7, 2012.

7. EXCO Resources (PA), LLC, Pad ID: Dale Bower Pad 2, ABR–201212007, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: December 11, 2012.

8. Cabot Oil & Gas Corporation, Pad ID: ZickW P1, ABR–201212008, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: December 12, 2012.

9. Southwestern Energy Production Company, Pad ID: CONKLIN EAST, ABR–201212009, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 14, 2012.

10. Southwestern Energy Production Company, Pad ID: TINGLEY PAD, ABR–201212010, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 14, 2012.

11. Southwestern Energy Production Company, Pad ID: BOMAN PAD, ABR–201212011, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 14, 2012.

12. Southwestern Energy Production Company, Pad ID: Swisher (Pad R), ABR–201212012, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 31, 2012.

13. SWEPI LP, Pad ID: Tri-Co 596, ABR–201212013, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 31, 2012.

14. Chief Oil & Gas LLC, Pad ID: Bishop Drilling Pad, ABR–201212014, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: December 31, 2012.

15. Chief Oil & Gas LLC, Pad ID: Harvey Drilling Pad, ABR–201212015, Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: December 31, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806, 807, and 808.

Dated: February 8, 2013.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2013–03832 Filed 2–19–13; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2013–0002–N–4]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 22, 2013.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB Control Number 2130–0533." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6170, or via email to Mr. Brogan at *Robert.Brogan@dot.gov*, or to Ms. Toone at *Kimberly.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce

information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Qualifications for Locomotive Engineers.

OMB Control Number: 2130–0533.

Abstract: Section 4 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), later amended and re-codified by Public Law 103–272, 108 Stat. 874 (July 5, 1994), required that FRA issue regulations to establish any necessary program for certifying or licensing locomotive engineers. The collection of information is used by FRA to ensure that railroads employ and properly train qualified individuals as locomotive engineers and designated supervisors of locomotive engineers. The collection of information is also used by FRA to verify that railroads have established required certification programs for locomotive engineers and that these programs fully conform to the standards specified in the regulation.

Affected Public: Businesses.

Respondent Universe: 733 railroads.

Frequency of Submission: On occasion; annually; tri-annually.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
240.9—Waivers	733 railroads	3 waiver petitions	1 hour	3
240.101/103—Cert. Prog.—Amendmnts	733 railroads	50 amendments	1 hour	50
—Cert. Prog.—New	20 railroads	20 programs	40 hours	800
—Final Review	20 railroads	20 reviews	1 hour	20
—Material Modification to Program	733 railroads	30 modified prog.	45 minutes	23
240.105(b)—Selection Criteria for DSLEs—Exams.	733 railroads	50 examinations	1 hour	50
(c) Written Reports/Determinations of DSLE Performance Skills.	10 railroads	10 reports	1 hour	10
240.109/App. C—Prior Safety Conduct Data	17,667 candidates	25 responses	60 minutes	25
240.111/App C—Driver's License Data	17,667 candidates	17,667 requests	15 minutes	4,417
—NDR Match—notifications and requests for data.	733 railroads	177 notices + 177 requests.	15 min. + 15 min.	89
—Written response from candidate on driver's lic. data candidates.	733 railroads	20 cases/comments	15 minutes	5
240.111(g)—Notice to RR of Absence of License.	53,000 candidates	4 letters	15 minutes	1
240.111(h)—Duty to furnish data on prior safety conduct as motor vehicle op..	733 railroads	200 phone calls	10 minutes	33
240.113—Notice to RR Furnishing Data on Prior Safety Conduct—Diff. RR.	17,667 candidates	353 requests + 353 responses.	15 min./30 min.	265
240.119—Self-referral to EAP re: active substance abuse disorder.	53,000 locomotive engineers.	50 self-referrals	5 minutes	4
240.121—Criteria—Vision/Hearing Acuity Data—New Railroads.	20 railroads	20 copies	15 minutes	5
240.121—Criteria—Vision/Hearing Acuity Data—Cond. Certification.	733 railroads	20 reports	1 hour	20
240.121—Criteria—Vision/Hearing Acuity Data—Not Meeting Standards—Notice by Employee.	733 railroads	10 notifications	15 minutes	3
240.127—Criteria for Examining Skill Performance—Modification to Certification Program to Include Scoring System.	733 railroads	46 amended programs + 687 amended programs.	48 hours + 8 hours	7,704
240.201/221—List of Qualified DSLEs	733 railroads	733 updates	60 minutes	733
240.201/221—List of Qualified Loco. Engineers	733 railroads	733 updated lists	60 minutes	733
240.201/223/301—Loco. Engineers Certificate	53,000 candidates	17,667 certificates	5 minutes	1,472
—False entry on certificates	N/A	N/A	N/A	N/A
240.205—Data to EAP Counselor	733 railroads	177 records	5 minutes	15
240.207—Medical Certificate Showing Hearing/Vision Standards are Met.	53,000 candidates	17,667 certificates	70 minutes	20,612
—Written determinations waiving use of corrective device.	733 railroads	10 determinations	2 hours	20
240.219—Denial of Certification	17,667 candidates	30 letters + 30 responses.	1 hour	60
—Notification to Employee of Adverse Decision.	733 railroads	30 notifications	1 hour	30
240.227—Canadian Certification Data	N/A	N/A	N/A	N/A
240. 229—Joint Operations—Notice—not qualified.	321 railroads	184 employee calls	5 minutes	15
240.309—RR Oversight Resp.: Detected Poor Safety Conduct—Annotation.	15 railroads	6 annotations	15 minutes	2
Testing Requirements:				
240.209/213—Written Tests	53,000 candidates	17,667 tests	2 hours	35,334
240.211/213—Performance Test	53,000 candidates	17,667 tests	2 hours	35,334
240.303—Annual operational monitor observation.	53,000 candidates	53,000 tests/docs.	2 hours	106,000
240.303—Annual operating rules compliance test.	53,000 candidates	53,000 tests	1 hour	53,000

REPORTING BURDEN—Continued

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Recordkeeping:				
240.215—Retaining Info. Supporting Determination.	733 railroads	17,667 records	30 minutes	8,834
240.305—Engineer's Notice of Non-Qualification to RR —Relaying.	53,000 engineers or candidates.	100 notifications	5 minutes	8
—Certification Denial or Revocation Status to other certifying railroad.	1,060 engineers	2 letters	30 minutes	1
240.307—Notice to Engineer of Disqualification	733 railroads	900 letters	1 hour	900
240.309—Railroad Annual Review	51 railroads	51 reviews	40 hours	2,040
—Report of findings	51 railroads	12 reports	1 hour	12

Total Responses: 217,325.

Estimated Total Annual Burden: 278,682 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on February 13, 2013.

Rebecca Pennington,

Chief Financial Officer, Federal Railroad Administration.

[FR Doc. 2013–03869 Filed 2–19–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Meeting

AGENCY: Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Monday, March 4 from 8:30 a.m. to 4:00 p.m. E.S.T. in the DOT Conference Center at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC. Section 52011 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department. The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of performance measures; (4) Update on BTS data programs and future plans; (5) Council Members review and discussion of BTS programs and plans; (6) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to participate must notify Courtney Freiberg at *Courtney.Freiberg@dot.gov*, not later than March 4, 2013. Members of the public may present oral statements at the meeting with the approval of Patricia Hu, Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via email no later than March 4, 2013

Questions about the agenda or written comments may be emailed (*Courtney.Freiberg@dot.gov*) or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *Attention:* Courtney Freiberg, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590, or faxed to (202) 366–3640. BTS requests that written comments be received by March 4, 2013. Access to the DOT Headquarters building is controlled therefore all persons who plan to attend the meeting must notify Mrs. Courtney Freiberg at 202–366–1270 prior to March 4, 2013. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue SE. for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Freiberg at 202–366–1270 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR parts 102–103) covering management of Federal advisory committees.

Issued in Washington, DC, on February 11, 2013.

Rolf Schmitt,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2013–03615 Filed 2–19–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Identification of Entities and Vessels Pursuant to the Iranian Transactions and Sanctions Regulations and Executive Order 13599

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 one hundred and ten (110) entities and vessels identified as the Government of Iran, Iranian financial institutions, or property or interest in property of the Government of Iran under the Iranian Transactions and Sanctions Regulations (the "ITSR"), 31 CFR part 560, and Executive Order 13599, and is updating OFAC's list of Specially Designated Nationals and Blocked Persons to identify those entities and vessels.

DATES: The identification and updates made by the Director of OFAC of the

entities and vessels identified in this notice, pursuant to the Iranian Transactions and Sanctions Regulations and Executive Order 13599, was effective on July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, 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 (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On February 5, 2012, the President issued Executive Order 13599, "Blocking Property of the Government of Iran and Iranian Financial Institutions" (the "Order"). Section 1 (a) of the Order blocks, with certain exceptions, all property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch.

Section 1 (b) of the Order blocks, with certain exceptions, all property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch.

Section 1 (c) of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons: Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Section 7 (d) of the Order defines the term "Government of Iran" to mean the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran.

Section 7 (f) of the Order defines the term "Iranian financial institution" to mean a financial institution organized under the laws of Iran or any jurisdiction within Iran (including foreign branches), any financial institution in Iran, any financial institution, wherever located, owned or controlled by the Government of Iran, and any financial institution, wherever located, owned or controlled by any of the foregoing.

On October 22, 2012, the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), were renamed the Iranian Transactions and Sanctions Regulations ("ITSR"), amended, and reissued in its entirety. The ITR and the ITSR prohibit various transactions, including, among others, transactions with the Government of Iran. Under the ITR, the term Government of Iran was defined in section 560.304 of the ITR to include: (a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof; (b) Any entity owned or controlled directly or indirectly by the foregoing; (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and (d) An person or entity designated by the Secretary of the Treasury as included within (a)–(c). The phrase entity owned or controlled by the Government of Iran was itself defined in section 560.313 of the ITR.

On July 12, 2012, the Director of OFAC, in consultation with the Secretary of State, identified, pursuant to one or more of the criteria set forth in the ITR and in subparagraphs (a) through (c) of Section 1 of the Order, one hundred and ten (110) entities and vessels as the Government of Iran, Iranian Financial Institutions, entities owned or controlled by the foregoing, or property or interest in property of the Government of Iran, and updated OFAC's list of Specially Designated Nationals and Blocked Persons to identify those entities and vessels.

The listing for these entities and vessels is as follows:

1. ANSAR BANK (a.k.a. ANSAR FINANCE AND CREDIT FUND; a.k.a. ANSAR FINANCIAL AND CREDIT INSTITUTE; a.k.a. BANK–E ANSAR; f.k.a. "ANSAR AL–MOJAHEDIN NO–INTEREST LOAN INSTITUTE"; f.k.a. "ANSAR INSTITUTE"; f.k.a. "ANSAR SAVING AND INTEREST FREE–LOANS FUND"), Building No. 539, North Pasdaran Street, Tehran 19575–497, Iran; North Pasdaran St., No. 539, Before Sahebgharanieh, corner of Narenjestan dahom, Tehran, Iran [NPWMD] [IFSR] [IRAN]
2. BANK–E SHAHR, Sepahod Gharani, Corner of Khosro St., No. 147, Tehran, Iran [IRAN]
3. CREDIT INSTITUTION FOR DEVELOPMENT, 53 Saanee, Jahan-e Koodak, Crossroads Africa St., Tehran, Iran [IRAN]
4. DEY BANK (a.k.a. BANK–E DEY), Bokharest St., 1st St., No. 13, Tehran, Iran [IRAN]
5. EGHTESAD NOVIN BANK (a.k.a. BANK–E EGHTESAD NOVIN; a.k.a. EN BANK PJSC), Vali Asr Street, Above Vanak Circle, across Niayesh, Esfandiari Blvd., No. 24, Tehran, Iran; SWIFT/BIC BEGN IR TH [IRAN].
6. FUTURE BANK B.S.C. (a.k.a. BANK–E AL–MOSTAGUBAL; a.k.a. FUTURE BANK), P.O. Box 785, City Centre Building, Government Avenue, Manama, Bahrain; Block 304, City Centre Building, Building 199, Government Avenue, Road 383, Manama, Bahrain; Free Trade Zone, Sanaati-e Kish, Vilay-e Ferdos 2, Corner of Klinik-e Khanevadeh, No 1, and 4th, Kish, Iran; Business Registration Document # 54514–1 (Bahrain) expires 9 Jun 2009; Trade License No. 13388 (Bahrain); All branches worldwide [NPWMD] [IFSR] [IRAN]
7. HEKMAT IRANIAN BANK (a.k.a. BANK–E HEKMAT IRANIAN), Argentine Circle, beginning of Africa St., Corner of 37th St., (Dara Carl-de-sac), No.26, Tehran, Iran [IRAN]
8. IRAN ZAMIN BANK (a.k.a. BANK–E IRAN ZAMIN), Seyyed Jamal-oldin Asadabadi St., Corner of 68th St., No. 472, Tehran, Iran [IRAN]
9. ISLAMIC REGIONAL COOPERATION BANK (a.k.a. BANK–E TAAWON MANTAGHEEY–E ESLAMI; a.k.a. REGIONAL COOPERATION OF THE ISLAMIC BANK FOR DEVELOPMENT & INVESTMENT), Tohid Street, Before Tohid Circle, No. 33, Upper Level of Eghtesad-e Novin Bank, Tehran 1419913464, Iran; Building No. 59, District 929, Street No. 17, Arsat Al-Hindia, Al Masbah, Baghdad, Iraq; SWIFT/BIC RCDF IQ BA [IRAN]
10. JOINT IRAN–VENEZUELA BANK (a.k.a. BANK MOSHTAREK–E IRAN VENEZUELA), Ahmad Ghasir St. (Bokharest), Corner of 15th St., Tose Tower, No.44–46, Tehran 10138307 11, Iran [IRAN]
11. KARAFARIN BANK (a.k.a. BANK–E KARAFARIN), Zafar St. No. 315, Between Vali Asr and Jordan, Tehran, Iran; SWIFT/BIC KBID IR TH [IRAN]
12. MEHR IRAN CREDIT UNION BANK (a.k.a. BANK–E GHARZOLHASANEH MEHR IRAN; a.k.a. GHARZOLHASANEH MEHR IRAN BANK), Taleghani St., No.204, Before the intersection of Mofatch, across from the former U.S. embassy, Tehran, Iran [IRAN]
13. PARSIAN BANK (a.k.a. BANK–E

PARSIAN), Keshavarz Blvd., No. 65, Corner of Shahid Daemi St., P.O. Box 141553163, Tehran 1415983111, Iran; No. 4 Zarafshan St, Farahzadi Blvd., Shahrak-e Ghods, 1467793811, Tehran, Iran; SWIFT/BIC BKPA IR TH [IRAN].

14. PASARGAD BANK (a.k.a. BANK-E PASARGAD), Valiasr St., Mirdamad St., No. 430, Tehran, Iran; SWIFT/BIC BKBP IR TH [IRAN]
15. POST BANK OF IRAN (a.k.a. PBI; a.k.a. SHERKAT-E DOLATI-E POST BANK), 237 Motahari Avenue, Tehran 1587618118, Iran; Motahari Street, No. 237, Past Darya-e Noor, Tehran, Iran [NPWMD] [IFSR] [IRAN]
16. SAMAN BANK (a.k.a. BANK-E SAMAN), Vali Asr, St. No. 3, Tehran, Iran. Before Vey Park intersection, corner of Tarakesh Dooz St; SWIFT/BIC SABC IR TH [IRAN]
17. SARMAYEH BANK (a.k.a. BANK-E SARMAYEH), Sepahod Gharani No. 24, Corner of Arak St., Tehran, Iran [IRAN]
18. TAT BANK, Shahid Ahmad Ghasir (Bocharest), Shahid Ahmadian (15th) St., No. 1, Tehran, Iran; No. 1 Ahmadian Street, Bokharest Avenue, Tehran, Iran; SWIFT/BIC TATB IR TH [IRAN]
19. TOSEE TAAVON BANK (a.k.a. BANK-E TOSE'E TA'AVON; a.k.a. COOPERATIVE DEVELOPMENT BANK), Mirdamad Blvd., North East Corner of Mirdamad Bridge, No. 271, Tehran, Iran [IRAN]
20. TOURISM BANK (a.k.a. BANK-E GARDESHGARI), Vali Asr St., above Vey Park, Shahid Fiazi St., No. 51, first floor, Tehran, Iran [IRAN]
21. NOOR ENERGY (MALAYSIA) LTD., Labuan, Malaysia; Company Number LL08318 [IRAN].
22. PETRO SUISSE INTERTRADE COMPANY SA, 6 Avenue de la Tour-Haldimand, Pully 1009, Switzerland [IRAN].
23. PETRO ENERGY INTERTRADE COMPANY, Dubai, United Arab Emirates [IRAN].
24. HONG KONG INTERTRADE COMPANY, Hong Kong [IRAN].
25. DANESH SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
26. DAVAR SHIPPING CO LTD, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22678777) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
27. HADI SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
28. HARAZ SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
29. HATEF SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
30. HIRMAND SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
31. HODA SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
32. HOMA SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
33. HONAR SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
34. TC SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
35. MEHRAN SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
36. MERSAD SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
37. SAMAN SHIPPING COMPANY LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
38. ASAN SHIPPING ENTERPRISE LIMITED, 85 St. John Street, Valletta VLT 1165, Malta; Telephone (356)(21241817); Fax (356)(25990640) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
39. SARV SHIPPING COMPANY LIMITED, 198 Old Bakery Street, Valletta VLT 1455, Malta; Telephone (356)(21241232) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
40. SEPID SHIPPING COMPANY LIMITED, 198 Old Bakery Street, Valletta VLT 1455, Malta; Telephone (356)(21241232) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
41. SIMA SHIPPING COMPANY LIMITED, 198 Old Bakery Street, Valletta VLT 1455, Malta; Telephone (356)(21241232) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
42. SINA SHIPPING COMPANY LIMITED, 198 Old Bakery Street, Valletta VLT 1455, Malta; Telephone (356)(21241232) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
43. CASPIAN MARITIME LIMITED, Fortuna Court, Block B, 284 Archbishop Makarios II Avenue, Limassol 3105, Cyprus; Telephone (357)(25800000); Fax (357)(25588055) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
44. MINAB SHIPPING COMPANY LIMITED (f.k.a. MIGHAT SHIPPING COMPANY LIMITED), Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
45. NATIONAL IRANIAN TANKER COMPANY (a.k.a. NITC), NITC Building, 67-88, Shahid Ateli Street, Africa Avenue, Tehran, Iran; Web site www.nitc.co.ir; Email Address info@nitc.co.ir; alt. Email Address administrator@nitc.co.ir; Telephone (98)(21)(66153220); Telephone (98)(21)(23803202); Telephone (98)(21)(23803303); Telephone (98)(21)(66153224); Telephone (98)(21)(23802230); Telephone (98)(9121153315); Telephone (98)(9128091642); Telephone (98)(9127389031); Fax (98)(21)(22224537); Fax (98)(21)(23803318); Fax (98)(21)(22013392); Fax (98)(21)(22058763) [IRAN].
46. NATIONAL IRANIAN TANKER COMPANY LLC (a.k.a. NATIONAL IRANIAN TANKER COMPANY LLC SHARJAH BRANCH; a.k.a. NITC SHARJAH), Al Wahda Street, Street No. 4, Sharjah, United Arab Emirates; P.O. Box 3267, Sharjah, United Arab Emirates; Web site http://nitcsharjah.com/index.html; Telephone +97165030600; Telephone + 97165749996; Telephone +971506262258; Fax +971653946666; Fax +971657466661 [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
47. N.I.T.C. REPRESENTATIVE OFFICE (a.k.a. NATIONAL IRANIAN TANKER COMPANY), Droogdokweg 71, Rotterdam 3089 JN, Netherlands; Email Address nitcrdam@tiscali.net; Telephone +31 010-4951863; Telephone +31 10-4360037; Fax +31 10-4364096 [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
48. ARTA SHIPPING ENTERPRISES LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax

(357)(22678777) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

49. ARASH SHIPPING ENTERPRISES LIMITED, Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22678777) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

50. PROTON PETROCHEMICALS SHIPPING LIMITED (a.k.a. PROTON SHIPPING CO; a.k.a. "PSC"), Diagoras House, 7th Floor, 16 Panteli Katelari Street, Nicosia 1097, Cyprus; Telephone (357)(22660766); Fax (357)(22668608) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

51. PARS PETROCHEMICAL SHIPPING COMPANY, 1st Floor, No. 19, Shenasa Street, Vali E Asr Avenue, Tehran, Iran; Web site www.parsshipping.com [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

52. DENA TANKERS FZE, Free Zone, P.O. Box 5232, Fujairah, United Arab Emirates [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

53. ABADEH (9HDQ9) Crude/Oil Products Tanker Malta flag; Vessel Registration Identification IMO 9187655; MMSI 256842000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

54. CASTOR (f.k.a. AMOL) (T2EM4) Crude/Oil Products Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9187667; MMSI 256843000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

55. NEPTUNE (f.k.a. ASTANEH) (T2ES4) Crude/Oil Products Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9187643; MMSI 572467210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

56. DAMAVAND (9HEG9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9218478; MMSI 256865000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

57. LEADERSHIP (f.k.a. DANESH) (5IM 592) Crude Oil Tanker Tanzania flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9356593; MMSI 677649200 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

58. DARAB (9HEE9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9218492; MMSI 256862000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

59. COMPANION (f.k.a. DAYAR) (5IM 593) Crude Oil Tanker Tanzania flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9357747; MMSI 677049300 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

60. DAYLAM (9HEU9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9218466; MMSI 256872000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

61. DELVAR (9HEF9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9218454; MMSI 256864000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

62. DENA (9HED9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9218480; MMSI 256861000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

63. SATEEN (f.k.a. FAEZ) (T2DM4) Chemical/Products Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9283760; MMSI 572438210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

64. PIONEER (f.k.a. HADI) (T2EJ4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9362073; MMSI 572459210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

65. LENA (f.k.a. HAMOON) (T2EQ4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9212929; MMSI 572465210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

66. FREEDOM (f.k.a. HARAZ) (5IM 597) Crude Oil Tanker Tanzania flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9357406; MMSI 677049700 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

67. VALOR (f.k.a. HARSIN) (5IM600) Crude Oil Tanker Tanzania flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9212917; MMSI 677050000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

68. GLORY (f.k.a. HATEF) (T2EG4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9357183; MMSI 212256000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

69. LOYAL (f.k.a. HENGAM) (T2ER4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9212905; MMSI 256875000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

70. HONESTY (f.k.a. HIRMAND) (T2DZ4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9357391; MMSI 572450210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

71. HORMOZ (9HEK9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9212890; MMSI 256870000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

72. HUWAYZEH (9HEJ9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9212888; MMSI 256869000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

73. IMICO NEKA 455 (a.k.a. YARD NO. 455 IRAN MARINE) Shuttle Tanker Iran flag; Vessel Registration Identification IMO 9404546 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

74. IMICO NEKA 456 (a.k.a. YARD NO. 456 IRAN MARINE) Shuttle Tanker Iran flag; Vessel Registration Identification IMO 9404558 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

75. IMICO NEKA 457 (a.k.a. YARD NO. 457 IRAN MARINE) Shuttle Tanker Iran flag; Vessel Registration Identification IMO 9404560 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

76. IRAN FAHIM Chemical/Products Tanker Iran flag; Vessel Registration Identification IMO 9286140 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

77. IRAN FALAGH Chemical/Products Tanker Iran flag; Vessel Registration Identification IMO 9286152 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

78. MARIVAN (EQKH) Tanker 640DWT 478GRT Iran flag; Vessel Registration Identification IMO 8517243; MMSI 422143000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

79. BRAWNY (f.k.a. NABI) (T2DS4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9079080; MMSI 572443210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

80. MOTION (f.k.a. NAJM) (T2DR4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9079092; MMSI 572442210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

81. TRUTH (f.k.a. NESA) (T2DP4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9079107; MMSI 572440210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

82. ELITE (f.k.a. NOAH) (T2DQ4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9079078; MMSI 572441210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

83. NOOR (9HES9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9079066; MMSI 256882000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

84. SAFE (a.k.a. YARD NO. 1220 SHANGHAI WAIGAOQIAO) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9569205 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

85. LANTANA (f.k.a. SANANDAJ) (5IM591) Crude Oil Tanker Tanzania flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9172040; MMSI 677049100 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
86. SARDASHT (EQKG) Landing Craft 640DWT 478GRT Iran flag; Vessel Registration Identification IMO 8517231; MMSI 422142000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
87. SARV (9HNZ9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9357377; MMSI 249257000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
88. MAGNOLIA (f.k.a. SARVESTAN) (5IM590) Crude Oil Tanker Tanzania flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9172052; MMSI 677049000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
89. CAMELLIA (f.k.a. SAVEH) (5IM 594) Crude Oil Tanker Tanzania flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9171462; MMSI 677049400 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
90. CLOVE (f.k.a. SEMINAN) (5IM 595) Crude Oil Tanker Tanzania flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9171450; MMSI 677049500 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
91. GARDENIA (f.k.a. SEPID) (T2EF4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9356608; MMSI 572455210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
92. BLOSSOM (f.k.a. SIMA) (T2DY4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9357353; MMSI 572449210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
93. SINA (9HNY9) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9357365; MMSI 249256000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
94. SMOOTH (a.k.a. YARD NO. 1225 SHANGHAI WAIGAOQIAO) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9569657 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
95. SONATA (a.k.a. YARD NO. 1222 SHANGHAI WAIGAOQIAO) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9569633 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
96. SONGBIRD (a.k.a. YARD NO. 1224 SHANGHAI WAIGAOQIAO) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9569645 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
97. SOUVENIR (a.k.a. YARD NO. 1221 SHANGHAI WAIGAOQIAO) Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9569619 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
98. DAISY (f.k.a. SUSANGIRD) (5IM584) Crude Oil Tanker Tanzania flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9172038; MMSI 677048400 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
99. TOLOU (EQOD) Crew/Supply Vessel 250DWT 178GRT Iran flag; Vessel Registration Identification IMO 8318178 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
100. VALFAJR2 (EQOX) Tug 650DWT 419GRT Iran flag; Vessel Registration Identification IMO 8400103 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
101. YAGHOUB (EQOE) Platform Supply Ship 950DWT Iran flag; Vessel Registration Identification IMO 8316168; MMSI 422150000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
102. YANGZHOU DAYANG DY905 (a.k.a. YARD NO. DY905 YANGZHOU D.) LPG Tanker Iran flag; Vessel Registration Identification IMO 9575424 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
103. YOUSEF (EQOG) Offshore Tug/Supply Ship 584GRT Iran flag; Vessel Registration Identification IMO 8316106; MMSI 422144000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
104. ALPHA (f.k.a. ABADAN) (T2EU4) Crude/Oil Products Tanker Tuvalu flag; Former Vessel Flag Malta; Vessel Registration Identification IMO 9187629; MMSI 572469210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
105. ASTARA (9HDS9) Crude/Oil Products Tanker Malta flag; Vessel Registration Identification IMO 9187631; MMSI 256845000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
106. BANEH (EQKF) Landing Craft 640DWT 478GRT Iran flag; Vessel Registration Identification IMO 8508462; MMSI 422141000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
107. PRECIOUS (f.k.a. HODA) (T2EH4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9362059; MMSI 572458210 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
108. COURAGE (f.k.a. HOMA) (5IM 596) Crude Oil Tanker Tanzania flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9357389; MMSI 677049600 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
109. VICTORY (f.k.a. HONAR) (T2EA4) Crude Oil Tanker Tuvalu flag; Former Vessel Flag Cyprus; Vessel Registration Identification IMO 9362061; MMSI 209511000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.
110. IRAN FAZEL (9IBAC) Chemical/Products Tanker Iran flag; Vessel Registration Identification IMO 9283746; MMSI 422303000 (vessel) [IRAN] Linked To: NATIONAL IRANIAN TANKER COMPANY.

Dated: February 6, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–03833 Filed 2–19–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Revised Pricing Grid for Gold and Platinum Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a revised pricing grid for 2013 gold and platinum products. Please see the grid following signature.

DATES: This grid will be effective Wednesday, February 27, 2013, at 12 noon (ET).

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701; Pub. L. 111–262, sec. 6.

Dated: February 11, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

BILLING CODE P

2013 Pricing of Numismatic and Commemorative Gold, Platinum Products

*an additional $5 introductory discount effective first month on sale

Average Price per Ounce	Size	American Eagle Gold Proof	American Eagle Gold Uncirculated	First Spouse 24K Gold Proof	First Spouse 24K Gold Uncirculated	American Buffalo 24K Gold Proof	American Eagle Platinum Proof	Commemorative Gold Proof*	Commemorative Gold Unc*
$500.00 to $549.99	1 oz	$860.00	$825.00			$890.00	$900.00		
	1/2 oz	$445.00		$465.00	$445.00				
	1/4 oz	$235.00							
	1/10 oz	$105.00							
	4-coin set	$1,595.00							
	commemorative gold							$235.35	$230.35
	commemorative 3-coin mulit-metal set							$296.35	
$550.00 to $599.99	1 oz	$910.00	$875.00			$940.00	$950.00		
	1/2 oz	$470.00		$490.00	$470.00				
	1/4 oz	$247.50							
	1/10 oz	$110.00							
	4-coin set	$1,687.50							
	commemorative gold							$247.50	$242.50
	commemorative 3-coin mulit-metal set							$308.50	
$600.00 to $649.99	1 oz	$960.00	$925.00			$990.00	$1,000.00		
	1/2 oz	$495.00		$515.00	$495.00				
	1/4 oz	$260.00							
	1/10 oz	$115.00							
	4-coin set	$1,780.00							
	commemorative gold							$259.65	$254.65
	commemorative 3-coin mulit-metal set							$320.65	
$650.00 to $699.99	1 oz	$1,010.00	$975.00			$1,040.00	$1,050.00		
	1/2 oz	$520.00		$540.00	$520.00				
	1/4 oz	$272.50							
	1/10 oz	$120.00							
	4-coin set	$1,872.50							
	commemorative gold							$271.80	$266.80
	commemorative 3-coin mulit-metal set							$332.80	
$700.00 to $749.99	1 oz	$1,060.00	$1,025.00			$1,090.00	$1,100.00		
	1/2 oz	$545.00		$565.00	$545.00				
	1/4 oz	$285.00							
	1/10 oz	$125.00							
	4-coin set	$1,965.00							
	commemorative gold							$283.95	$278.95
	commemorative 3-coin mulit metal set							$344.95	

$750.00 to $799.99	1 oz	$1,110.00	$1,075.00			$1,140.00	$1,150.00		
	1/2 oz	$570.00		$590.00	$570.00				
	1/4 oz	$297.50							
	1/10 oz	$130.00							
	4-coin set	$2,057.50							
	commemorative gold							$296.10	$291.10
	commemorative 3-coin mulit-metal set							$357.10	
$800.00 to $849.99	1 oz	$1,160.00	$1,125.00			$1,190.00	$1,200.00		
	1/2 oz	$595.00		$615.00	$595.00				
	1/4 oz	$310.00							
	1/10 oz	$135.00							
	4-coin set	$2,150.00							
	commemorative gold							$308.25	$303.25
	commemorative 3-coin mulit-metal set							$369.25	
$850.00 to $899.99	1 oz	$1,210.00	$1,175.00			$1,240.00	$1,250.00		
	1/2 oz	$620.00		$640.00	$620.00				
	1/4 oz	$322.50							
	1/10 oz	$140.00							
	4-coin set	$2,242.50							
	commemorative gold							$320.40	$315.40
	commemorative 3-coin mulit-metal set							$381.40	
$900.00 to $949.99	1 oz	$1,260.00	$1,225.00			$1,290.00	$1,300.00		
	1/2 oz	$645.00		$665.00	$645.00				
	1/4 oz	$335.00							
	1/10 oz	$145.00							
	4-coin set	$2,335.00							
	commemorative gold							$332.55	$327.55
	commemorative 3-coin mulit-metal set							$393.55	
$950.00 to $999.99	1 oz	$1,310.00	$1,275.00			$1,340.00	$1,350.00		
	1/2 oz	$670.00		$690.00	$670.00				
	1/4 oz	$347.50							
	1/10 oz	$150.00							
	4-coin set	$2,427.50							
	commemorative gold							$344.70	$339.70
	commemorative 3-coin mulit-metal set							$405.70	

$1000.00 to $1049.99	1 oz	$1,360.00	$1,325.00			$1,390.00	$1,400.00		
	1/2 oz	$695.00		$715.00	$695.00				
	1/4 oz	$360.00							
	1/10 oz	$155.00							
	4-coin set	$2,520.00							
	commemorative gold							$356.85	$351.85
	commemorative 3-coin mulit metal set							$417.85	
$1050.00 to $1099.99	1 oz	$1,410.00	$1,375.00			$1,440.00	$1,450.00		
	1/2 oz	$720.00		$740.00	$720.00				
	1/4 oz	$372.50							
	1/10 oz	$160.00							
	4-coin set	$2,612.50							
	commemorative gold							$369.00	$364.00
	commemorative 3-coin mulit-metal set							$430.00	
$1100.00 to $1149.99	1 oz	$1,460.00	$1,425.00			$1,490.00	$1,500.00		
	1/2 oz	$745.00		$765.00	$745.00				
	1/4 oz	$385.00							
	1/10 oz	$165.00							
	4-coin set	$2,705.00							
	commemorative gold							$381.15	$376.15
	commemorative 3-coin mulit-metal set							$442.15	
$1150.00 to $1199.99	1 oz	$1,510.00	$1,475.00			$1,540.00	$1,550.00		
	1/2 oz	$770.00		$790.00	$770.00				
	1/4 oz	$397.50							
	1/10 oz	$170.00							
	4-coin set	$2,797.50							
	commemorative gold							$393.30	$388.30
	commemorative 3-coin mulit-metal set							$454.30	
$1200.00 to $1249.99	1 oz	$1,560.00	$1,525.00			$1,590.00	$1,600.00		
	1/2 oz	$795.00		$815.00	$795.00				
	1/4 oz	$410.00							
	1/10 oz	$175.00							
	4-coin set	$2,890.00							
	commemorative gold							$405.45	$400.45
	commemorative 3-coin mulit-metal set							$466.45	

$1250.00 to $1299.99	1 oz	$1,610.00	$1,575.00			$1,640.00	$1,650.00		
	1/2 oz	$820.00		$840.00	$820.00				
	1/4 oz	$422.50							
	1/10 oz	$180.00							
	4-coin set	$2,982.50							
	commemorative gold							$417.60	$412.60
	commemorative 3-coin mulit-metal set							$478.60	
$1300.00 to $1349.99	1 oz	$1,660.00	$1,625.00			$1,690.00	$1,700.00		
	1/2 oz	$845.00		$865.00	$845.00				
	1/4 oz	$435.00							
	1/10 oz	$185.00							
	4-coin set	$3,075.00							
	commemorative gold							$429.75	$424.75
	commemorative 3-coin mulit-metal set							$490.75	
$1350.00 to $1399.99	1 oz	$1,710.00	$1,675.00			$1,740.00	$1,750.00		
	1/2 oz	$870.00		$890.00	$870.00				
	1/4 oz	$447.50							
	1/10 oz	$190.00							
	4-coin set	$3,167.50							
	commemorative gold							$441.90	$436.90
	commemorative 3-coin mulit-metal set							$502.90	
$1400.00 to $1449.99	1 oz	$1,760.00	$1,725.00			$1,790.00	$1,800.00		
	1/2 oz	$895.00		$915.00	$895.00				
	1/4 oz	$460.00							
	1/10 oz	$195.00							
	4-coin set	$3,260.00							
	commemorative gold							$454.05	$449.05
	commemorative 3 coin mulit-metal set							$515.05	
$1450.00 to $1499.99	1 oz	$1,810.00	$1,775.00			$1,840.00	$1,850.00		
	1/2 oz	$920.00		$940.00	$920.00				
	1/4 oz	$472.50							
	1/10 oz	$200.00							
	4-coin set	$3,352.50							
	commemorative gold							$466.20	$461.20
	commemorative 3 coin mulit-metal set							$527.20	

$1500.00 to $1549.99	1 oz	$1,860.00	$1,825.00			$1,890.00	$1,900.00		
	1/2 oz	$945.00		$965.00	$945.00				
	1/4 oz	$485.00							
	1/10 oz	$205.00							
	4-coin set	$3,445.00							
	commemorative gold							$478.35	$473.35
	commemorative 3 coin mulit-metal set							$539.35	
$1550.00 to $1599.99	1 oz	$1,910.00	$1,875.00			$1,940.00	$1,950.00		
	1/2 oz	$970.00		$990.00	$970.00				
	1/4 oz	$497.50							
	1/10 oz	$210.00							
	4-coin set	$3,537.50							
	commemorative gold							$490.50	$485.50
	commemorative 3-coin mulit-metal set							$551.50	
$1600.00 to $1649.99	1 oz	$1,960.00	$1,925.00			$1,990.00	$2,000.00		
	1/2 oz	$995.00		$1,015.00	$995.00				
	1/4 oz	$510.00							
	1/10 oz	$215.00							
	4-coin set	$3,630.00							
	commemorative gold							$502.65	$497.65
	commemorative 3-coin mulit-metal set							$563.65	
$1650.00 to $1699.99	1 oz	$2,010.00	$1,975.00			$2,040.00	$2,050.00		
	1/2 oz	$1,020.00		$1,040.00	$1,020.00				
	1/4 oz	$522.50							
	1/10 oz	$220.00							
	4 coin set	$3,722.50							
	commemorative gold							$514.80	$509.80
	commemorative 3-coin mulit-metal set							$575.80	
$1700.00 to $1749.99	1 oz	$2,060.00	$2,025.00			$2,090.00	$2,100.00		
	1/2 oz	$1,045.00		$1,065.00	$1,045.00				
	1/4 oz	$535.00							
	1/10 oz	$225.00							
	4-coin set	$3,815.00							
	commemorative gold							$526.95	$521.95
	commemorative 3-coin mulit metal set							$587.95	

							$2,140.00		$2,150.00			
$1750.00 to $1799.99	1 oz	$2,110.00	$2,075.00									
	1/2 oz	$1,070.00		$1,090.00		$1,070.00						
	1/4 oz	$547.50										
	1/10 oz	$230.00										
	4 coin set	$3,907.50								$539.10		$534.10
	commemorative gold									$600.10		
	commemorative 3-coin mulit-metal set											
							$2,190.00		$2,200.00			
$1800.00 to $1849.99	1 oz	$2,160.00	$2,125.00									
	1/2 oz	$1,095.00		$1,115.00		$1,095.00						
	1/4 oz	$560.00										
	1/10 oz	$235.00								$551.25		$546.25
	4-coin set	$4,000.00								$612.25		
	commemorative gold											
	commemorative 3-coin mulit-metal set											
							$2,240.00		$2,250.00			
$1850.00 to $1899.99	1 oz	$2,210.00	$2,175.00									
	1/2 oz	$1,120.00		$1,140.00		$1,120.00						
	1/4 oz	$572.50										
	1/10 oz	$240.00								$563.40		$558.40
	4-coin set	$4,092.50								$624.40		
	commemorative gold											
	commemorative 3-coin mulit-metal set											
							$2,290.00		$2,300.00			
$1900.00 to $1949.99	1 oz	$2,260.00	$2,225.00									
	1/2 oz	$1,145.00		$1,165.00		$1,145.00						
	1/4 oz	$585.00										
	1/10 oz	$245.00								$575.55		$570.55
	4 coin set	$4,185.00								$636.55		
	commemorative gold											
	commemorative 3-coin mulit metal set											
							$2,340.00		$2,350.00			
$1950.00 to $1999.99	1 oz	$2,310.00	$2,275.00									
	1/2 oz	$1,170.00		$1,190.00		$1,170.00						
	1/4 oz	$597.50										
	1/10 oz	$250.00								$587.70		$582.70
	4-coin set	$4,277.50								$648.70		
	commemorative gold											
	commemorative 3 coin mulit metal set											

$2000.00 to $2049.99	1 oz	$2,360.00	$2,325.00		$2,390.00	$2,400.00		
	1/2 oz	$1,195.00		$1,215.00	$1,195.00			
	1/4 oz	$610.00						
	1/10 oz	$255.00						
	4-coin set	$4,370.00						
	commemorative gold						$599.85	$594.85
	commemorative 3-coin mulit-metal set						$660.85	
$2050.00 to $2099.99	1 oz	$2,410.00	$2,375.00		$2,440.00	$2,450.00		
	1/2 oz	$1,220.00		$1,240.00	$1,220.00			
	1/4 oz	$622.50						
	1/10 oz	$260.00						
	4-coin set	$4,462.50						
	commemorative gold						$612.00	$607.00
	commemorative 3-coin mulit-metal set						$673.00	
$2100.00 to $2149.99	1 oz	$2,460.00	$2,425.00		$2,490.00	$2,500.00		
	1/2 oz	$1,245.00		$1,265.00	$1,245.00			
	1/4 oz	$635.00						
	1/10 oz	$265.00						
	4-coin set	$4,555.00						
	commemorative gold						$624.15	$619.15
	commemorative 3-coin mulit-metal set						$685.15	
$2150.00 to $2199.99	1 oz	$2,510.00	$2,475.00		$2,540.00	$2,550.00		
	1/2 oz	$1,270.00		$1,290.00	$1,270.00			
	1/4 oz	$647.50						
	1/10 oz	$270.00						
	4 coin set	$4,647.50						
	commemorative gold						$636.30	$631.30
	commemorative 3-coin mulit metal set						$697.30	
$2200.00 to $2249.99	1 oz	$2,560.00	$2,525.00		$2,590.00	$2,600.00		
	1/2 oz	$1,295.00		$1,315.00	$1,295.00			
	1/4 oz	$660.00						
	1/10 oz	$275.00						
	4-coin set	$4,740.00						
	commemorative gold						$648.45	$643.45
	commemorative 3-coin mulit-metal set						$709.45	

$2250.00 to $2299.99	1 oz	$2,610.00	$2,575.00			$2,640.00	$2,650.00		
	1/2 oz	$1,320.00		$1,340.00	$1,320.00				
	1/4 oz	$672.50							
	1/10 oz	$280.00							
	4-coin set	$4,832.50							
	commemorative gold							$660.60	$655.60
	commemorative 3-coin mulit-metal set							$721.60	
$2300.00 to $2349.99	1 oz	$2,660.00	$2,625.00			$2,690.00	$2,700.00		
	1/2 oz	$1,345.00		$1,365.00	$1,345.00				
	1/4 oz	$685.00							
	1/10 oz	$285.00							
	4-coin set	$4,925.00							
	commemorative gold							$672.75	$667.75
	commemorative 3-coin mulit-metal set							$733.75	
$2350.00 to $2399.99	1 oz	$2,710.00	$2,675.00			$2,740.00	$2,750.00		
	1/2 oz	$1,370.00		$1,390.00	$1,370.00				
	1/4 oz	$697.50							
	1/10 oz	$290.00							
	4-coin set	$5,017.50							
	commemorative gold							$684.90	$679.90
	commemorative 3-coin mulit-metal set							$745.90	
$2400.00 to $2449.99	1 oz	$2,760.00	$2,725.00			$2,790.00	$2,800.00		
	1/2 oz	$1,395.00		$1,415.00	$1,395.00				
	1/4 oz	$710.00							
	1/10 oz	$295.00							
	4-coin set	$5,110.00							
	commemorative gold							$697.05	$692.05
	commemorative 3-coin mulit-metal set							$758.05	
$2450.00 to $2499.99	1 oz	$2,810.00	$2,775.00			$2,840.00	$2,850.00		
	1/2 oz	$1,420.00		$1,440.00	$1,420.00				
	1/4 oz	$722.50							
	1/10 oz	$300.00							
	4-coin set	$5,202.50							
	commemorative gold							$709.20	$704.20
	commemorative 3 coin mulit-metal set							$770.20	

$2500.00 to $2549.99	1 oz	$2,860.00	$2,825.00			$2,890.00	$2,900.00		
	1/2 oz	$1,445.00		$1,465.00	$1,445.00				
	1/4 oz	$735.00							
	1/10 oz	$305.00							
	4-coin set	$5,295.00							
	commemorative gold							$721.35	$716.35
	commemorative 3-coin mulit-metal set							$782.35	
$2550.00 to $2599.99	1 oz	$2,910.00	$2,875.00			$2,940.00	$2,950.00		
	1/2 oz	$1,470.00		$1,490.00	$1,470.00				
	1/4 oz	$747.50							
	1/10 oz	$310.00							
	4-coin set	$5,387.50							
	commemorative gold							$733.50	$728.50
	commemorative 3-coin mulit-metal set							$794.50	
$2600.00 to $2649.99	1 oz	$2,960.00	$2,925.00			$2,990.00	$3,000.00		
	1/2 oz	$1,495.00		$1,515.00	$1,495.00				
	1/4 oz	$760.00							
	1/10 oz	$315.00							
	4-coin set	$5,480.00							
	commemorative gold							$745.65	$740.65
	commemorative 3-coin mulit-metal set							$806.65	
$2650.00 to $2699.99	1 oz	$3,010.00	$2,975.00			$3,040.00	$3,050.00		
	1/2 oz	$1,520.00		$1,540.00	$1,520.00				
	1/4 oz	$772.50							
	1/10 oz	$320.00							
	4-coin set	$5,572.50							
	commemorative gold							$757.80	$752.80
	commemorative 3 coin mulit-metal set							$818.80	
$2700.00 to $2749.99	1 oz	$3,060.00	$3,025.00			$3,090.00	$3,100.00		
	1/2 oz	$1,545.00		$1,565.00	$1,545.00				
	1/4 oz	$785.00							
	1/10 oz	$325.00							
	4-coin set	$5,665.00							
	commemorative gold							$769.95	$764.95
	commemorative 3-coin mulit-metal set							$830.95	

$2750.00 to $2799.99	1 oz	$3,110.00	$3,075.00			$3,140.00	$3,150.00		
	1/2 oz	$1,570.00		$1,590.00	$1,570.00				
	1/4 oz	$797.50							
	1/10 oz	$330.00							
	4-coin set	$5,757.50							
	commemorative gold							$782.10	$777.10
	commemorative 3-coin mulit metal set							$843.10	
$2800.00 to $2849.99	1 oz	$3,160.00	$3,125.00			$3,190.00	$3,200.00		
	1/2 oz	$1,595.00		$1,615.00	$1,595.00				
	1/4 oz	$810.00							
	1/10 oz	$335.00							
	4-coin set	$5,850.00							
	commemorative gold							$794.25	$789.25
	commemorative 3-coin mulit-metal set							$855.25	
$2850.00 to $2899.99	1 oz	$3,210.00	$3,175.00			$3,240.00	$3,250.00		
	1/2 oz	$1,620.00		$1,640.00	$1,620.00				
	1/4 oz	$822.50							
	1/10 oz	$340.00							
	4-coin set	$5,942.50							
	commemorative gold							$806.40	$801.40
	commemorative 3-coin mulit-metal set							$867.40	
$2900.00 to $2949.99	1 oz	$3,260.00	$3,225.00			$3,290.00	$3,300.00		
	1/2 oz	$1,645.00		$1,665.00	$1,645.00				
	1/4 oz	$835.00							
	1/10 oz	$345.00							
	4 coin set	$6,035.00							
	commemorative gold							$818.55	$813.55
	commemorative 3-coin mulit metal set							$879.55	
$2950.00 to $2999.99	1 oz	$3,310.00	$3,275.00			$3,340.00	$3,350.00		
	1/2 oz	$1,670.00		$1,690.00	$1,670.00				
	1/4 oz	$847.50							
	1/10 oz	$350.00							
	4-coin set	$6,127.50							
	commemorative gold							$830.70	$825.70
	commemorative 3-coin mulit-metal set							$891.70	

[FR Doc. 2013–03633 Filed 2–19–13; 8:45 am]
BILLING CODE C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0691]

Agency Information Collection (Learner's Perception (LP) Survey) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 22, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0691" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492, fax (202) 632–7583 or email *crystal.rennie@va.gov.* Please refer to "OMB Control No. 2900–0691."

SUPPLEMENTARY INFORMATION:

Title: Learner's Perception (LP) Survey, VA Form 10–0439.

OMB Control Number: 2900–0691.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0439 will be use to obtain health care trainees perception of their clinical experience with VA versus non-VA facilities. VA will use the data to identify strengths and opportunities for improvement in VA clinical training programs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 13, 2012, on page 74280.

Affected Public: Individuals or households.

Estimated Annual Burden: ",500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

Dated: February 13, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–03754 Filed 2–19–13; 8:45 am]
BILLING CODE 8320–01–P

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