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OFFICE OF THE FEDERAL REGISTER

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OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, May 14, 2013 - 9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

Contents

Federal Register
Vol. 78, No. 74
Wednesday, April 17, 2013

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
8957 23103

5 CFR
9601 22767

8 CFR
103 22770
208 22770

12 CFR
Ch. III 22771

13 CFR
Proposed Rules:
Ch. III 22801

14 CFR
Proposed Rules:
39 (2 documents) 22802, 22806

15 CFR
902 22950

18 CFR
40 22773

19 CFR
351 22773

33 CFR
100 22777
165 22778
Proposed Rules:
100 (3 documents) 22808, 22811, 22814

34 CFR
Ch. III (2 documents) 22780, 22783
Proposed Rules:
Ch. III 22817

37 CFR
382 23054

39 CFR
Proposed Rules:
3001 22820

40 CFR
52 22785
80 22788
180 22789
Proposed Rules:
52 (2 documents) 22827, 22840

42 CFR
83 22794

48 CFR
1552 22795
Proposed Rules:
226 22841
252 22841

49 CFR
107 22798
171 22798

50 CFR
622 22950
640 22950

Rules and Regulations

Federal Register
Vol. 78, No. 74
Wednesday, April 17, 2013

NATIONAL CREDIT UNION ADMINISTRATION

5 CFR Part 9601

RIN 3133–AE10

Supplemental Standards of Ethical Conduct for Employees of the National Credit Union Administration

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing this final rule for employees of the NCUA that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. The rule prohibits credit union-related employment and requires NCUA employees to obtain approval before engaging in other types of outside employment or activities.

DATES: This final rule is effective April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, National Credit Union Administration, Alternate Agency Ethics Official, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314 or telephone (703–518–6540).

SUPPLEMENTARY INFORMATION:

I. Background

Why is NCUA issuing this rule?

On August 7, 1992, OGE published the Standards, which became effective on February 3, 1993. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The Standards, as corrected and amended, are codified in 5 CFR part 2635. The Standards set uniform ethical conduct standards applicable to all executive branch personnel (including NCUA employees).

Section 2635.105 of the Standards authorizes an agency, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to properly implement its respective ethics program. To date, the NCUA Board (Board) has not published any agency-specific ethics regulations pursuant to Section 2635.105.[1] Section 2635.802 of the OGE Standards prohibits employees from engaging in outside employment or activities that conflict with official duties. Section 2635.803 of the OGE Standards authorizes the Board to issue a supplemental regulation requiring employees to obtain its prior approval before engaging in outside employment or activities where the Board has determined it necessary or desirable for the purpose of administering its ethics program. Such a supplemental regulation may apply to all employees or a category of employees. *Id.* Most, if not all, of the other financial regulatory agencies have issued supplemental regulations. In most of the agencies' regulations reviewed, employees are prohibited from working for regulated institutions and affiliates, and employees must get approval for certain outside employment and activities due to the nature of the agencies' work and the potential for conflict of interest.

Why is this rule necessary?

In the recent past there have been cases where NCUA employees have participated in outside employment/activities without such consultation and the employment/activity has resulted in either an appearance of or an actual conflict of interest. For example, an NCUA examiner could not serve as a volunteer director of a credit union as this would present an appearance of a conflict of interest as well as other potential violations of the Standards. Neither could an NCUA examiner serve as a paid part-time manager of a credit union for the same reasons. The Board has now determined that a supplemental regulation will be necessary and useful in avoiding potential conflicts of interest. The rule contains a general provision referring to the Standards and additional ethics provisions that prohibit employment in credit unions and related entities and requires approval for other outside employment and activities. The Board, with OGE's concurrence, has determined that the following supplemental rule is necessary for successful implementation of its ethics program in light of NCUA's unique programs and operations.

Where is the new rule found?

All supplemental agency ethics regulations are found in part 5 of the Code of Federal Regulations, following the OGE Regulations.[2] NCUA has been assigned 5 CFR part 9601 for its supplemental ethics regulation.

II. Discussion of Amendments

Section 9601.101 General

What does the general provision contain?

Paragraph (a) explains that the regulation applies to NCUA employees, other than special government employees,[3] and supplements the OGE Standards. Paragraph (b) notes that employees must comply with ethics guidance and procedures issued by NCUA. This paragraph also includes cross-references to other OGE ethics related regulations including the regulations concerning Executive Branch financial disclosure, financial interests, and post-employment, and to the NCUA specific regulation regarding post-employment restrictions applicable to senior examiners spending a specific amount of time in a particular credit union. *See* footnote 1. In addition, this paragraph notes that employees should contact an NCUA ethics official if an ethics question arises.

[1] Certain senior NCUA examiners are subject to post-employment restrictions found in Part 796 of the NCUA Regulations, 12 CFR part 796. Part 796 was issued pursuant to a provision of the Federal Credit Union (FCU) Act, rather than pursuant to the ethics regulations. *See* Section 206(w) of the FCU Act, 12 U.S.C. 1786(w).

[2] All other NCUA-specific regulations are found in 12 CFR chapter VII.

[3] Special government employees are defined in the Standards at 5 CFR 2635.102(l) as employees to perform temporary duties for a period not to exceed 130 days during any consecutive 365-day period.

Section 9601.102 Definitions

How is employment defined?

Paragraph (a)(1) broadly defines "employment" to include any form of non-Federal employment or business relationship involving the provision of personal services other than in the discharge of official duties, regardless of whether the services are compensated. In addition to more typical second jobs, employment includes outside teaching, speaking or writing when the writing is done under an arrangement with another person or for the publication of a written product. Employees who operate their own businesses are subject to the approval requirement. Paragraph (a)(2) excludes from the definition of employment non-compensated participation in the activities of certain nonprofit organizations. Employees are not required to seek approval if working for the type of organization described in paragraph (a)(2) unless: (1) The employee will receive compensation other than reimbursement of expenses; or (2) the organization's activities substantially relate to the employee's official duties. If either of the above two criteria are met, employees must request and obtain approval before engaging in outside employment for the organization.

How are credit union-related entities defined?

For purposes of this rule, a credit union includes both insured and noninsured credit unions as defined in section 102(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7), and a credit union service organization (CUSO) as defined in section 741.222(a) of the NCUA Regulations, 12 CFR 741.222. A credit union trade group is a trade organization whose membership is comprised of credit unions, CUSOs, state credit union regulators, state credit union organizations, and employees and officials of such organizations. Other credit union-related entities may be specified in Instructions issued by the Designated Agency Ethics Official (DAEO) pursuant to section 104.

Section 9601.103 Prohibited Employment

Why is an outright prohibition necessary?

Most of the financial regulatory agencies' supplemental ethics regulations contain an outright prohibition against their employees working for their own regulated entities as well as affiliated entities, in any capacity. *See, e.g., FDIC Supplemental Standards* at 5 CFR 3201.107(a). The Board believes that an outright prohibition against NCUA employees, other than special government employees, working for credit unions, CUSOs, credit union trade groups, and related entities is appropriate and necessary because such employment or other service would either involve a direct conflict of interest or the appearance of a conflict of interest.

Section 9601.104 Prior Approval for Outside Employment

When is approval required?

Paragraph (a)(1) requires prior approval before an employee, other than a special government employee, engages in non-prohibited outside employment, with or without compensation. Employees must obtain the approval of their immediate supervisor with the concurrence of the Designated Agency Ethics Official (DAEO). Paragraph (a)(2) includes an approval requirement for outside employment that predates the effective date of this regulation. It also requires that new NCUA employees, other than special government employees, either terminate such employment or activities if prohibited by section 103 or get approval of continuing outside employment or activities pursuant to the rule.

How is the request for approval submitted and what information must it contain?

Paragraph (b) requires that the employee, other than a special government employee, submit an email or other form of written correspondence to his or her supervisor to request approval. The employee must submit the name of his or her outside employer, the title of the outside position, the nature of the work to be performed, and the estimated duration of the outside employment. The employee may provide additional information addressing any potential conflicts of interest. This paragraph also requires that if there is a significant change in either outside employment or in the employee's official position at NCUA, the employee must submit a revised request for approval.

What standard will be applied to requests for approval?

Paragraph (c) states that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. This involves a conflict of interest analysis (including appearance issues) as well as a review of the additional prohibitions in the Standards addressing outside employment. *See* 5 CFR 2635.801 et seq. For example, the Standards address service as an expert witness, limit the outside income of noncareer employees, and impose limitations on teaching, speaking and writing. *See* 5 CFR 2635.804, 805 and 807. There are also provisions in the United States criminal code addressing special approval for certain representational activities. *See* 18 U.S.C. 203(d) and 205(e). These provisions are addressed in a note to the rule. The requirement for the DAEO's concurrence with the supervisor's approval will assure that all provisions of the ethics laws are addressed in the approval process.

Section 9601.105 DAEO Responsibilities

What are the DAEO's responsibilities under this new rule?

Pursuant to delegated authority, the DAEO will issue an Instruction setting forth specific procedures to be followed concerning this new regulation prior to its effective date. As noted above, the effective date is the date of publication in the **Federal Register**. Future Instructions may exempt categories of employment from prior approval as well as set forth examples of outside employment that are permissible or impermissible under the rule, including examples of organizations or entities similar to credit unions, credit union trade groups, and credit union service organizations (other credit union-related entities).

III. Direct Final Rule

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553, notice and public comment are not required because this rule concerns matters of agency organization, practice and procedure. In addition, the Board finds good cause exists for waiving the general notice of proposed rulemaking and opportunity for public comment because the rule primarily affects agency employees. The Board is issuing this rule as a final rule that is effective upon publication. *See* 5 U.S.C. 553(a)(2), (b)(3)(A) and (B), and (d)(3).

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars. This interim final rule will not have a significant economic impact on a

substantial number of small credit unions as it primarily affects NCUA employees.

Paperwork Reduction Act

NCUA has determined that the final rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 et seq.; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence with fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 5302(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–212 (SBREFA)), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accountability Office so that the rule may be reviewed.

List of Subjects in 5 CFR Part 9601

Conflict of interests, Government employees.

Dated: February 21, 2013.

Mary Rupp,

Secretary of the Board.

Approved: April 1, 2013.

Walter M. Shaub, Jr.

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the National Credit Union Administration Board, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXXXVI, consisting of part 9601, to read as follows:

TITLE 5—Administrative Personnel

CHAPTER LXXXVI—NATIONAL CREDIT UNION ADMINISTRATION

PART 9601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL CREDIT UNION ADMINISTRATION

Sec.

Authority: 12 U.S.C. 1752a(d), 1766; 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.403, 5 CFR 2635.502 and 5 CFR 2635.803

§ 9601.101 General

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Credit Union Administration (NCUA), other than special government employees as defined in 5 CFR 2635.102(l) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635 (Office of Government Ethics (OGE) Standards).

(b) *Other regulations, guidance and procedures.* In addition to 5 CFR part 2635 and this part, NCUA employees are required to comply with implementing guidance and procedures issued by the NCUA in accordance with 5 CFR 2635.105(c). NCUA employees are also subject to other government-wide ethics regulations including, but not limited to: Regulations concerning financial disclosure contained in 5 CFR part 2634, regulations concerning executive branch financial interests and conflicts contained in 5 CFR part 2640, and regulations concerning post-employment restrictions contained in 5 CFR part 2641. Certain senior NCUA examiners are also subject to post-employment restrictions contained in NCUA's Regulation found at 12 CFR part 796. Employees should contact an NCUA ethics official if they have questions about any provision of this regulation or other ethics-related matters.

§ 9601.102 Definitions.

The following definitions apply to this part:

(a) Employment.

(1) For purposes of this section, "employment" means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes a writing when done under an arrangement with another person for production or publication of the written product.

(2) The definition of employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:

(i) The employee will receive compensation other than reimbursement of expenses; or

(ii) The organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E).

Note to paragraph (a): There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e), respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as agent or attorney for, or otherwise represent his parents, spouse, child, or any person for whom, or any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval of this section.

(b) Credit union-related entities.

(1) Credit union includes insured and non-insured credit unions as defined in Section 102(7) of the Federal Credit Union Act (the Act), 12 U.S.C. 1752(7).

(2) Credit union service organization as defined in § 741.222(a) of the NCUA Regulations, 12 CFR 741.222(a).

(3) Credit union trade groups include credit union trade organizations whose membership is comprised of credit union, CUSO, state credit union regulators, state credit union organizations, and officials and employees of such organizations.

(4) Other credit union-related entities may be defined pursuant to Agency Instruction.

§ 9601.103 Prohibited outside employment.

No employee may engage in outside employment, with or without compensation, with any credit union, credit union trade group, credit union service organization, or other credit union-related entity, in any capacity.

§ 9601.104 Prior approval for outside employment.

(a) General requirement.

(1) Before engaging in any outside employment, with or without compensation, other than prohibited employment in section 103 of the Act, an NCUA employee, other than a special government employee, must obtain written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO), except to the extent that the DAEO has issued an instruction pursuant to section 105 of the Act exempting an activity or class of activities from this requirement.

(2) Any employee, other than a special government employee, who, before the effective date of this part or commencement of employment with NCUA, began engaging in outside employment must, within 30 calendar days of the effective date of this part or 30 days of commencement of employment with NCUA, either terminate such employment if it is in violation of section 103 of the Act or request written approval from his or her supervisor and the concurrence of the DAEO in accordance with this section. The employee may continue engaging in the outside employment while the request for approval is under review.

(b) Procedure for requesting approval.

(1) Employees shall request the approval required by paragraph (a) of this section by email or other form of written correspondence in advance of engaging in outside employment as defined in section 102 of the Act. The employee requesting approval shall submit the request to his/her supervisor.

(2) The request for approval to engage in outside employment shall set forth, at a minimum:

(i) The name of the employer or organization;

(ii) The nature of the activity or other work to be performed;

(iii) The title of the position; and

(iv) The estimated duration of the outside employment.

(3) Upon a significant change in the nature or scope of the outside employment or in the employee's official position with the NCUA, the employee must, within 7 calendar days of the change, submit a revised request for approval.

(c) Standard for approval. Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

§ 9601.105 DAEO's responsibilities.

The NCUA DAEO may issue Instructions governing the submission of requests for approval of outside employment. The Instructions may exempt categories of employment from prior approval requirement of this section based on a determination that employment within those categories of employment would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The DAEO may include in these Instructions examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR part 2635, including examples of other credit union-related entities.

[FR Doc. 2013–08086 Filed 4–16–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 208

[CIS No. 2481–09; DHS Docket No. USCIS–2009–0022]

RIN 1615–AB83

Immigration Benefits Business Transformation, Increment I; Correction

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Correcting amendment.

SUMMARY: On August 29, 2011, the Department of Homeland Security (DHS) published a final rule to amend DHS regulations to enable U.S. Citizenship and Immigration Services (USCIS) to transform its business processes. In this notice, we are correcting three technical errors.

DATES: The effective date of this correcting amendment is April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Jason J. Johnsen, Office of Transformation Coordination, U.S. Citizenship and Immigration Services, Department of Homeland Security, 633 Third St. NW., Washington, DC 20529–2210; telephone (202) 233–2515.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2011, DHS issued a final rule titled, *Immigration Benefits Business Transformation, Increment I,* which amended more than fifty parts of title 8 of the Code of Federal Regulations and finalized seven interim rules. 76 FR 53764 (Aug. 29, 2011). The final rule removed form titles, number references, and position titles. It also removed obsolete and expired regulatory provisions and corrected provisions that were affected by statutory changes.[1]

Need for correction

DHS amended 8 CFR in the final rule, wherever possible, to:

1. Remove references to official position titles used within DHS or used in the past by the former Immigration and Naturalization Service (INS). These titles include director, district director, and commissioner, as well as position descriptions, such as examiner or adjudicator. 76 FR 53764, 53767.

2. Replace references to the terms "application" and "petition" with the newly defined term "benefit request." *Id.*

3. Remove information about internal processing, administrative filing requirements, filing locations, and procedures. *Id.*

DHS inadvertently neglected to revise the language in 8 CFR 103.2(b)(18) to reflect these changes. DHS is correcting that oversight by replacing individual job titles with "USCIS" in 8 CFR 103.2(b)(18). Delegations of authority to fulfill various responsibilities with respect to benefits requests are set forth in internal USCIS guidance. In addition, this correcting amendment replaces, "application or petition" with "benefit request."

In addition, the August 2011 final rule amended the definition of "Service" to mean, "U.S. Citizenship and

[1] In addition, before the rule took effect, DHS reviewed the public comments in the docket of this final rule and corrected several errors and omissions in a correction that was effective on the same date as the rule. 73 FR 73475 (Nov. 29, 2011) (effective Nov. 28, 2011).

Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears." 76 FR 53764, 53780. Where a section of the regulations was determined to pertain to an action that may have been taken by INS, or a function that is within the purview of or shared with another component, the term "the Service" was retained or inserted. *Id.*

DHS made one erroneous amendment in the August 2011 final rule with regard to the use of "USCIS" in lieu of "the Service." In 8 CFR part 208, the term "the Service" was revised to read "USCIS," including in 8 CFR 208.24(f), which deals with the termination of asylum or withholding of deportation or removal by an Immigration Judge or the Board of Immigration Appeals. Termination of asylum is an authority shared between the Department of Justice and USCIS, but USCIS has no role in removal proceedings beyond the issuance of a notice to appear in accordance with 8 CFR 208.24(e) and (g). The current, recently-amended regulatory language incorrectly provides, however, that USCIS has the responsibility in removal proceedings to establish grounds of termination, whereas that is the responsibility of U.S. Immigration and Customs Enforcement. Therefore, this notice corrects that error by removing one incorrect reference to "USCIS" in 8 CFR 208.24(f) and replacing it with "the Service."

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Correction

Accordingly, for the reasons set out in the preamble, chapter I of title 8 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.2 is amended by revising paragraph (b)(18) to read as follows:

Subpart A—Applying for Benefits, Surety Bonds, Fees

§ 103.2 Submission and adjudication of benefit requests.

* * * * *

(b) * * *

(18) *Withholding adjudication.* USCIS may authorize withholding adjudication of a visa petition or other application if USCIS determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the benefit request, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the benefit request would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, USCIS will review the matter and determine whether adjudication of the benefit request should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of USCIS's determination, the investigation has not been completed, the matter will be reviewed again by USCIS and, if it concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, USCIS may authorize that adjudication be held in abeyance for another six months. Thereafter, if USCIS determines it is necessary to continue to withhold adjudication pending completion of the investigation, it will review that determination every six months.

* * * * *

PART 208—PROCEDURES FOR ASLYUM AND WITHHOLDING OF REMOVAL

■ 3. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2.

Subpart A—Asylum and Withholding of Removal

§ 208.24 [Corrected]

■ 4. Section 208.24 is amended in paragraph (f), the second sentence, by removing the term "USCIS" and adding in its place the term, "the Service".

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

[FR Doc. 2013–08985 Filed 4–16–13; 8:45 am]

BILLING CODE 9111–97–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Statement of Policy on the Development and Review of Regulations and Policies

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Revision of statement of policy.

SUMMARY: The FDIC is updating its Statement of Policy entitled, "Development and Review of FDIC Regulations and Policies" (Policy Statement). The Policy Statement articulates the basic principles that guide the FDIC in its promulgation and review of regulations and written statements of policy. The Policy Statement is being revised to more fully reflect the FDIC's current rulemaking policies and procedures, as well as take into account various organizational changes since the Policy Statement was adopted.

DATES: *Effective Date:* April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–8967, or Michelle Borzillo, Legal Division, (703) 562–6083, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC has a longstanding and ongoing commitment to ensure that its regulations and policies achieve legislative and regulatory goals in the most efficient and effective manner possible. As part of that commitment, the FDIC recently undertook a review of its existing Policy Statement, which was adopted in 1998, to determine what updates and clarifications would be appropriate. As a result of that review, the FDIC Board of Directors adopted revisions to the existing Policy Statement to more fully reflect the FDIC's current rulemaking policies and

procedures as well as take into account various organizational changes. These revisions highlight important rulemaking processes and procedures, such as the FDIC's open and transparent rulemaking process, robust interagency coordination, evaluation of regulatory costs and benefits (including consideration of alternatives), and periodic review of existing regulations.

Text: The text of the revised Policy Statement is as follows:

Development and Review of FDIC Regulations and Policies

Statement of Policy

I. Purpose and Scope

The Federal Deposit Insurance Corporation is committed to continually improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently. The purpose of this statement of policy (Policy) is to establish basic principles which guide the FDIC's promulgation and review of regulations and written statements of policy. This Policy applies to regulations and written statements of policy issued by the Board of Directors of the FDIC.

II. Principles for the Development and Review of Regulations and Statements of Policy

The following principles guide the FDIC in its development of regulations and written policies:

• *The implications of regulations and statements of policy should be evaluated.* Before issuing or updating a regulation or written statement of policy the FDIC gives careful consideration to the need for such action. Frequently a regulation is required by statute. Alternatively, the FDIC may identify a need for a supervisory tool to implement its statutory obligations, such as maintaining public confidence in the financial system through safety and soundness and compliance supervision, protecting insured depositors, closing failed institutions, and preventing or mitigating systemic risk. The FDIC also may identify a need to clarify its policy for the benefit of the banking industry or the public. To bring different perspectives to the development of a regulation, the FDIC typically assigns staff with different backgrounds or expertise to a regulatory project; such staff may include examiners, economists, lawyers or accountants, depending on the regulation.

Once the need or requirement for a regulation or statement of policy is determined, the FDIC evaluates benefits and costs, based on available information, and considers reasonable and possible alternatives. For many rulemakings, one or more alternatives likely will be available, at least with respect to some aspects of the rule. The main alternatives, once identified as available, should be described and analyzed for their consistency with the statutory or regulatory objectives, effectiveness in achieving those objectives, and burden on the public or industry. In this context, the FDIC seeks to minimize to the extent practicable the burdens which the proposed regulation or policy imposes on the banking industry and the public. For example, new reporting and recordkeeping requirements imposed by a regulation are carefully analyzed. The effect of the regulation or statement of policy on competition within the industry is considered. Particular attention is focused on the impact that a regulation will have on small institutions and whether there are comprehensive or targeted alternatives to accomplish the FDIC's goal which would minimize any burden on small institutions. Typically, when notice and opportunity for comment is involved, comment is sought on these matters. Prior to issuance of a final rule, the potential benefits associated with the regulation are weighed against the potential costs. Both the proposed and final rule should discuss key implications that the FDIC considered in its analysis.

• *Regulations and policies should be clearly, understandably, and concisely written.* The FDIC seeks to make its regulations and statements of policy as clear and as understandable as possible to those persons who are affected by them. In developing or reviewing existing regulations and statements of policy, the FDIC considers the document's organizational structure, as well as the specific language used and the target audience; all are important components to achieving a clear and useful statement.

• *The public should have a meaningful opportunity to participate in an open and transparent rulemaking process.* The FDIC encourages public participation in the rulemaking process. Whether a new regulation is being promulgated or an existing one revised, the Board gives careful consideration to the implications of its actions as public policy. Public participation in the rulemaking process is an opportunity for the Board to hear directly from affected members of the public with important experience and insights related to the pertinent issues. As part of this, the FDIC recognizes the importance of providing adequate time for the public comment process and thus, generally provides a 60-day comment period. Under appropriate circumstances, the FDIC may provide a longer comment period and, occasionally, as permitted by the Administrative Procedure Act (APA), a shorter comment period if quicker action is needed. A person or organization may petition the Board for the issuance, amendment, or repeal of any regulation or policy by submitting a written petition to the Executive Secretary of the FDIC. The petition should include a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.

All rulemaking is carried out in accordance with the APA (as well as other applicable law [1]), and the Board provides the public with notices of proposed rulemaking and opportunities to submit comments on the proposals. The Board also may seek public comment on proposed statements of policy as well. All comments and proposed alternatives received during the comment period are carefully considered prior to the issuance of a final rule or statement of policy. The Board takes final action on proposed regulations and policies as promptly as circumstances allow. If a significant period of time elapses following the publication of a proposed rule or statement of policy without final action, the Board will consider withdrawing the proposal or republishing it for comment. If the Board decides to reconsider a proposed regulation or statement of policy that has been withdrawn, it will begin the rulemaking or policy development process anew.

The FDIC Board typically considers proposed and final regulations at meetings open to the public. The written recommendations of FDIC staff are made available on the FDIC's public Web site, and the FDIC also broadcasts public Board meetings live over the Internet. Comment letters on pending proposed rules or statements of policy can be submitted electronically through the FDIC's public Web site, and all letters are posted on the FDIC's public

[1] In addition to specific statutory provisions necessitating an implementing rulemaking or statement of policy, other applicable law includes the Regulatory Flexibility Act, Paperwork Reduction Act, Section 722 of the Gramm-Leach-Bliley Act, the Plain Writing Act of 2010, Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, Small Business Regulatory Enforcement Fairness Act, and Economic Growth and Regulatory Paper Reduction Act of 1996.

Web site for easy access by all interested parties. In addition, the FDIC posts notices of meetings held with outside parties commenting on pending rulemakings during the comment period and may, in appropriate circumstances, hold roundtable discussions on issues of particular importance.

• *Common or overlapping statutory and supervisory requirements should be implemented by the Federal financial institutions regulators in a coordinated way.* The FDIC has many statutory and supervisory requirements that are common to the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, and some are common to the Consumer Financial Protection Bureau, and/or the National Credit Union Administration. The more uniform the Federal financial institutions regulators can be in their regulations, policies and approaches to supervision, the easier it will be for the industry and the public to comply with the regulators' requirements. The FDIC is a member of the Federal Financial Institutions Examination Council (FFIEC) and works with the other federal financial institutions regulators through the FFIEC to make uniform those regulations and policies that implement common statutory or supervisory policies.

Moreover, other statutory and supervisory requirements may overlap either in substance or in effect on other participants in the financial sector. As a result, coordination with other regulators (such as the Securities and Exchange Commission, Commodity Futures Trading Commission, and Federal Housing Finance Agency) has become more common. Some rulemakings also require consultation with the Financial Stability Oversight Council. Where required by law or otherwise appropriate, interagency working groups consult or collaborate to develop rules and policy statements to identify interactions and promote consistency.

III. Periodic Review of Existing Regulations and Statements of Policy

To ensure that the FDIC's regulations and written statements of policy are current, effective, and efficient, and continue to meet the principles set forth in this Policy, the FDIC periodically undertakes a review of each regulation and statement of policy. Sometimes, this review is done in conjunction with a change to a regulation or policy statement triggered by a change in the law. In addition, under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 and in conjunction with other FFIEC agencies, the FDIC conducts a comprehensive review of its regulations, at least once every ten years, to identify any outdated, unnecessary, or unduly burdensome regulatory requirements imposed on financial institutions. The FDIC also may initiate a targeted review in a specific area based on changes in the markets or observations at bank examinations, for example.

Factors to be considered in determining whether a regulation or written policy should be revised or eliminated include: the continued need for the regulation or policy; opportunities to simplify or clarify the regulation or policy; the need to eliminate duplicative and inconsistent regulations and policies; and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation or policy. The result of this review will be a specific decision for each regulation and statement of policy to retain, revise, or rescind it. The principles of regulation and statement of policy development, as articulated in this Policy, will apply to the periodic reviews as well.

Dated at Washington, DC, this 11th day of April 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–08986 Filed 4–16–13; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM12–4–000; Order No. 777]

Revisions to Reliability Standard for Transmission Vegetation Management; Correction

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (RM12–4–000) which was published in the **Federal Register** of Thursday, March 28, 2013 (78 FR 18817). The regulations established procedures with regard to filing and other requirements the North American Electric Reliability Corporation (NERC) needs to submit when modifying certain Reliability Standards.

DATES: Effective on May 28, 2013.

FOR FURTHER INFORMATION CONTACT: Julie Greenisen, (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Errata Notice

On March 21, 2013, the Commission issued "Order No. 777; Final Rule, in the above referenced proceeding. *Revisions to Reliability Standard for Transmission Vegetation Management,* 142 FERC ¶ 61,208 (2013).

Paragraphs 73 and 77 of the Final Rule indicate that NERC will be required to file modifications to the Violation Risk Factor for Requirement R2 of Reliability Standard FAC–003–2 within 45 days of the effective date of the Final Rule, while Paragraph 5 of the Final Rule indicates that NERC will have 60 days to make that filing. This errata notice serves to correct paragraphs 73 and 77 of the Final Rule, to delete the reference to 45 days and to replace it with the same 60 day deadline as set out in Paragraph 5 of the Final Rule.

In FR Doc. 2013–07113 appearing on page 18817 in the **Federal Register** of Thursday, March 28, 2013, the following corrections are made:

1. On page 18826, in the third column, in paragraph 73, correct "45 days" to read "60 days".

2. On page 18827, in the first column, in paragraph 77, correct "45 days" to read "60 days".

Dated: April 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–08640 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

RIN 0625–AA92

[Docket No.: 120613168–2175–02]

Regulation Strengthening Accountability of Attorneys and Non-Attorney Representatives Appearing Before the Department

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the Department) is amending its regulations to add a subsection that strengthens the accountability of attorneys and non-attorney

representatives who appear in proceedings before the Import Administration (IA). The rule provides that both attorneys and non-attorney representatives will be subject to disciplinary action for misconduct based upon good cause. The rule will assist the Department in maintaining the integrity of its proceedings by deterring misconduct by those who appear before it in antidumping duty (AD) and countervailing duty (CVD) proceedings.

DATES: *Effective Date:* May 17, 2013. *Applicability Date:* This rule will apply to all submissions made on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Michele Lynch, Senior Counsel, Office of the General Counsel, Office of Chief Counsel for Import Administration, or Eric Greynolds, International Trade Program Manager, Office 3, Import Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, 202–482–2879 or 202–482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 2012, the Department published a proposed rule entitled "Regulation Strengthening Accountability of Attorneys and Non-Attorney Representatives Appearing Before the Department" that would amend its regulations to add a subsection to strengthen the accountability of attorneys and non-attorney representatives who appear in proceedings before IA. (77 FR 38017). The proposed rule detailed amendments to the Department's regulations that provide, when good cause is found, that both attorneys and non-attorney representatives will be subject to disciplinary action for misconduct.

The Department received a number of comments on its proposed rule, which can be accessed using the Federal eRulemaking portal at *http://www.regulations.gov* under Docket Number ITA–2012–003.

After analyzing and considering all of the comments that the Department received in response to the proposed rule, the Department is adopting the rule without changes and is amending its regulations to add a new subsection.

Explanation of Changes to 19 CFR Part 351

To implement this rule, the Department is amending 19 CFR part 351 to add to subpart C § 351.313.

Response to Comments on the Proposed Rule

Below is a summary of the comments, grouped by issue category, followed by the Department's response.

Comment 1—Necessity for Proposed Rule

Most commenters support the Department's goal of strengthening the accountability of attorneys and non-attorney representatives who engage in misconduct during agency proceedings. One commenter observed that the proposed rule "reasonably makes clear the Department's intentions and practice so that attorneys and other representatives will be on notice of the consequences of any misconduct." Another commenter stated that the Department's efforts in promulgating the proposed rule are laudable and are "crucial to upholding the rule of law and integrity" of the Department's administrative proceedings. Other commenters summarized examples of misconduct that have occurred before the Department, noting that such incidents have been increasing in recent years. Some commenters, however, question the purpose of the proposed rule. One commenter, for example, expressed concern that, however well-intentioned the proposed rule is, it subjects practitioners to potentially punitive sanctions "at the whim of government officials" without clear guidelines or safeguards. While acknowledging the need for the Department to regulate non-attorney representatives, another commenter suggested that there is no separate need for the Department to discipline attorneys because appropriate Bar counsel and associations are responsible for such discipline.

Response: As discussed previously in the Notice of Proposed Rulemaking (77 FR 38017), the Department believes that promulgation of this rule will assist the Department in its efforts to continue to maintain the integrity of its proceedings by deterring misconduct by attorneys and non-attorney representatives appearing before it in antidumping and countervailing duty proceedings. Set forth below are our responses with respect to specific issues.

Comment 2—Practitioners May Have To Demonstrate Acceptability To Practice

Certain commenters are concerned with the "acceptability" language contained in the proposed rule and have asserted that the term is impermissibly vague. One has suggested that the Department create a standard of acceptability where "technical competence and ethical integrity" must be satisfied. According to this commenter, attorneys would automatically satisfy the standard while non-attorney representatives should be required to adhere to a code of conduct and, for technical competence, to meet standards modeled after other agencies such as the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The commenter states that the ATF requires practitioners to satisfy minimum standards such as 5 years of employment with the agency or 5 years of employment in the regulated industry, or prior experience representing parties before the Internal Revenue Service or ATF.

Response: The "acceptability" language in the rule mirrors language that appears in the International Trade Commission (ITC's) regulation governing the appearance of attorneys and agents before the Commission (19 CFR 201.15): "Any person desiring to appear as attorney or representative before the Department may be required to show to the satisfaction of the Secretary his acceptability in that capacity." The Department is not aware that this requirement has caused the ITC any difficulty in administering its regulation. Without having applied the rule, the Department is not in a position to identify every conceivable instance in which this provision may need to be invoked, but the Department does not agree that it is impermissibly vague. We note that an attorney, who is eligible to practice pursuant to the rules of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, who is not currently under suspension or disbarment, may practice as an attorney before the Department. The possibility exists that a person who is not an attorney in good standing as set forth above might identify himself or herself as an attorney or "legal representative" in an administrative proceeding. If that happens, the Department may find that the mischaracterization of that person's status renders that person not acceptable in the capacity presented.

Additionally, suspension or disbarment of an attorney or non-attorney representative by another agency or disciplinary tribunal might render such a person ineligible to appear before the Department. As discussed further below, this would be especially true if the suspension or disbarment were based upon fraud, misrepresentation, bribery or perjury. The Department agrees with the commenter who noted that attorneys

and non-attorney representatives should have sufficient knowledge of and competence in the subject area and should comply with the highest professional and ethical standards. However, unlike the ATF, the Department does not administer a regulated industry and is not instituting any technical "tests" that practitioners must satisfy except for the obvious standard that attorneys practicing before the Department must be in good standing before a U.S. Bar as noted above.

Comment 3—Good Cause Standard for the Application of Sanctions for Misconduct

Certain commenters assert that the "good cause" standard contained in the proposed rule is vague and undefined, and that this lack of definition could create uncertainty for practitioners. Another commenter recommends that the Department review allegations of misconduct prior to beginning a proceeding to ensure that a plausible basis exists for imposing sanctions.

Response: The Department does not agree that a "good cause" standard is too vague. Many administrative agencies, including the Department, are frequently required to exercise discretion based upon a standard of "good cause." Indeed, this standard already appears in the Department's regulations in several other contexts, so the agency and practitioners are familiar with it and the agency has significant experience applying such a standard. See 19 CFR 351.216(c), 351.218(d)(3)(iv), 351.218(e)(1)(iii), 351.302(b), 351.307(b)(1)(iv). Allegations of misconduct by an attorney or non-attorney representative in an administrative proceeding will be reviewed to ensure that there are adequate or substantial grounds supporting the allegation and the affected party will have an opportunity to present his or her views before any sanction is imposed.

Comment 4—What Is "Improper Conduct"

Commenters have suggested that the Department further define "improper conduct" so that practitioners understand what conduct is and is not acceptable. Included within one comment was an inquiry concerning the possible effect of suspension or disbarment by another agency.

Response: Because of the breadth and variety of proceedings involving practitioners before the Department, we are not able to define every possible act that may be encompassed by the term "improper conduct." Indeed, there may be some types of "improper conduct" in the future that we simply cannot contemplate at this time. Further, the Department is concerned that any attempt to specifically define "improper conduct" would be deemed by certain practitioners to be an exhaustive list. It is the Department's intent to maintain the integrity of its proceedings and the agency will proceed to review any allegations of misconduct that may arise on a case-by-case basis. The Department can identify, however, certain conduct by attorneys and non-attorney representatives that directly affects the integrity of its proceedings and that would be considered improper. Clearly improper conduct includes, but is not limited to, knowingly providing incorrect information to the agency; knowingly making misrepresentations of fact or law; knowingly making false accusations in a proceeding; failing to engage in reasonable diligence including failure to exercise such diligence in the preparation and/or review of submissions; and assisting an attorney or non-attorney representative who has been suspended or disbarred from practicing before the Department during such disbarment or suspension to work on matters pending before the agency.

The Department will have to examine on a case-by-case basis the circumstances surrounding an attorney's or non-attorney representative's suspension or disbarment by another federal agency. Certain circumstances surrounding a suspension or disbarment may call into question an attorney's or representative's ability to practice before the Department, such as if the practitioner were suspended or disbarred for perpetrating a fraud, misrepresentation, perjury, or bribery upon another agency.

This rule is not intended to cover ethical conflicts uniquely within the province of local Bar authorities. For instance, the Department will not consider claims that a prior attorney refuses to provide a client's file to the current attorney or that a former law firm lawyer is representing a new client whose interest conflicts with the attorney's former clients. Additionally, parties should not file requests covering such matters with the Department believing that the Department will notify appropriate Bar counsel of the possible ethical conflict. The Department will not entertain such requests and will not refer such conflicts to Bar counsel. Instead, to the extent a law firm or individual attorney believes that an ethical breach is occurring or has occurred, they should follow the appropriate professional responsibility guidelines and ethical canons.

Comment 5—Procedural Safeguards

Certain commenters express concern about what they deem to be a lack of procedural safeguards protecting attorneys and non-attorney representatives. Specifically, the commenters assert that the agency should provide more than just a mere opportunity to present views, and that affected parties should have the right to review and respond to evidence forming the basis of any potential disciplinary action. Other commenters suggest that agency personnel involved in a prospective disciplinary proceeding should be independent from the personnel conducting the underlying administrative proceeding, similar to the agency's Administrative Protective Order (APO) practice. One commenter has suggested that the Department designate a contact person or office to handle misconduct inquiries. Another commenter asserts that the Department is required to establish procedures to protect client confidences in the defense of a prospective disciplinary action and to permit reference to APO information in defense of an action. Another commenter appreciated the Department's intention to provide practitioners with the opportunity to provide their views to the agency before the imposition of sanctions indicating that adequate due process must be provided.

Response: Before issuing this rule, the Department considered the process to be followed in the event that an allegation of misconduct is received or if the agency is otherwise aware of the misconduct. The Department believes that the existence of the regulation will serve to remind practitioners of their responsibilities such that the regulation may not be heavily used. The agency intends to develop specific procedures for handling misconduct allegations as it proceeds and expects to refine such procedures as it gains experience with misconduct claims. Although the Department may use the agency's APO regulations as guidance, the Department does not presently envision adopting the lengthy process contained in those regulations. For now, it is sufficient that the affected party will be afforded the opportunity to provide his or her views to the agency. The Department believes that this will permit potentially affected parties an opportunity to review and respond to the allegations and the evidence. It is not the Department's intention to require attorneys to breach client confidences. However, attorneys and non-attorney representatives are

reminded that a successful practice before the Department requires due diligence. With respect to misconduct involving information covered by an APO, the agency will have to address such a situation if it arises under this rule. The Department agrees with the suggestion that the personnel involved in administering the underlying administrative proceeding should not be involved in a misconduct investigation once an allegation is made or in determining the proper sanction for the misconduct. The Department has not yet determined whether a specific person or office will be responsible for reviewing misconduct inquiries but will continue to consider the matter as it gains experience administering this new regulation. For now, parties may direct such allegations to the Deputy Assistant Secretary for Import Administration at the filing address set forth in 19 CFR 351.303(b) of our regulations.

Comment 6—Public Register of Sanctioned Attorneys and Representatives

Several commenters take issue with the Department's stated intention of maintaining a public register of attorneys and representatives who may be suspended or barred from practice before the agency. Some suggest that the Department simply publish the offenders' names in the **Federal Register** along with the periods for such suspension or disbarment thereby obviating the need to maintain a separate registry. Others believe that a public registry is not warranted noting that the ITC's comparable rule has no such provision and that consistency between the two regulations would be beneficial to all parties. One commenter asserts that the maintenance of an internal, non-public list should be sufficient to prevent such persons from practicing while another is concerned that the registry might contain names of attorneys, who through an inadvertent bracketing error, have violated the Department's APO procedures and that such public release would be overly harsh. Others state that, because the proposed regulation, like the ITC's regulation, contemplates the issuance of public reprimands, where appropriate, there is no need for a public registry. One of those commenters also expressed concern that in today's internet age, publicizing violators' names will survive long after the temporary nature of any suspension.

Another commenter suggests that the Department delete any reference to a private reprimand arguing that the rule will be less effective if the public and trade community are not aware of reprimands and that the possibility of private reprimands affects the transparency of the proposed rule.

Response: The public nature of the registry is intended to serve as a deterrent to prevent attorneys and non-attorney representatives from engaging in improper conduct with respect to their practice before the agency. Whether the deterrent is created by notification in the **Federal Register** or through maintenance of a public registry is largely a distinction without a difference. The Department recognizes in this rule that there may be situations that do not necessitate sanctions or disbarment from practicing before the agency—both of which would result in public disclosure—and that a private reprimand would be appropriate in the circumstances.

This rule is not intended to interfere or overlap with the APO regulations located at 19 CFR 354.1 which have been in place for many years. Consequently, Departmental action taken pursuant to this rule is not intended to encompass behavior regulated by the APO regulations. If misconduct is alleged involving information covered by an APO, the Department will address the situation at that time. Inadvertent APO bracketing alone should not result in an attorney's or non-attorney representative's name being placed on the public registry maintained for violations of this rule (although, the APO regulations do not mandate that sanctions be private).

With respect to comments that publication is "draconian" or will survive long-past the actual suspension in the internet age, we note that at a minimum, attorneys are aware that publicizing names of those found to have violated their professional responsibilities is undertaken routinely by local disciplinary tribunals. For example, the D.C. Office of Bar Counsel and Board on Professional Responsibility publish the names of reprimanded, suspended and disbarred attorneys on a monthly basis in the *Washington Lawyer: The Official Journal of the District of Columbia Bar*, along with a description of the violation. Disciplinary information is also available on the District of Columbia Bar Web site *www.dcbar.org*. Publicizing names of those who violate this rule is thus consistent with the practice of other disciplinary tribunals.

Comment 7—Effect on Those Working With Sanctioned Attorney or Non-attorney Representative

The Department received comments indicating that the proposed rule does not address the effect that sanctioning an individual working in a firm or with co-counsel might have upon the firm or co-counsel. The same commenter also expressed concern that the proposed rule does not address whether a "lead attorney" will be held responsible for another person's misconduct.

Response: Depending upon the nature of the misconduct allegation, the Department may be required to investigate more than one practitioner at a firm and will consider all allegations on a case-by-case basis. Practitioners whose names appear on submissions before the agency, including certifications filed pursuant to 19 CFR 351.303, are subject to disciplinary action pursuant to the rule. It is not the Department's intent at this time to hold one practitioner responsible for the conduct of others; however, if a submission contains multiple names, all named practitioners may be responsible for any misconduct associated with the submission. Consequently, if the Department determines that a submission contains misrepresentations and, for example, three practitioners are listed on the submission, then depending upon the results of the Department's investigation, it may be appropriate for all three practitioners to be sanctioned. In general, the Department does not intend to sanction entire firms when a particular representative is determined to have engaged in misconduct, unless the facts and evidence support such a sanction. The Department does, however, expect that firms will ensure that any sanctioned individuals abide by the terms of any sanction and will not permit such individuals to work on Department matters during the pendency of any sanction. In fact, such action could itself be deemed to be improper conduct and subject the firm to sanctions.

Comment 8—Who May Appear Before the Department

Commenters have variously suggested that the Department require licenses to appear before it, that non-attorney representatives may not appear before the agency and that permitting them to do so violates D.C. Bar rules, that the Department should only permit entities to be represented by "approved" representatives subject to discipline, and that foreign-based non-attorneys should not be permitted to appear before the agency. Certain commenters have also suggested that the Department preclude non-attorney representatives from raising legal issues.

Response: The Department's regulations for many years have permitted attorneys and non-attorney

representatives to appear before the agency in representative capacities and have regulated their appearance without requiring an application or a license to do so and without restricting the issues covered by either type of representative. This rule does not change that practice in any respect. The rule expressly identifies persons who may appear before the agency, including both attorneys and non-attorney representatives, and identifies possible sanctions for misconduct by such representatives. Nothing presently precludes the Department from disciplining any representatives including attorneys who appear before it. Indeed, both attorneys and non-attorney representatives have been subject to possible discipline for years for violation of the Department's APO procedures. The Department recognizes that some agencies require certain non-attorney practitioners to enroll to practice before them (for instance, ATF). Trade remedies, however, is not a regulated industry warranting such enrollment.

The Department shares the concern expressed by one commenter that this rule may not remedy misconduct by all practitioners, specifically those who do not operate in the United States. To the extent a foreign non-attorney representative (a foreign attorney, not licensed in the United States, a U.S. possession or territory, may not appear as an attorney in Department proceedings and may only appear as a non-attorney representative) is found to have violated the rule, he or she will be subject to the same disciplinary sanctions by the Department as U.S. non-attorney representatives. Depending upon the nature of the misconduct, such an individual may thus receive a reprimand, a suspension for a period of time or disbarment from appearing before the agency and with respect to the latter two, would not be permitted to appear before the Department or sign submissions filed with the Department. To the extent a commenter is concerned that the suspended or disbarred foreign non-attorney representative could then begin to work for other companies behind the scenes, we agree that the Department's ability to police such matters is limited; however, the Department expects that any such cases would be exceptional and will seek to address them consistent with their particular facts.

With respect to disciplining attorneys who appear before the Department, many federal agencies undertake similar endeavors. We agree that relevant Bar associations and Bar counsel are well able to discipline attorneys and the Department expects to refer the names of attorneys that the Department determines have engaged in misconduct to the appropriate Bar counsel.

Classification

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 USC 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, at the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this rule. As a result, the conclusion in the proposed rule remains unchanged and a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Countervailing duties.

Dated: April 11,2013.

Paul Piquado,

Assistant Secretary for Import Administration.

For the reasons stated above, the Department amends 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 et seq.; and 19 U.S.C. 3538.

■ 2. Add § 351.313 to subpart C to read as follows:

§ 351.313 Attorneys or representatives.

In general. No register of attorneys or representatives who may practice before the Department is maintained. No application for admission to practice is required. Any person desiring to appear as attorney or representative before the Department may be required to show to the satisfaction of the Secretary his acceptability in that capacity. Any attorney or representative practicing before the Department, or desiring so to practice, may for good cause shown be suspended or barred from practicing before the Department, or have imposed on him such lesser sanctions (e.g., public or private reprimand) as the Secretary deems appropriate, but only after he has been accorded an opportunity to present his views in the matter. The Department will maintain a public register of attorneys and representatives suspended or barred from practice. "Attorney" pursuant to this subpart and "legal counsel" in § 351.303(g) have the same meaning. "Representative" pursuant to this subpart and in § 351.303(g) has the same meaning.

[FR Doc. 2013–09041 Filed 4–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0161]

Special Local Regulations; Recurring Marine Events in the Seventh Coast Guard District; St. Croix, U.S.V.I.

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the Ironman St. Croix 70.3 Triathlon from 5 a.m. until 10 a.m. on May 5, 2013. This action is necessary to ensure safety of life on navigable waters of the United States during the Ironman St. Croix 70.3 Triathlon. During the enforcement period, the special local regulation will consist of a race area, which will exclude the presence of any and all non race participants and non safety vessels. Non-participants and non safety vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the area unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This regulation will be enforced from 5 a.m. until 10 a.m. on May 5, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation pertaining to a Half Ironman Triathlon on the first Sunday in May for the annual Ironman St. Croix 70.3 Triathlon, located in 33 CFR 100.701 Table 1 from 5 a.m. until 10 a.m. on May 5, 2013. The 2013 event is sponsored by Project St. Croix, Inc.

Under the provisions of 33 CFR 100.701, a vessel may not enter the regulated area, unless it receives permission from the COTP. Vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, or impede the race participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552 (a). The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: April 5, 2013.

D.M. Flaherty,

Captain, U.S. Coast Guard. Acting Captain of the Port, San Juan.

[FR Doc. 2013–09033 Filed 4–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0086]

RIN 1625–AA00

Safety Zone; Corp. Event Finale UHC, St. Thomas Harbor; St. Thomas, U.S.V.I.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of St. Thomas Harbor in St. Thomas, U.S. Virgin Islands during the Corp. Event Finale UHC, a firework display. The event is scheduled to take place on Wednesday, April 24, 2013, and will entail a barge being positioned near the St. Thomas Harbor channel from which fireworks will be lit. The safety zone is necessary to ensure the safety of vessels, spectators, and the public on the navigable waters of the United States during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

DATES: This rule is effective from 8:00 p.m. until 10:00 p.m. on April 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0086. 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 Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@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. Regulatory History and Information

The Coast Guard published a notice of proposed rulemaking (NPRM) on March 14, 2013, in the **Federal Register** (78 FR 16211). The Coast Guard received no public comments in the docket and no requests for public meetings.

Under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard did not receive information from the event sponsor early enough to both publish a NPRM and allow 30 days after publication before making this rule effective. The Coast Guard chose to notify the public and seek comment on this rule by publishing a NPRM. As such, it is impracticable to delay the effective date by 30 days. This final rule is necessary to protect the public and commercial traffic during the firework display, and therefore, must be effective by the start of the event on April 24, 2013.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On April 24, 2013, Fireworks by Grucci and Left Lane Productions are sponsoring the Corp. Event Finale UHC, a firework display event. The event will be held on the waters of St. Thomas Harbor, St. Thomas, U. S. Virgin Islands. The fireworks will be launched from a barge stationed near the St. Thomas Harbor channel.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in the docket for this rulemaking. We made no changes to the regulation as originally proposed.

This safety zone encompasses waters in St. Thomas Harbor. The zone is effective from 8 p.m. until 10 p.m. on April 24, 2013. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port San Juan or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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 economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for

only two hours; (2) persons and vessels may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 zero 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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of St. Thomas Harbor encompassed within the safety zone from 8 p.m. until 10 p.m. on April 24, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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 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 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 a safety zone around a barge during a fireworks display, that will be enforced for two hours. This rule is categorically excluded under paragraph 34(g) 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**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0086 to read as follows:

§ 165.T07–0086 Special Local Regulation; Corp. Event Finale UHC, St. Thomas Harbor; St. Thomas, U. S. Virgin Islands.

(a) *Regulated Area.* The following regulated area is established as a safety zone: All waters within an 800 foot radius of 18°18.205 N, 64°55.556 W. All coordinates are North American Datum 1983. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

(b) *Definition.* The term "designated representative" means U.S. Coast Guard Patrol Commanders, including U.S. Coast Guard coxswains, petty officers, and other officers operating U.S. Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port San Juan or those participating in the firework display.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

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

(d) *Enforcement Date.* This rule will be enforced on Wednesday, April 24, 2013, from 8:00 p.m. until 10:00 p.m.

Dated: April 5, 2013.

D.M. Flaherty,

Captain, U.S. Coast Guard, Acting, Captain of the Port San Juan.

[FR Doc. 2013–09027 Filed 4–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133E–1]

Final Priority; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Engineering Research Center (RERC) on Hearing Enhancement under the Disability and Rehabilitation Research Projects and Centers program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend to use this priority to improve outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective May 17, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

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

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to improve the health and functioning, employment and community living and participation of individuals with disabilities through comprehensive programs of research, engineering, training, technical assistance, and knowledge translation and dissemination. The Plan reflects NIDRR's commitment to quality, relevance and balance in its programs to ensure appropriate attention to all aspects of well-being of individuals with disabilities and to all types and degrees of disability, including individuals with low incidence and severe disability. This notice announces a priority that NIDRR intends to use for an RERC competition in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, and support the employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers (RERCs) Program The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation,

and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERCs program can be found at: *www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on January 17, 2013 (78 FR 3864). That notice contained background information and our reasons for proposing the priority.

Public Comment: In response to our invitation in the NPP, we did not receive any comments on the proposed priority.

Final Priority:

Hearing Enhancement.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Engineering Research Center (RERC) on Hearing Enhancement. The RERC must focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of individuals with disabilities.

Under this priority, the RERC must research, develop, and evaluate technologies, methods, and systems that will improve the accessibility, usability, and performance of hearing enhancement technologies (e.g., hearing aids, ear molds, assistive listening devices, and implants) for people with hearing loss, including but not limited to people with untreated hearing loss. This includes: (a) Addressing technological factors that prevent or reduce adoption of and benefit from hearing enhancement devices (e.g., hearing aid and implant design features, ear mold fit and comfort, and assistive listening devices and technologies for group settings); (b) improving the compatibility of hearing enhancement technologies with technologies such as cell phones, mobile devices, television, and the Internet; (c) improving the performance of hearing enhancement devices in social environments (e.g., school, work, recreation, and entertainment); and (d) enhancing aural rehabilitation and consumer involvement strategies (e.g., online access to peer and expert input on hearing technologies and communication strategies; consumer focus groups and surveys; and consumer beta testing and review of products) to maximize hearing enhancement in real-life settings. The RERC must involve key stakeholders (including but not limited to people with hearing loss) in the design and implementation of RERC activities.

Requirements applicable to all RERC priorities:

The RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved usability and accessibility of products and environments in the RERC's designated priority research area. The RERC must contribute to this outcome by emphasizing the principles of universal design in its product research and development. For purposes of this section, the term "universal design" refers to the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

(5) Improved awareness and understanding of cutting-edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with relevant stakeholders, including NIDRR; individuals with disabilities and their representatives; disability organizations; service providers; editors of professional journals; manufacturers; and other interested parties regarding trends and evolving product concepts related to its designated priority research area.

(6) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its designated priority research area.

(7) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, a plan to disseminate its research results to individuals with disabilities and their representatives; disability organizations; service providers; professional journals; manufacturers; and other interested parties. In meeting this requirement, each RERC may use a variety of mechanisms to disseminate information, including state-of-the-science conferences, webinars, Web sites, and other dissemination methods; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority

(34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. Establishing new RERCs based on the final priority will generate new knowledge through research and development and improve the lives of individuals with disabilities. The new RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to fully participate in their communities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

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

Dated: April 12, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–09079 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133A–8]

Final Priority; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability Rehabilitation Research Project (DRRP) on Knowledge Translation for Technology Transfer under the Disability and Rehabilitation Research Projects and Centers program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective May 17, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program

This notice of final priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice announces a priority that NIDRR intends to use for a DRRP competition in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

The purpose of DRRPs, which are under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the priority on *General DRRP Requirements* that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on January 15, 2013 (78 FR 2923). That notice contained background information and our reasons for proposing the particular priority.

There are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, 10 parties submitted comments on the proposed priority. Nine of these parties submitted comments that are wholly supportive of NIDRR's proposed Center. One commenter submitted supportive comments, as well as two specific suggestions for the priority.

Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One commenter suggested that NIDRR explicitly require the Center to collaborate with other NIDRR-funded knowledge translation grantees.

Discussion: NIDRR agrees with this suggestion. However, NIDRR plans to manage this collaboration through the General Disability and Rehabilitation Research Projects (DRRP) Requirements priority. These requirements will be provided in the notice inviting applications and the application package for this competition. The relevant requirement states that all DRRPs must "Coordinate on research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer." After an award is made under this priority, the NIDRR Project Officer will work with the grantee to identify the appropriate NIDRR-funded projects with which the Center must collaborate, including other NIDRR-funded knowledge translation grantees.

Changes: None.

Comment: One commenter suggested that NIDRR require the Center to identify effective approaches that have been used by NIDRR technology grantees to bring their products to the marketplace.

Discussion: NIDRR generally agrees that the identification of effective approaches to technology transfer may

help fulfill the stated outcomes of the priority. However, we have purposefully left such prescriptive detail out of the priority so that applicants can propose a wide range of activities to meet the outcome of improved technology transfer among NIDRR's technology grantees. The merits of each application will be determined by the peer review process.

Changes: None.

FINAL PRIORITY:

DRRP for Center on Knowledge Translation for Technology Transfer

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project to serve as the Center on Knowledge Translation for Technology Transfer (Center). The Center must conduct rigorous research, development, technical assistance, dissemination, and utilization activities to increase successful technology transfer of rehabilitation technology products and devices developed by NIDRR-funded technology grantees.

In planning and conducting all activities, the Center must partner with relevant stakeholders such as NIDRR's technology grantees, trade and professional associations, industry representatives, individuals with disabilities, and others.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Increased rate of successful technology transfer of rehabilitation technology products developed by NIDRR-funded technology grantees to the marketplace, into engineering standards, or into other intended applications;

(b) Increased understanding among rehabilitation engineers and others engaged in disability research and development of technology transfer processes and practices that lead to successful transfer of rehabilitation technology products to the marketplace, into engineering standards, or into other intended applications;

(c) Increased capacity of NIDRR's technology grantees to plan and to engage in technology transfer activities.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for

administering the Department's programs and activities.

Summary of potential costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of the final priority is that establishing new DRRPs will improve the lives of individuals with disabilities. The new DRRPs will provide support and assistance for NIDRR grantees as they generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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

Dated: April 12, 2013.

Michael Yudin,

Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–09060 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0091; FRL–9803–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Delaware State Implementation Plan (SIP) submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on January 11, 2013. The SIP revision addresses requirements of the Clean Air Act (CAA) for all criteria pollutants of the national ambient air quality standards (NAAQS) in relation to State Boards. EPA is approving this SIP revision in accordance with the requirements of the CAA.

DATES: This rule is effective on June 17, 2013 without further notice, unless EPA receives adverse written comment by May 17, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0091 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0091, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0091. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 128 of the CAA requires SIPs to comply with the requirements regarding State Boards. Section 110(a)(2)(E)(ii) of the CAA also references these requirements. Section 128(a) of the CAA requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members

represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

The requirements of CAA section 128(a)(1) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of CAA section 128(a)(2), however, are applicable to Delaware because DNREC's cabinet level Secretary (i.e., the head of an executive agency) makes the referenced decisions.

II. Summary of SIP Revision

On January 11, 2013, DNREC submitted a SIP revision that addresses the requirements of CAA sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants NAAQS in relation to State Boards. Delaware's statutes governing the relevant section 128 requirements are found in 29 Delaware Code Chapter 58, "Laws Regulating the Conduct of Officers and Employees of the State." The conduct of the DNREC Secretary, and that of his employees, is subject to the requirements of 29 Delaware Code Chapter 58. State employees are required to follow the laws in Chapter 58 regarding employee conduct. Delaware is incorporating only certain relevant provisions of Chapter 58 into this SIP revision.

Chapter 58, Subpart I, State Employees', Officers' and Officials' Code of Conduct

Section 5804. Definitions

Section 5805. Prohibitions relating to conflicts of interest

(a) Restrictions on exercise of official authority.

(b) Restrictions on representing another's interest before the State.

(c) Restrictions on contracting with the State.

(f) Criminal sanctions.

(g) Contracts voidable by court action.

(h) Exceptions for transportation contracts with school districts.

Section 5806. Code of conduct

(c) Financial interest in any private enterprise directly involved in decisions.

(d) Financial interest in any private enterprise subject to the regulatory jurisdiction.

Chapter 58, Subpart II, Financial Disclosure

Section 5812. Definitions

Section 5813. Report disclosing financial information

Section 5813A. Report disclosing council or board membership

Section 5815. Violations; penalties; jurisdiction of Superior Court

III. EPA's Analysis of Delaware's SIP Revision

CAA sections 128 and 110(a)(2)(E)(ii) require that each state's SIP demonstrates how State Boards who approve CAA permits or enforcement orders disclose any potential conflicts of interest. DNREC approves all CAA permits and enforcement orders in Delaware. DNREC is an executive agency that acts through its Secretary or a delegated state employee subordinate. DNREC submits that public disclosure of any potential conflict in the SIP as required by CAA sections 128 and 110(a)(2)(E)(ii) is satisfied by 29 Delaware Code Chapter 58.

Chapter 58 applies to state employees and prohibits their exercise of official duties when there is a conflict of interest. The SIP revision reflects this existing law and demonstrates that Delaware complies with the requirements of CAA sections 128 and 110(a)(2)(E)(ii).

IV. Final Action

EPA is approving the Delaware SIP revision that addresses the requirements of CAA sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants NAAQS. The SIP revision, which consists of relevant provisions of 29 Delaware Code Chapter 58, meets the requirements of CAA sections 128 and 110(a)(2)(E)(ii). EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 17, 2013 without further notice unless EPA receives adverse comment by May 17, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments 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.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP which meets CAA sections 128 and

110(a)(2)(E)(ii) 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 June 17, 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, approving the SIP revision for purposes of meeting the CAA sections 128 and 110(a)(2)(E)(ii) requirements for all criteria pollutants of the NAAQS in relation to State Boards, 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.

Dated: April 3, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

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 I—Delaware

■ 2. Section 52.420 is amended by:

■ a. Revising table heading in paragraph (c) to read "EPA-Approved Regulations and Statutes in the Delaware SIP."

■ b. The Table in paragraph (c) is amended by adding entries for Chapter 58 at the end of the table.

■ c. The table in paragraph (e) is amended by adding an entry for "CAA sections 128 and 110(a)(2)(E)(ii) requirements in relation to State Boards for all criteria pollutants" at the end of the table.

The additions and revisions read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP

State regulation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Chapter 58 Laws Regulating the Conduct of Officers and Employees of the State				
Subpart I State Employees', Officers' and Officials' Code of Conduct				
Section 5804 ..	Definitions	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	
Section 5805 ..	Prohibitions relating to conflicts of interest.	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	Paragraphs (a), (b), (c), (f), (g), (h).
Section 5806 ..	Code of conduct	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	Paragraphs (c) and (d).
Subpart II Financial disclosure				
Section 5812 ..	Definitions	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	
Section 5813 ..	Report disclosing financial information.	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	Paragraphs (a), (b), (c) and (d).
Section 5813A	Report disclosing council and board membership.	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	Paragraphs (a), and (b).
Section 5815 ..	Violations; penalties; jurisdiction of Superior Court.	12/4/12	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	Paragraphs (a), (b), (c) and (d).

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
CAA sections 128 and 110(a)(2)(E)(ii) requirements in relation to State Boards for all criteria pollutants.	Statewide	1/11/13	4/17/13 [*Insert* **Federal Register** *page number where the document begins and date*].	

[FR Doc. 2013–08926 Filed 4–16–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0542; FRL–9803–6]

Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program From Grain Sorghum; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: In the December 17, 2012 **Federal Register**, EPA published a final rule that determines that grain sorghum ethanol qualifies as a renewable fuel under the RFS Program based on a lifecycle greenhouse gas analysis for grain sorghum ethanol. This action corrects typographical errors contained in the December 17, 2012, final rule.

DATES: Effective on April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Jefferson Cole, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 (MC: 6041A); telephone number: 202–564–1283; fax number: 202–564–1177; email address: *cole.jefferson@epa.gov*.

SUPPLEMENTARY INFORMATION: This action corrects typographical errors in the regulatory text section of the final rule published on December 17, 2012. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. There is good cause for making this action final without prior proposal and opportunity for comment because the changes to this rule are minor corrections of typographical errors, are noncontroversial, and do not substantively change the agency actions taken in the final rule. Notice and comment is unnecessary, because these changes do not affect the rights or obligations of outside parties, and do not alter the requirements of the regulations published on December 17, 2012, except to the extent that the regulatory provisions are amended to correct typographical errors. We find that this constitutes good cause under 5 U.S.C. 553(b)(B). Section 307(d) of the CAA states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA § 307(d)(3)). The promulgation or revision of regulations for fuels or fuel additives under section 211 of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA.

Specifically, EPA is correcting the final rule to indicate that the recordkeeping requirements for the grain sorghum ethanol pathway regulatory text in 40 CFR Section 80.1454(k)(1) should reference 40 CFR 80.1454 (f)(10) rather than (f)(1). *See* 77 FR 74592. In addition, EPA is amending 40 CFR 80.1454(k)(2) to include non-substantive introductory text mistakenly omitted from the final rule.

EPA also finds that there is good cause under APA section 553(d)(3) for these corrections to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action merely corrects non-substantive errors in the regulatory text of a prior rulemaking. For these reasons, EPA finds good cause under APA section 553(d)(3) for these corrections to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order (EO) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). The corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The corrections do not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132, Federalism (64 FR 43255, August 10, 1999).

This action also does not significantly or uniquely affect the communities of tribal governments, as specified by EO 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The corrections also are not subject to EO 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under EO 12866.

The corrections do not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 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 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 8, 2013.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

40 CFR part 80 is amended as follows:

PART 80—[AMENDED]

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(1) and 7601(a).

■ 2. Section 80.1454 (k)(1) introductory text and (k)(2) introductory text are revised to read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(k)(1) Biogas and electricity in pathways involving feedstocks other than grain sorghum. A renewable fuel producer that generates RINs for biogas or electricity produced from renewable biomass (renewable electricity) for fuels that are used for transportation pursuant to § 80.1426(f)(10) and (11), or that uses process heat from biogas to generate RINs for renewable fuel pursuant to § 80.1426(f)(12) shall keep all of the following additional records:

* * * * *

(2) Biogas and electricity in pathways involving grain sorghum as feedstock. A renewable fuel producer that produces fuel pursuant to a pathway that uses grain sorghum as a feedstock shall keep all of the following additional records, as appropriate:

* * * * *

[FR Doc. 2013–09068 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0134; FRL–9382–6]

Methyl Jasmonate; 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 methyl jasmonate in or on all food commodities when applied pre-harvest. Becker Underwood, Inc. 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 methyl jasmonate when applied pre-harvest.

DATES: This regulation is effective April 17, 2013. Objections and requests for hearings must be received on or before June 17, 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–2012–0134. 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: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; email address: *pfeifer.chris@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, 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–2012–0134 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 June 17, 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–2012–0134, 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 May 2, 2012 (77 FR 25957) (FRL–9346–1), 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 1F7941) by Becker Underwood, Inc.; 801 Dayton Avenue, Ames, IA 50010. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of methyl jasmonate. That document referenced a summary of the petition prepared by the petitioner Becker Underwood, Inc., which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

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 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 the Agency 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 has 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 has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Methyl jasmonate is a biochemical pesticide active ingredient intended for use as a systemic acquired resistance (SAR) inducer on a variety of agricultural crops. It is applied pre-harvest as a seed treatment and an in-furrow soil treatment. Methyl jasmonate is a naturally occurring biochemical hormone found in most plants. It acts by eliciting plant defense responses in vulnerable seedlings. Methyl jasmonate is the principal compound of a class of plant hormones known as jasmonates, which are common to most plants but particularly concentrated in jasmine and honeysuckle. As a group, jasmonates are known to trigger plant responses to a variety of stresses. Methyl jasmonate, in particular, is known to bolster plant defenses against extreme temperature changes and attacks by insects, fungi and bacteria. It has a non-toxic mode of action and is present in most fruits, with especially high concentrations in apples and strawberries. As such, it is already a normal part of the human diet.

With regard to dietary risks related to pesticidal use, EPA has determined that the information submitted by the applicant satisfies the required human health assessment data requirements and demonstrates that any potential residues of methyl jasmonate in or on foods do not pose a toxicological risk. First, methyl jasmonate is a ubiquitous and naturally occurring plant hormone that is already regarded as a safe and natural part of the human diet through such commonly consumed fruits as apples and strawberries (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Data demonstrate that humans, including infants, regularly ingest methyl jasmonate in fruits and plants at much higher levels than what can be expected to be ingested from the pesticidal use of this active ingredient (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Second, the toxicity data demonstrate that methyl jasmonate is virtually non-toxic to humans and other non-target organisms, through all routes of exposure, including oral (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Third, methyl jasmonate has been assessed and approved by Food and Agriculture Organization/World Health Organization (FAO/WHO) as a food additive (JECFA, 2005). Their robust assessment concluded that methyl jasmonate was non-toxic as a food additive, establishing a threshold of 540 microgram/day (ug/day), far above the maximum anticipated pesticidal residues of 373 ug ai/kg of seed (JECFA, 2005). Fourth, no toxicological endpoints have been identified for methyl jasmonate through any route of exposure (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Fifth, methyl jasmonate's non-toxic mode of action has been well established (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Further, methyl jasmonate biodegrades readily within four weeks (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Because applications necessarily occur early in

the growing season due to its mode of action as a SAR inducer on seeds and seedlings, no significant pesticidal residues are anticipated for any harvested foods. Data show that any potential exposures are expected to be well within the range of exposures that would occur naturally, and are therefore not of concern (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). For all of the foregoing reasons, EPA finds that methyl jasmonate is virtually non-toxic and poses no dietary risks to humans.

Summaries of the toxicological data submitted in support of this exemption from the requirement of a tolerance follow:

A. Acute Toxicity

Acute toxicity studies, submitted to support the registration of the products containing methyl jasmonate, confirm a virtually non-toxic profile and support the finding that this active ingredient poses no significant human health risk with regard to new food uses. The acute toxicity data show virtual non-toxicity for all routes of exposure and suggest that any dietary risks associated with this naturally occurring plant hormone would be inconsequential.

1. The acute oral median lethal doses (LD_{50}s) in rats were greater than 3,129 milligrams per kilogram (mg/kg) and confirmed virtual non-toxicity through the oral route of exposure. There were no observed toxicological effects on the test subjects in the acute oral study submitted (Master Record Identification Number (MRID No.) 48653901). Methyl jasmonate is Toxicity Category III for acute oral toxicity.

2. The acute dermal median lethal dose (LD_{50}) in rats was greater than 5,050 mg/kg. There were no clinical signs of toxicity or dermal irritation throughout the study. The data substantiate methyl jasmonate's virtual non-toxicity through the dermal route of exposure. (MRID No. 48653902). Methyl jasmonate is Toxicity Category IV for acute dermal toxicity.

3. The acute inhalation median lethal concentration (LC_{50}) was greater than 2.23 milligrams per liter (mg/L) in rats and showed no consequential inhalation toxicity (MRID No. 48653903). Methyl jasmonate is Toxicity Category III for acute inhalation toxicity.

4. A skin irritation study on rabbits indicated that methyl jasmonate was not irritating to the skin (MRID No. 48653905). Methyl jasmonate is Toxicity Category IV for dermal irritation.

5. Data indicated methyl jasmonate is not a dermal sensitizer (MRID No. 48653906).

Data indicate that methyl jasmonate is not acutely toxic. No toxic endpoints were established in any of the acute toxicity studies, and no significant toxicological effects were observed in any of the acute toxicity studies.

B. Subchronic Toxicity

Based on its biodegradation properties, residues of methyl jasmonate are not expected to result in significant dietary exposure beyond the levels expected in background dietary exposures. Sufficient information (MRID No. 48653908) on methyl jasmonate was submitted to satisfy requirements for subchronic toxicity testing [i.e., 90-day Oral (OCSPP 870.3100), 90-day Inhalation (OCSPP 870.3465), and 90-day Dermal (OCSPP 870.3250)]. The information submitted was found acceptable based on the toxicological and exposure profile of methyl jasmonate, summarized below.

Methyl jasmonate is a naturally occurring compound found in fruits and other plants and is already consumed in the human diet. This compound has a history of safe dietary exposure (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). The proposed use pattern of this active ingredient results in exposure levels that are lower than the current estimated dietary exposure (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Oral exposure of children and adults to methyl jasmonate calculated from food consumption information from the U.S. EPA Exposure Factors Handbook (U.S. EPA, 2009) were found to be less than the residues resulting from a maximum application. Methyl jasmonate was reviewed by the Joint FAO/WHO Expert Committee on Food Additives (JECFA, 2005) and was identified as a non-toxic flavoring agent. Methyl jasmonate is not known or expected to be metabolized differently following exposure by the dermal route than the oral route, and a literature search yielded no reports of subchronic dermal toxicity effects in rodents or humans from methyl jasmonate exposure (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Prolonged dermal exposure is not expected because the product is not purposely applied to the skin and because handlers and applicators are required to wear appropriate personal protective equipment (PPE). There is a long history of safe inhalation exposure to methyl jasmonate because it is a naturally occurring volatile component of common plants. The potential inhalation exposure concentration from use of products containing methyl jasmonate will be less than or equal to naturally occurring concentrations from crops and other plants (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Significant exposure to humans is not anticipated based on low application rates and, more importantly, rapid degradation in the environment (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012).

C. Developmental Toxicity and Mutagenicity

The applicant provided adequate information (MRID No. 48653908) to fulfill the developmental toxicity and mutagenicity data requirements [i.e., Prenatal Development (OCSPP 870.3700), Bacterial Reverse Mutation Test (OCSPP 870.5100), *In vitro* Mammalian Chromosome Aberration (OCSPP 870.5375), and *In vitro* Mammalian Cell Assay (OCSPP 870.5300)]. The submitted information is sufficient to confirm that there are no expected dietary or non-occupational risks of mutagenicity with regard to new food uses. The information submitted was found acceptable based on the toxicological and exposure profile of methyl jasmonate, summarized below.

There is a long history of safe dietary exposure to methyl jasmonate because it naturally occurs in apples, strawberries and mangos (Lalel *et al.*, 2003), fruits that are part of the normal diet. The potential oral exposure to methyl jasmonate from the proposed uses of methyl jasmonate is well below the average exposure for women of child-bearing age from the consumption of fruits that naturally contain methyl jasmonate, and also well below the Joint FAO/WHO Expert Committee on Food Additives (JECFA) human exposure threshold (Munro, 1999). Methyl jasmonate has been evaluated for safety by the FAO and determined to be metabolized to innocuous end products that are eliminated in the urine (Lalel *et al.*, 2003). A literature search yields no reports of genotoxicity in laboratory studies on methyl jasmonate (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Significant exposure to child-bearing women is not anticipated based on low application rates, appropriate PPE requirements on the label, and rapid degradation in the environment.

D. Effects on Endocrine Systems

There is no available evidence demonstrating that methyl jasmonate is an endocrine disruptor in humans. As a result, the Agency is not requiring information on the endocrine effects of methyl jasmonate at this time. However, the Endocrine Disruption Screening Program (EDSP) has established a protocol which guides the Agency in

selecting suspect ingredients for review, and the Agency reserves the right to require new information should the program require it. Presently, based on the lack of exposure and the virtually non-toxic profile of methyl jasmonate, no adverse effects to the endocrine are known or expected. Overall, the lack of evidence of endocrine disruption is consistent with methyl jasmonate's negligible toxicity profile and supports this exemption from the requirement of a tolerance.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in or on 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

Because of methyl jasmonate's ability to biodegrade quickly relative to the time it is to be applied on seeds or to soil near planting, the Agency does not anticipate significant residues being present in or on food at the time of consumption. Moreover, any residues that are present in or on food at the time of consumption as a result of pesticide use are likely to be indistinguishable from naturally occurring methyl jasmonate due to its ubiquitous presence in plants. Finally, the Agency believes that it is unlikely that any exposure to the residues of methyl jasmonate will result in dietary risks because of the non-toxic mode of action as a SAR inducer and the pesticide's virtually non-toxic profile.

1. *Food.* Exposure to residues of methyl jasmonate on foods is expected to be negligible. The application of methyl jasmonate is made directly to seeds through a contained seed-treatment or through in-furrow or soil drench applications. This application scenario prevents drift and minimizes exposure to humans. Although applications will result in minimal exposure, the Agency has calculated that exposures associated with maximum application rates are still lower than the current estimated dietary exposure for regular fruit consumption (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Further, the data indicate that methyl jasmonate is readily biodegradable within four weeks (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Because applications necessarily occur early in the growing season due to its mode of action as a SAR inducer on seeds and seedlings, no significant pesticidal residues are anticipated for any harvested foods. However, in the event of exposure to residues of methyl jasmonate, no dietary risks are anticipated. As described in Unit III, acute, subchronic, mutagenic and developmental studies and information support its nontoxic profile. Furthermore, it is already present in the human fruit and vegetable diet without any known detrimental effects. There is no information in the public literature suggesting any health issues to either animals or plants relative to this compound. It is estimated that humans consume at least .348 ug/day on average, based on EPA models for apple and strawberry consumption (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). Finally, the dietary use of methyl jasmonate as a food additive was approved by the Joint FAO/WHO Expert Committee on Food Additives, which found methyl jasmonate to be non-toxic at a conservative threshold of 540 ug/day. (JECFA, 2005). By comparison, maximum residues have been calculated to be 373 ug ai/kg of seed (Memorandum from Miachel Rexrode, Ph.D., July 19, 2012). In sum, minimal dietary exposure is expected; however, any potential dietary exposures would not be expected to pose any consequential risk, mainly due to methyl jasmonate's virtually non-toxic profile.

2. *Drinking water exposure.* Residues of methyl jasmonate are not expected to be present in drinking water because applications of methyl jasmonate are made directly to seeds, seedlings and soil. Methyl jasmonate residues are not expected to percolate through the soil because residues are not expected to persist beyond the time it would typically take for any residues to percolate into the groundwater. Nonetheless, given methyl jasmonate's virtually non-toxic profile as described in Unit III, risks from aquatic exposure would be negligible.

B. Other Non-Occupational Exposure

Non-occupational exposure is not expected because methyl jasmonate is intended for commercial use. The active ingredient is applied directly to seeds or agricultural furrows, and it degrades rapidly. Further, health risks are not expected from any pesticidal exposure to this active ingredient, no matter the circumstances. A February, 2013 Agency risk assessment of methyl jasmonate establishes that even a worst case exposure scenario involving prolonged and regular occupational exposures, which are not associated with this active ingredient, would pose negligible risks (Methyl Jasmonate BRAD, February 28, 2013). Methyl jasmonate is characterized by its biodegradability; low toxicity profile; nontoxic, SAR-inducing mode of action; and demonstrable lack of dietary effects.

1. *Dermal exposure.* Non-occupational dermal exposures to methyl jasmonate are expected to be negligible because of its directed agricultural use. Even in the event of dermal exposure to residues, the nontoxic profile of methyl jasmonate (as described in Unit III) is not expected to result in any risks through this route of exposure.

2. *Inhalation exposure.* Non-occupational inhalation exposures are not expected to result from the agricultural uses of methyl jasmonate. Any inhalation exposure associated with this new agricultural and commercial use pattern 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, the Agency 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 methyl jasmonate to share a common mechanism of toxicity with any other substances, and methyl jasmonate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that methyl jasmonate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals 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

Health risks to humans, including infants and children, are considered negligible with regard to the pesticidal use of methyl jasmonate. As illustrated in Unit III, acute toxicity studies indicate that methyl jasmonate is virtually non-toxic. It is ubiquitous in nature and present in fruits and vegetables. There is no history of any toxicological incident involving its

consumption, and its use in food supplements is already allowed by the United States Food and Drug Administration. For all of these reasons, the Agency has determined that this food use of methyl jasmonate poses no foreseeable risks to human health or the environment. Thus, there is a reasonable certainty of no harm to the general U.S. population, including infants and children, from exposure to this active ingredient.

A. U.S. Population

The Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to residues of methyl jasmonate to the U.S. population. This includes all anticipated dietary exposures and other non-occupational exposures for which there is reliable information. The Agency arrived at this conclusion based on the low levels of mammalian dietary toxicity associated with methyl jasmonate, the natural ubiquity of methyl jasmonate in food, and information suggesting that the pesticidal use of methyl jasmonate will not result in significant exposure. For these reasons, the Agency has determined that methyl jasmonate residues in and on all food commodities will be safe, and that there is a reasonable certainty that no harm will result from aggregate exposure to residues of methyl jasmonate.

B. Infants and Children

FFDCA section 408(b)(2)(C) provides that 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 margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless the EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which are often referred to as uncertainty factors, are incorporated into EPA risk assessments either directly or through the use of a margin of exposure analysis, or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk.

Based on all the information evaluated for methyl jasmonate, the Agency concludes that there are no threshold effects of concern and, as a result, an additional margin of safety is not necessary.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency 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. 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 methyl jasmonate.

VIII. Conclusions

Therefore, an exemption is established for residues of methyl jasmonate in or on all food commodities when applied preharvest.

IX. References

Complete citations to the references used in this document are set forth in Appendix C to the document captioned "Methyl Jasmonate BRAD (Biopesticides Registration Action Document) Methyl Jasmonate PC Code: 028100" (document ID number EPA–HQ–OPP–2012–0134–0006), found in the OPP docket listed under docket ID number EPA–HQ–OPP–2012–0134, and may be seen by accessing the *www.regulations.gov Web site.*

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. 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 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, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency 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, the Agency 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 Agency 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: March 22, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. Section 180.1320 is added to subpart D to read as follows:

§ 180.1320 Methyl jasmonate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of methyl jasmonate in or on all food commodities when methyl jasmonate is applied pre-harvest.

[FR Doc. 2013–08829 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

World Trade Center Health Program; Certification of Breast Cancer in WTC Responders and Survivors Exposed to PCBs

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Change in certification requirements.

SUMMARY: On September 12, 2012, HHS published a final rule in the **Federal Register** adding certain types of cancer to the List of World Trade Center (WTC)-Related Health Conditions (List) established in the WTC Health Program regulation. Breast cancer was included on the List, although only individuals experiencing nighttime sleep disruption as a result of response and cleanup activities involving shiftwork are currently considered to have experienced exposure relevant for certification. A recent publication in *The Lancet Oncology* by the International Agency for Research on Cancer (IARC) concludes that there is *limited* evidence that polychlorinated biphenyls (PCBs) cause breast cancer in humans. As described below, the WTC Program Administrator (Administrator) has found that PCBs were present in WTC dust in the New York City disaster area and, accordingly, the Program will now certify breast cancer in eligible WTC responders and survivors who were exposed to either shiftwork/nighttime sleep disruption or PCBs as a result of the 9/11 attacks.

DATES: This change in certification requirements is effective April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Middendorf, Senior Health Scientist, 1600 Clifton Rd. NE., MS: E–20, Atlanta, GA 30329; telephone (404)498–2500 (this is not a toll-free number); email *pmiddendorf@cdc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On September 7, 2011, the Administrator received a written petition to add cancers to the List of WTC-Related Health Conditions in 42 CFR 88.1 (Petition 001). On October 5, 2011, the Administrator formally exercised his option to request a recommendation from the WTC Health Program Scientific/Technical Advisory Committee (STAC) regarding the petition.[1] The Administrator requested that the STAC "review the available information on cancer outcomes associated with the exposures resulting from the September 11, 2001, terrorist attacks, and provide advice on whether to add cancer, or a certain type of cancer, to the List specified in the Zadroga Act." Following three public meetings where the Committee deliberated on the issues, the STAC submitted its recommendation on Petition 001 to the Administrator on April 2, 2012. After considering the STAC's recommendation, the Administrator issued a notice of proposed rulemaking on June 13, 2012 [77 FR 35574]. On September 12, 2012, HHS published a final rule in the **Federal Register** adding certain types of cancer to the List of WTC-Related Health Conditions in 42 CFR 88.1 [77 FR 56138]. On October 12, 2012, HHS published a **Federal Register** notice to correct errors in Table 1 of the final rule (the list of cancers covered by the Program) [77 FR 62167].

B. Administrator's Determination on the Inclusion of Female Breast Cancer

In the final rule, the Administrator established a four-pronged Methodology for evaluating whether to add certain types of cancer to the List: Epidemiologic Studies of September 11, 2001 Exposed Populations (Method 1); Established Causal Associations (Method 2); Review of Evaluations of Carcinogenicity in Humans, requiring both Published Exposure Assessment Information, and Evaluation of Carcinogenicity in Humans from Scientific Studies (Method 3, including criteria 3A and 3B); and Review of Information Provided by the WTC Health Program Scientific/Technical Advisory Committee (Method 4). A full narrative description and graphic of the Methodology were published in the final rule [77 FR 56138, 56142–56143 (September 12, 2012)].

At the time of the Administrator's deliberation, breast cancer was determined to meet Method 4 (the STAC had provided a reasonable basis for its inclusion on the List). In its April 2, 2012 recommendation, the STAC had reported that:

> There is evidence of PCB [polychlorinated biphenyl] exposures to WTC responders and survivors based on air samples, window film samples and one biomonitoring study. Studies have linked total and congener-specific PCB levels in serum and adipose tissue with breast cancer, although evidence has been conflicting. PCBs and some other substances at the WTC site are endocrine disruptors. Breast cancer risks are highly related to hormonal factors, including endogenous and exogenous estrogens, and could plausibly be affected by endocrine disruptors. A recent study found that PCBs enhanced the metastatic properties of breast cancer cells by activating rho-associated kinase. Shiftwork involving circadian rhythm disruption has been classified by IARC as probably carcinogenic to humans, based in part on epidemiologic studies associating shiftwork with increased risks of breast cancer. Both shiftwork and long shifts were common for workers involved in rescue, recovery, clean up, restoration and other activities at the WTC site.[2] [references omitted]

Although the STAC specified that PCBs might be causally associated with breast cancer, the Committee provided stronger evidence (IARC classification as a carcinogen) that shiftwork

[1] See 42 CFR 88.17(a)(2)(i).

[2] STAC [World Trade Center Health Program Scientific/Technical Advisory Committee) [2012]. Letter from Elizabeth Ward, Chair to John Howard, MD, Administrator. This letter is included in NIOSH Docket 257, *http://www.cdc.gov/niosh/docket/archive/docket257.html*.

involving circadian rhythm disruption, as a 9/11 exposure, could be associated with breast cancer.[3] For that reason, the Administrator determined that breast cancer would be included on the List, but that the relevant exposures would be limited to nighttime sleep disruption related to response and cleanup activities (including shiftwork). Accordingly, the WTC Health Program has only considered exposure to nighttime sleep disruption related to response and cleanup activities when certifying breast cancers for treatment in WTC responders and survivors.

C. New Information on Breast Cancer and PCBs

On March 15, 2013, the IARC Monograph Working Group announced a change in its classification of polychlorinated biphenyls (PCBs). According to the Working Group's article, published in *The Lancet Oncology*,[4] a review of more than 70 epidemiological studies led IARC to determine that the studies provided limited evidence of increased risks for breast cancer for individuals with exposures to PCBs.[5]

In reviewing this new information, the Administrator finds that all of the criteria in Method 3 supporting the addition of breast cancer to the List based on PCB exposures are now satisfied: PCBs have been reported in several exposure assessment studies of responders or survivors of the September 11, 2001, terrorist attacks in New York City (Method 3A);[6] NTP identified PCBs as reasonably anticipated to be a human carcinogen[7] and IARC has recently found limited evidence that PCBs cause breast cancer (Method 3B).

Consequently, the Administrator finds that PCB exposures associated with the 9/11 attacks (including response and remediation activities) qualify as another exposure basis—in addition to nighttime sleep disruption related to response and cleanup activities (including shiftwork)—for certifying a member's breast cancer for treatment.

D. Effect on Breast Cancer Coverage

As a result of this finding by the Administrator, eligible responders and survivors who experienced the requisite exposure to either nighttime sleep disruption related to response and cleanup activities (including shiftwork) or PCBs (in dust and smoke) resulting from the 9/11 attacks may be certified for treatment of breast cancer.

Dated: April 11, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–09003 Filed 4–16–13; 8:45 am]

BILLING CODE 4163–19–P

[3] Shiftwork involving circadian rhythm disruption has been classified by IARC as *probably* carcinogenic based in part on limited evidence in humans demonstrating an increased risk of breast cancer among shiftworkers who work at night. IARC notes that mechanistic studies suggest that exposure to light at night may increase the risk of breast cancer by suppressing the normal nocturnal production of melatonin, which in turn, may alter gene expression in cancer-related pathways [Straif, et al. 2007]. NTP has not yet examined the evidence for an association of shiftwork and breast cancer, however, NTP recently requested comment from the public on whether shiftwork involving light at night should be nominated for possible review for future editions of the RoC. [NTP 2012] The Administrator was not aware of any published exposure assessment study of shiftwork and 9/11, although the Administrator was aware that extended work hours for many responders occurred at all three 9/11 sites over several months. Thus the evidence supporting an association between shiftwork and breast cancer did not meet all of the requirements of Method 3; however, the Administrator felt the STAC's recommendation and support for an association between shiftwork and female breast cancer was sufficient to add breast cancer to the List of WTC-Related Health Conditions based on Method 4.

[4] Lauby-Secretan B, Loomis D, Grosse Y, El Ghissassi F, Bouvard V, Benbrahim-Tallaa L, Guha N, Baan R, Mattock H, Straif K (on behalf of IARC Monograph Working Group) [2013]. Carcinogenicity of Polychlorinated Biphenyls and Polybrominated Biphenyls. The Lancet Oncology 14(4):287–288.

[5] According to the Lancet article, the Working Group's assessments will be published as volume 107 of the IARC Monographs.

[6] Butt CM, Diamond ML, Truong J, Ikonomou MG, Helm PA, Stern GA [2004]. Semivolatile organic compounds in window films from lower Manhattan after the September 11th World Trade Center attacks. Environmental Science & Technology. 38(13):3514–3524.

Lorber M, Gibb H, Grant L, Pinto J, Pleil J, Cleverly D [2007]. Assessment of inhalation exposures and potential health risks to the general population that resulted from the collapse of the World Trade Center towers. Risk Anal 27(5):1203–21.

Lioy PJ, Gochfeld M [2002]. Lessons learned on environmental, occupational, and residential exposures from the attack on the World Trade Center. Am J Ind Med 42(6):560–565.

[7] NTP (National Toxicology Program) [2011]. 12th Report on Carcinogens. National Toxicology Program, Public Health Service, U.S. Department of Health and Human Services, Research Triangle Park, NC. *http://ntp.niehs.nih.gov/ntp/roc/twelfth/profiles/PolychlorinatedBiphenyls.pdf.* Accessed March 28, 2013.

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[EPA–HQ–OARM–2012–0196; FRL–9800–6]

EPAAR Clause for Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The final rule provides updates to outdated information previously in the EPAAR *Printing* clause.

DATES: This final rule is effective on April 17, 2013.

ADDRESSES: *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, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov*, or in hard copy at the Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 2011 the EPA reviewed EPAAR clause 1552.208–70, *Printing*. Review was performed to reconsider the electronic reproduction threshold under which vendors may provide contract deliverables without violating mandatory printing source requirements. Reconsideration of the reproduction threshold was warranted given the ease with which electronic media may be reproduced. The clause is also being updated to clarify that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers provided by the Joint Committee on Printing. Finally, the definition of non-paper copies that the contractor may provide has been expanded to include other types of portable electronic media in addition to compact discs. As such, the

updates to the clause raise the limit for contractor-provided non-paper copies from 100 to 500, and clarifies that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers. On October 4, 2012 (77 FR 60667) EPA sought comments on the proposed rule and received no comments.

II. Final Rule

This final rule amends the EPAAR to revise the following within the *Printing* clause: 1. Paragraph (d)(2)—changed from "the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing" to "Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel."

2. Paragraph (d)(3)—changed from "the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing" to "Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel."

3. Paragraph (d)(4)—changed from "the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing" to "Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel."

4. Paragraph (d)(4)—duplication limit changed from 100 to 500.

5. Paragraph (d)(4)—examples of non-paper duplication expanded from "CDs/DVDs" to "electronic information storage device."

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

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

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications as specified in Executive Order 13175.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

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

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution of Use" (66 FR 28335, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

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

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rulemaking does not involve human health or environmental affects.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Part 1552

Government procurement, Reporting and recordkeeping requirements.

Dated: April 1, 2013.

John R. Bashista,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 2. Revise 1552.208–70 to read as follows:

1552.208–70 Printing.

As prescribed in 1508.870, insert the following clause:

Printing (SEP 2012)

(a) *Definitions.* "Printing" is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

"Composition" applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

"Camera copy" (or "camera-ready copy") is a final document suitable for printing/duplication.

"Desktop Publishing" is a method of composition using computers with the final output or generation of a camera copy done by a color inkjet or color laser printer. This is not considered "printing." However, if the output from desktop publishing is being sent to a typesetting device (i.e., Linotronic) with camera copy being produced in either paper or negative format, these services are considered "printing."

"Microform" is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for conventionally printed material. Microform services are classified as printing services and include microfiche and microfilm. The contractor may make up to two sets of microform files for archival purposes at the end of the contract period of performance.

"Duplication" means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

"Requirement" means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the duplication limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

"Incidental" means a draft and/or proofed document (not a final document) that is not prohibited from printing under EPA contracts.

(b) *Prohibition.* (1) The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the printing limitation is to eliminate duplication of final documents.

(2) In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) *Affirmative Requirements.* (1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA's Web site for the Comprehensive Procurement Guidelines at: *http://www.epa.gov/cpg/.*

(d) *Permitted Contractor Activities.* (1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's

Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel. Duplication services of "incidentals" in excess of the thresholds are allowable.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(4) The contractor may perform the duplication of no more than a total of 500 units of an electronic information storage device (e.g., CD–ROMs, DVDs, thumb drives [1]) (including labeling and packaging) per work assignment or task order/delivery order per contract year. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(e) *Violations.* The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) *Flowdown Clause.* The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

(End of clause)

[FR Doc. 2013–08922 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

[1] Pursuant to the July 2008 guidance *Promotional Communications for EPA*, a thumb drive can be used as a promotional item, but it also must be an information medium in itself. Namely, it must have substantive EPA information already loaded into the drive. Due to its intrinsic material value, it may not be used simply or primarily to display an EPA message on the exterior of the drive.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 171

[Docket No. PHMSA–2012–0257 (HM–258)]

RIN 2137–AE96

Hazardous Materials: Revision of Maximum and Minimum Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is revising the references in its regulations to the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. As amended in the "Moving Ahead for Progress in the 21st Century Act" (MAP–21), effective October 1, 2012, the maximum civil penalty for a knowing violation is now $75,000, except that the maximum civil penalty is $175,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. In addition, there is no longer a minimum civil penalty amount, except that the minimum civil penalty amount of $450 applies to a violation relating to training.

DATES: *Effective Date:* April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Safety, (202) 366–8553; or Joseph Solomey, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Civil Penalty Amendments

In Section 33010 of MAP–21 (Pub. L. 112–141, 126 Stat. 837 [July 6, 2012]), Congress revised the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a) for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. These changes to the civil penalty amounts apply to violations occurring on or after October 1, 2012. Accordingly, PHMSA is revising the references to the maximum and minimum civil penalty amounts in its regulations to reflect the changes to Section 5123 of the Federal hazardous material transportation law. In 49 CFR 107.329, Appendix A to subpart D of 49 CFR part 107, and 49 CFR 171.1, we are:

- Revising the maximum civil penalty from $55,000 to $75,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law.
- Revising the maximum civil penalty from $110,000 to $175,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law that results in death, serious illness, or severe injury to any person or substantial destruction of the property.
- Removing the current $250 minimum civil penalty and revising the minimum penalty amount to $450 for a violation related to training.

Because these revisions simply set forth changes in the law and are part of PHMSA's general statements of agency policy and procedure, notice and comment is not necessary.

II. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.). Section 5123(a) of that law provides civil penalties for knowing violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises the references in PHMSA's regulations by (1) revising the maximum penalty amount for a knowing violation and a knowing violation resulting in death, serious illness, or severe injury to any person or substantial destruction of property to $75,000 and $175,000, respectively, and (2) removing the minimum penalty amount, except for the minimum penalty amount of $450 for a violation related to training.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563. Accordingly, this final rule was not reviewed by the Office of Management and Budget (OMB). Further, this rule is not a significant regulatory action under the Regulatory Policies and Procedures of the DOT because it is limited to a ministerial act on which the agency has

no discretion. 44 FR 11034. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted. Given the low number of penalty actions within the scope of this final rule, the impacts will be very limited. We provide, however, the following information regarding cases and tickets involving the maximum and minimum civil penalties to establish the scope economic impacts associated with this final rule.

Maximum Civil Penalty

In reviewing Penalty Action Reports and enforcement data from 2010–2012, PHMSA has found that twenty-one separate cases have been referred by field operations to chief counsel with one or more violations with a recommended penalty greater than $50,000. Of those cases, seventeen are pending, and four have been finalized. In three of the four finalized cases, the penalty assessed in the Order was reduced below the maximum based on corrective actions, finances, or based on statutory criteria that PHMSA must consider. In one case, the company paid the maximum civil penalty.

Minimum Civil Penalty

In reviewing Penalty Action Reports and enforcement data from 2010–2012, PHMSA has found that approximately 325 tickets that are not related to training have been issued with a penalty of $500 or less. These penalties would include actions in which the minimum civil penalty was assessed for one or more violations. In addition, there were no cases with a recommended penalty less than $500. Even though these minimum penalties are no longer required, they will likely be issued. The minimum civil penalty is expected to be used in a very limited number of actions under very exceptional circumstances. For example, a person that demonstrates a willingness to comply, works with PHMSA to correct violations, and is facing financial hardship may be granted leniency from a civil penalty.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

This final rule is being undertaken to address our statutory requirements. It does not conflict with Executive Order 12866, Executive Order 13563, or DOT Regulatory Policies and Procedures. This rule imposes no new costs upon persons conducting hazardous materials operations in compliance with the requirements of the HMR. Those entities not in compliance with the requirements of the HMR may experience an increased cost based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus is not considered in any evaluation of the significance of this regulatory action. The amendments in this rule could provide safety benefits (i.e., larger penalties deterring knowing violators). Overall, it is anticipated this rulemaking would be cost neutral.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rule does not impose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply, and, a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to all business transporting hazardous material. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

There are no new information requirements in this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or to the private sector.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4375), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. These amendments would be generally applicable and not be carried out in a defined geographic area. Civil penalties may act as a deterrent to those violating the HMR, and, this can have a negligible positive environmental impact as a result of increased compliance with the HMR. Based on the above discussion PHMSA concludes there are no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) which may be viewed at *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97

■ 2. Section 107.329 is revised to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $75,000 for each violation, except the maximum civil penalty is $175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $450 for violations relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $75,000 for each violation, except the maximum civil penalty is $175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $450 for violations relating to training.

■ 3. In Appendix A to subpart D of part 107, in Section IV.C., the first sentence is revised to read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

IV. * * *

C. * * *

Under the Federal hazmat law, 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations relating to packaging manufacture or qualification) is subject to a civil penalty of up to $75,000 or $175,000 for a violation occurring on or after October 1, 2012. * * *

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 5. In § 171.1, paragraph (g) is revised to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than $75,000 for each violation, except the maximum civil penalty is $175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $450 for a violation relating to training.

* * * * *

Issued in Washington, DC on April 9, 2013 under authority delegated in 49 CFR part 1.

Cynthia Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–08981 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 78, No. 74
Wednesday, April 17, 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 COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 130301184–3184–01]

RIN 0610–XC001

Request for Comments on Developing a Program To Provide Loan Guarantees to Small- or Medium-Sized Manufacturers

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry and Request for Comments.

SUMMARY: The Economic Development Administration (EDA) seeks public comment on, how to design and structure loan guarantees for small- and medium-sized manufacturers through its authority under the Consolidated and Further Continuing Appropriations Act of 2012 (H.R. 2112, Pub. L. 112–55), which designated up to $5,000,000 from its Economic Adjustment Assistance Program appropriations for loan guarantees under Section 26 of the Stevenson-Wydler Technology Innovation Act of 1980 (the Stevenson-Wydler Act) (15 U.S.C. 3721). Specifically, EDA is considering how to implement its statutory authority to establish a loan guarantee program for small- and medium-sized manufactures that encourages projects that re-equip, expand, or establish a manufacturing facility in the United States and that use innovative technology or processes in manufacturing. The loan guarantees should also be used to encourage the manufacture of innovative products, processes, or ideas developed by research funded in whole or in part by grants from the Federal government. EDA requests input from the public, through the specific questions listed below, on ways to structure this program, in order to assess the level of demand for such a program and the level of agency support necessary to institute a loan guarantee program consistent with the provisions of the Stevenson-Wydler Act.

DATES: Comments must be received by 5:00 p.m. Eastern Time on May 15, 2013.

ADDRESSES: You may submit comments by any of the following methods. All comments must include the title, "Comments on Development of EDA Program to Provide Loan Guarantees to Manufacturers" and Docket No. 130301184–3184–01.

- *Email: rfi@eda.gov.* Include "Comments on Development of EDA Program to Provide Loan Guarantees to Manufacturers" and Docket No. 130301184–3184–01 in the subject line of the message.
- *Fax:* (202) 482–5671, *Attention: Office of Chief Counsel.* Please indicate "Comments on Development of EDA Program to Provide Loan Guarantees to Manufacturers" and Docket No. 130301184–3184–01 on the cover page.
- *Mail:* Economic Development Administration, Office of Chief Counsel, Suite 7325, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Please indicate "Comments on Development of EDA Program to Provide Loan Guarantees to Manufacturers" and Docket No. 130301184–3184–01 on the envelope.

FOR FURTHER INFORMATION CONTACT: Samantha Schasberger, Program Analyst, U.S. Department of Commerce, Economic Development Administration, 1401 Constitution Avenue NW., Washington, DC 20230 or via *sschasberger@eda.gov.*

SUPPLEMENTARY INFORMATION:

Established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA), EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA partners with stakeholders throughout the United States to foster job creation, collaboration and innovation. EDA's regulations, which are codified at 13 CFR chapter III, implement the agency's six economic development assistance programs authorized under PWEDA, as well as the Trade Adjustment Assistance for Firms Program, which are authorized under chapters 3, 4, and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

Section 26 of the Stevenson-Wydler Act, 15 U.S.C. 3721, authorizes EDA to issue loan guarantees to companies for small- or medium-sized manufacturers to finance projects that re-equip, expand, or establish a manufacturing facility in the United States to use an innovative technology or innovative process in manufacturing; manufacture an innovative technology product or an integral component of such a product; or, to commercialize an innovative product, process or idea developed by research funded in whole or in part by a grant from the Federal government. The Stevenson-Wydler Act, at 15 U.S.C. 3721(s)(3), defines innovative technology as "a technology that is significantly improved as compared to the technology in general use in the commercial marketplace in the United States at the time the loan guarantee is issued." In considering the definition of small or medium-sized manufacturers, EDA refers to the definitions for small businesses established by the Small Business Administration (SBA) available at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards.* EDA has not yet established this program, and seeks public comments, especially from lenders and manufacturers, on how best to do so.

In addition to the questions in this **SUPPLEMENTARY INFORMATION** section that are targeted to manufacturers and lending institutions, EDA seeks public comments on any aspect of structuring a loan guarantee program. Comments that identify potential impediments and make corresponding recommendations, as well as the commenter's experiences in attempting, to access capital via loan guarantee programs will be instructive.

Comments should be submitted to EDA as described in the **ADDRESSES** section of this notice. EDA will consider all comments submitted in response to this request for information (RFI) that are received by 5:00 p.m. Eastern Time on May 15, 2013, as referenced under **DATES.** EDA will not accept public comments accompanied by a request that a part or all of the material be treated confidentially for any reason; EDA will not consider such comments and will return such materials to the

commenter. All public comments in response to this RFI must be in writing (including fax or email) and will be a matter of public record.

Questions

For Lenders

1. Are small- or medium-sized manufacturers a part of your ordinary portfolio of loans? If not, why not?
2. What are the biggest impediments to a small- or medium-sized manufacturer receiving a loan from your lending institution? Are there types of manufacturers (company size, industry etc.) that you would be more hesitant to loan to than others?
3. Would a new loan guarantee program make you more likely to lend to manufacturers especially small- or medium-sized manufacturers? If so, why and what increase in loan volume to these companies would you estimate would occur?
4. If EDA established a new Federal loan guarantee program that offered loan guarantees for targeted loans for small- or medium-sized manufacturers to support the use or production of innovative technology (as defined above) how much of a guarantee would your lending institution need in order to be willing to offer loans for such purposes? Besides the level of the guarantee, are there any other requirements that you would have of the guarantee program in order to offer such loans?
5. What would your lending institution require for a borrower to demonstrate that a market exists for an innovative technology product?
6. With the support of a loan guarantee program, what size loans would you anticipate making to manufacturers who meet the definition of small- or medium-sized and would you use the loan proceeds to support the use or production of innovative technologies?
7. If such a Federal program were created, what additional requirements would you require from the manufacturers, if any, to support such a loan?
8. Have you ever participated in a loan guarantee program (for example, any guarantee program provided by SBA? If not, why not? If so, would you recommend this process to others? What was your experience with loan guarantee programs (including SBA loan guarantee programs)?

For Manufacturers

9. What is the largest sized manufacturer that you would consider calling a medium-sized manufacturer?
10. Is access to capital an impediment for your development as a small- or medium-sized manufacturer? If so, why (specifically) and what is the size of your firm?
11. If accessing capital is an impediment, is securing a loan via a new Federal loan guarantee program to support the use or production of innovative technologies a strategy that you would pursue in order to access capital? If not, why not?
12. If you would pursue a loan, what size loan would be necessary to support your development needs?
13. Given that the purpose of this program would be to support innovation by re-equipping, expanding or establishing a manufacturing facility in the U.S., what types of activities and outcomes would you use the loan to support?
14. Have you ever used a loan guarantee program (for example, any guarantee program provided by the SBA)? If not, why not? If so, would you recommend this process to others? What was your experience with loan guarantee programs (including SBA loan guarantee programs)?

General

15. Are there any additional comments that you would like to offer about the proposal to establish a loan guarantee program that targets the use or production of innovative technologies for manufacturing?

Dated: April 10, 2013.

Matt Erskine,

Deputy Assistant Secretary for Economic Development and Chief Operating Officer, Economic Development Administration.

[FR Doc. 2013–08999 Filed 4–16–13; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0331; Directorate Identifier 2011–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–200B, 747–200F, 747–300, 747SP, 747–400, and 747–400F series airplanes equipped with Rolls-Royce RB211–524 engines; and certain Model 767–300 series airplanes equipped with Rolls-Royce RB211–524 engines. This proposed AD was prompted by multiple reports of uncommanded thrust reverser unlock events. This proposed AD would require replacing certain relays and relay sockets, and doing wiring changes. For certain airplanes, this proposed AD would also require installing new relay panels, and removing and installing certain components. Additionally, this proposed AD would require, for certain airplanes, accomplishing concurrent actions, which include installing an additional locking system on the thrust reversers, installing an additional locking gearbox on each engine and modifying system wiring for in-flight fault indications of the thrust reverser system, and installing a second locking gearbox system on the thrust reversers. We are proposing this AD to prevent an uncommanded thrust reverser deployment during takeoff or in-flight resulting in decreased airplane control and performance, possible runway excursions, and failure to climb.

DATES: We must receive comments on this proposed AD by June 3, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the

Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0331; Directorate Identifier 2011–NM–170–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received multiple reports of uncommanded thrust reverser unlock events. In three of these events, all three thrust reverser locks had disengaged. One report stated that during takeoff roll on a Rolls-Royce RB211–524-powered Model 747–400 airplane, the flightcrew received the ENG 4 REV LIMTD EICAS status message and the ENG 4 REVERSER advisory and status messages. During climb, the cabin crew saw sparks from the exhaust of the number 4 engine. The event was found to be caused by a failure of the o-rings in the air motor switcher or shutoff solenoid valves because of overheating. This let the air motor shutoff valve open, which released the air motor brake. Releasing the air motor brake in the ground mode energized the number 2 and number 3 thrust reverser gear box unlock solenoids, thereby unlocking the number 2 and number 3 gear boxes. The thrust reverser system on the Rolls-Royce RB211-powered Model 767 airplane is similar to that on the Model 747–400 airplane, and the Model 767 airplane thrust reverser system is likely to be susceptible to the same failure mode. This condition, if not corrected, could result an uncommanded thrust reverser deployment during takeoff or in-flight resulting in decreased airplane control and performance, possible runway excursions, and failure to climb.

Relevant Service Information

We reviewed the following service information:

- Boeing Service Bulletin 747–78–2178, Revision 1, dated August 4, 2011.
- Boeing Service Bulletin 747–78–2180, Revision 2, dated November 11, 2011.
- Boeing Service Bulletin 767–78–0096, Revision 1, dated December 10, 2009.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0331.

Concurrent Service Information

Boeing Service Bulletin 747–78–2178, Revision 1, dated August 4, 2011, specifies concurrent or prior accomplishment of Boeing Service Bulletin 747–78–2156, Revision 1, dated August 30, 2001. Boeing Service Bulletin 747–78–2180, Revision 2, dated November 11, 2011, specifies concurrent or prior accomplishment of Boeing Service Bulletin 747–78–2158, Revision 2, dated July 29, 1999. Boeing Service Bulletin 767–78–0096, Revision 1, dated December 10, 2009, specifies concurrent or prior accomplishment of Boeing Service Bulletin 767–78–0059, Revision 3, dated January 20, 1994. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0331.

Other Relevant Rulemaking

AD 2000–01–05, Amendment 39–11502 (65 FR 1051, January 7, 2000), which applies to certain Boeing Model 747–100B, –200, –300, and 747SP series airplanes equipped with Rolls-Royce RB211–524B2, C2, and D4 engines, requires repetitive inspections and tests of the thrust reverser control and indication system on each engine, and corrective actions if necessary; installation of a terminating modification; and repetitive operational checks of that installation, and repair if necessary. AD 2000–01–05 refers to Boeing Service Bulletin 747–78–2156, dated October 31, 1996, as the appropriate source of service information for accomplishing the required terminating modification.

AD 2000–02–22, Amendment 39–11540 (65 FR 5222, February 3, 2000), for certain Boeing Model 747–400 series airplanes equipped with Rolls-Royce RB211–524G/H and RB211–524G–T/H–T engines, requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive operational checks of that installation to detect discrepancies, and repair if necessary. AD 2000–02–22 refers to Boeing Service Bulletin 747–78–2158, Revision 2, dated July 29, 1999, as the appropriate source of service information for accomplishing the required modification.

AD 94–17–03, Amendment 39–8998 (59 FR 41647, August 15, 1994), for certain Boeing Model 767 series airplanes equipped with Rolls-Royce RB211–524 series engines, requires inspections, adjustments, and functional checks of the thrust reverser system; installation of a terminating modification; and repetitive operational checks of the gearbox locks and the air motor brake following accomplishment of the modification. AD 94–17–03 refers to Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993; or Revision 3, dated January 20, 1994; as the appropriate source of service information for accomplishing the required terminating action.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

The phrase "related investigative actions" might be used in this proposed AD. "Related investigative actions" are follow-on actions that: (1) Are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase "corrective actions" might be used in this proposed AD. "Corrective actions" are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 1 airplane of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement and wiring change for Model 747–200B, 747–200F, 747–300, and 747SP series airplanes (1 U.S. airplane).	30 work-hours × $85 per hour = $2,550.	$4,289	$6,839	$6,839
Removal, installations, and wiring changes for Model 747–400 and 747–400F series airplanes (0 U.S. airplanes).	Up to 90 work-hours × $85 per hour = $7,650.	Up to $16,607	Up to $24,257	$0
Replacements and wiring changes for Model 767–300 series airplanes (0 U.S. airplanes).	Up to 32 work-hours × $85 per hour = $2,720.	Up to $2,245	Up to $4,965	$0

We estimate the following costs to do any necessary concurrent requirements. We have no way of determining the number of aircraft that might need to do the concurrent requirements.

CONCURRENT COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of an additional locking system	336 work-hours × $85 per hour = $28,560	$62,674	$91,234
Installation of an additional locking gearbox on each engine and modification of the system wiring.	185 work-hours × $85 per hour = $15,725	$72,860	$88,585
Installation of a second locking gearbox system	754 work-hours × $85 per hour = $64,090	$0	$64,090

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2013–0331; Directorate Identifier 2011–NM–170–AD.

(a) Comments Due Date

We must receive comments by June 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, and equipped with Rolls-Royce RB211–524 engines.

(1) Model 747–200B, 747–200F, 747–300, 747SP series airplanes, as identified in Boeing Service Bulletin 747–78–2178, Revision 1, dated August 4, 2011.

(2) Model 747–400 and 747–400F airplanes, identified in Boeing Service Bulletin 747–78–2180, Revision 2, dated November 11, 2011.

(3) Model 767–300 airplanes, as identified in Boeing Service Bulletin 767–78–0096, Revision 1, dated December 10, 2009.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 7830, Engine Thrust Reverser.

(e) Unsafe Condition

This AD was prompted by multiple reports of uncommanded thrust reverser unlock events, three of which had all three locks disengaged. We are issuing this AD to prevent an uncommanded thrust reverser deployment during takeoff or in-flight resulting in decreased airplane control and performance, possible runway excursions, and failure to climb.

(f) Compliance

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

(g) Replacement

Within 60 months after the effective date of this AD: Do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) For Model 747–200B, 747–200F, 747–300, and 747SP series airplanes: Replace relays and relay sockets in the P252 and P253 panels with new relays and relay sockets, and do wiring changes, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2178, Revision 1, dated August 4, 2011.

(2) For Model 747–400 and 747–400F series airplanes: Install the components removed from the existing P252 and P253 panels, install new relays and relay sockets, and do wiring changes on the new P252 and P253 relay panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2180, Revision 2, dated November 11, 2011.

(3) For Model 767–300 series airplanes: Replace relays and relay sockets in the P36 and P37 panels with new relays and relay sockets, and do wiring changes in the P33, P36, and P37 panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–78–0096, Revision 1, dated December 10, 2009.

(h) Concurrent Requirements

(1) For Model 747–200B, 747–200F, 747–300, and 747SP series airplanes: Prior to or concurrently with accomplishing the actions required by paragraph (g)(1) of this AD, install an additional locking system on the thrust reversers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2156, Revision 1, dated August 30, 2001. Accomplishing this installation is a method of compliance with the installation required by paragraph (c) of AD 2000–01–05, Amendment 39–11502 (65 FR 1051, January 7, 2000).

(2) For Model 747–400 and 747–400F series airplanes identified as Group 1, 2, 3, 4, 7, 8, or 9 airplanes in Boeing Service Bulletin 747–78–2180, Revision 2, dated November 11, 2011: Prior to or concurrently with accomplishing the actions required by paragraph (g)(2) of this AD, install an additional locking gearbox on each engine and modify system wiring for in-flight fault indications of the thrust reverser system, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2158, Revision 2, dated July 29, 1999.

Note 1 to paragraph (h)(2) of this AD: Paragraph (a)(1) of AD 2000–02–22, Amendment 39–11540 (65 FR 5222, February 3, 2000), refers to Boeing Service Bulletin 747–78–2158, Revision 2, dated July 29, 1999, as the appropriate source of service information for accomplishing the installation required by that paragraph.

(3) For Model 767–300 series airplanes identified as Group 2 airplanes in Boeing Service Bulletin 767–78–0096, Revision 1, dated December 10, 2009: Prior to or concurrently with accomplishing the actions required by paragraph (g)(3) of this AD, install a second locking gearbox system on the thrust reversers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–78–0059, Revision 3, dated January 20, 1994.

Note 2 to paragraph (h)(3) of this AD: Paragraph (c) of AD 94–17–03, Amendment 39–8998 (59 FR 41647, August 15, 1994), refers to Boeing Service Bulletin 767–78–0059, Revision 3, dated January 20, 1994, as an appropriate source of service information for accomplishing the installation required by that paragraph.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the requirements of paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–78–2178, dated January 22, 2009.

(2) This paragraph provides credit for the requirements of paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–78–2180, dated April 10, 2008.

(3) This paragraph provides credit for the requirements of paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–78–2180, Revision 1, dated November 11, 2010.

(4) This paragraph provides credit for the requirements of paragraph (g)(3) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–78–0096, dated August 7, 2008.

(5) This paragraph provides credit for the requirements of paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–78–2156, dated October 31, 1996.

Note 3 to paragraph (i)(5) of this AD: Paragraph (c) of AD 2000–01–05, Amendment 39–11502 (65 FR 1051, January 7, 2000), refers to Boeing Service Bulletin 747–78–2156, dated October 31, 1996, as the appropriate source of service information for accomplishing the installation required by that paragraph.

(6) This paragraph provides credit for the requirements of paragraph (h)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–78–2158, Revision 1, dated January 22, 1998.

Note 4 to paragraph (i)(6) of this AD: In AD 2000–02–22, Amendment 39–11540 (65 FR 5222, February 3, 2000), Note 2 to paragraph (a)(1) of AD 2000–02–22 refers to Boeing Service Bulletin 747–78–2158, Revision 1, dated January 22, 1998, as a method of compliance for accomplishing the installation required by paragraph (a)(1) of AD 2000–02–22.

(7) This paragraph provides credit for the requirements of paragraph (h)(3) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993.

Note 5 to paragraph (i)(7) of this AD: Paragraph (c) of AD 94–17–03, Amendment 39–8998 (59 FR 41647, August 15, 1994), refers to Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993, as an appropriate source of service information for accomplishing the installation required by that paragraph.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 10, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–09006 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0332; Directorate Identifier 2013–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This proposed AD was prompted by reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators, which occurred during or after heavy rain. This proposed AD would require, for certain airplanes, inspecting for drain bottles having certain part numbers, and replacing affected drain bottles. This proposed AD would require, for certain other airplanes, replacing drain bottles. We are proposing this AD to prevent pitot static tubing from becoming blocked by water, which if not corrected, could lead to erroneous airspeed and altitude indications, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by June 3, 2013.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0332; Directorate Identifier 2013–NM–009–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–30, dated December 7, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A number of reports were received from the operators indicating airspeed mismatch between the pilot and co-pilot's airspeed indicators. The erroneous indication occurred during or after heavy rain. Further investigation revealed that during heavy precipitation, the pitot static tubing may become partially or completely blocked by the water which didn't enter the drain bottle(s). This condition, if not corrected, may result in erroneous airspeed and altitude indications [and consequent loss of control of the airplane].
>
> This [Canadian] AD mandates [for certain airplanes] the replacement of the drain bottles to improve drainage of the pitot-static tubing [and, for certain other airplanes, an inspection for, and replacement of, certain drain bottles].

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Bombardier Service Bulletin 601–0617, Revision 03, dated December 20, 2012.
- Bombardier Service Bulletin 604–34–065, Revision 02, dated December 20, 2012.
- Bombardier Service Bulletin 605–34–027, Revision 02, dated December 20, 2012.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 77 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost up to $2,939 per

product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $259,028, or $3,364 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2013–0332; Directorate Identifier 2013–NM–009–AD.

(a) Comments Due Date

We must receive comments by June 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive.

(2) Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes, serial numbers 5301 through 5665 inclusive, and 5701 through 5918 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators, which occurred during or after heavy rain. We are issuing this AD to prevent pitot static tubing from becoming blocked by water, which if not corrected, could lead to erroneous airspeed and altitude indications, and consequent loss of control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection and Replacement for Certain Model CL–600–2B16 (CL–601–3A and CL–601–3R) Variants Airplanes

For Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having serial numbers 5001 through 5194 inclusive: Within 24 months after the effective date of this AD, inspect for drain bottles having part number (P/N) 50029–001, 50030–001, 9035000, 9035001, 9435014, 9435015, or 601A51704–5.

(1) If none of the part numbers identified in paragraph (g) of this AD are found, no further action is required by this paragraph for that airplane.

(2) If any part number identified in paragraph (g) of this AD is found: Before further flight, replace the drain bottles that are installed on the pitot and static lines of the air data computers (ADC), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0617, Revision 03, dated December 20, 2012.

(h) Replacement for Certain Model CL–600–2B16 (CL–604 Variant) Airplanes

For Model CL–600–2B16 (CL–604 Variant) airplanes having serial numbers 5301 through 5665 inclusive: Within 24 months after the effective date of this AD, replace drain bottles installed on the pitot and static lines of the ADCs, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–34–065, Revision 02, dated December 20, 2012.

(i) Replacement for Certain Other Model CL–600–2B16 (CL–604 Variants) Airplanes

For Model CL–600–2B16 (CL–604 Variant) airplanes having serial numbers 5701 through 5918 inclusive: Within 24 months after the effective date of this AD, replace drain bottles installed on the pitot and static lines of the ADCs, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–34–027, Revision 02, dated December 20, 2012.

(j) Parts Installation Prohibitions

(1) As of the effective date of this AD, no person may install drain bottles having P/N 50029–001, 50030–001, 9035000, 9035001, 9435014, 9435015, or 601A51704–5 on any Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplane.

(2) As of the effective date of this AD, no person may install drain bottles having P/N 50029–001, 50030–001, 9035000, 9035001, 9435014, or 9435015 on the pitot and static lines of the ADCs; or drain bottles having P/N 50030–001, 50034–002, 9435014, or 9035001 on the pitot line of the integrated stand-by instrument (ISI); on any Model CL–600–2B16 (CL–604 Variant) airplanes, S/N 5301 through 5665 inclusive.

(3) As of the effective date of this AD, no person may install drain bottles having P/N 50029–001 or 50030–001 on the pitot and static lines of the ADCs; or P/N 50030–001 or 50034–002 on the pitot line of the ISI; on any Model CL–600–2B16 (CL–604 Variant) airplanes.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using a service bulletin specified in paragraphs (k)(1)(i) through (k)(1)(iii) of this AD.

(i) Bombardier Service Bulletin 601–0617, Revision 02, dated November 14, 2012, which is not incorporated by reference in this AD.

(ii) Bombardier Service Bulletin 601–0617, Revision 01, dated November 12, 2012, which is not incorporated by reference in this AD.

(iii) Bombardier Service Bulletin 601–0617, dated July 31, 2012, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using a service bulletin specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Bombardier Service Bulletin 604–34–065, Revision 01, dated October 15, 2012, which is not incorporated by reference in this AD.

(ii) Bombardier Service Bulletin 604–34–065, dated July 31, 2012, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using a service bulletin specified in paragraph (k)(3)(i) or (k)(3)(ii) of this AD.

(i) Bombardier Service Bulletin 605–34–027, Revision 01, dated October 15, 2012, which is not incorporated by reference in this AD.

(ii) Bombardier Service Bulletin 605–34–027, dated July 31, 2012, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2012–30, dated December 7, 2012, and the service information specified in paragraphs (m)(1)(i) through (m)(1)(iii) of this AD, for related information.

(i) Bombardier Service Bulletin 601–0617, Revision 03, dated December 20, 2012.

(ii) Bombardier Service Bulletin 604–34–065, Revision 02, dated December 20, 2012.

(iii) Bombardier Service Bulletin 605–34–027, Revision 02, dated December 20, 2012.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 5, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–09008 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0171]

RIN 1625–AA08

Special Local Regulations; Pro Hydro-X Tour, Lake Dora; Tavares, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation on the waters on Lake Dora in Tavares, Florida during the Pro Hydro-X Tour, a series of high-speed personal watercraft races. The event is scheduled to take place on Saturday and Sunday, June 1–2 and June 8–9, 2013. Approximately 75 vessels are anticipated to participate in the races. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation would consist of the following two areas during each weekend of its enforcement: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants and vessels transiting to the race area, are prohibited from entering, transiting, anchoring, or remaining unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 17, 2013. Requests for public meetings must be received by the Coast Guard on or May 1, 2013.

ADDRESSES: You may submit comments identified by docket number 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 Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, U.S. Coast Guard; telephone (904) 564–7563, email *Robert.S.Butts@uscg.mil*. If you have questions on viewing or submitting material to the docket, call 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–2013–0171] 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–2013–0171 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. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during a regatta or marine parade.

On Saturday and Sunday, June 1–2 and June 8–9, 2013, H2X Racing Promotions will host the Pro Hydro-X Tour, a series of high-speed personal watercraft races. The Pro Hydro-X Tour will be held on Lake Dora in Tavares, Florida. Approximately 75 vessels are anticipated to participate in the races. No spectator vessels are expected to attend the Pro Hydro-X Tour. In prior years, the two weekends of the event were spaced farther apart and multiple temporary regulations were issued for this same event. This year, due to the close proximity in time of the event, only a single regulation will be issued and enforced.

C. Discussion of Proposed Rule

The proposed rule would establish a special local regulation that encompasses certain waters of Lake Dora in Tavares, Florida. The special local regulation will be enforced from 9 a.m. until 5:30 p.m. on June 1–2 and June 8–9, 2013. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation will consist of the following two areas during each weekend that it is enforced: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants transiting to and from the race area, are prohibited from entering, transiting, anchoring, or remaining unless authorized by the Captain of the Port Jacksonville or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7511, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. 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.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 34 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without being an authorized participant or enforcing the buffer zone, or receiving authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) nonparticipant persons and vessels may still enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Lake Dora encompassed within the special local regulation from 9 a.m. until 5:30 p.m. on June 1–2, 2013 and June 8–9, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Technical Standards

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

14. 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 a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. A preliminary 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 proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T07–0171 to read as follows:

§ 100.35T07–0171 Special Local Regulations; Pro Hydro-X Tour, Lake Dora, Tavares, FL.

(a) Regulated Areas. The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) Race Area. All waters of Lake Dora encompassed within an imaginary line connecting the following points: starting at Point 1 in position 28°47′57″ N, 81°43′39″ W; thence south to Point 2 in position 28°47′55″ N, 81°43′39″ W; thence east to Point 3 in position 28°47′55″ N, 81°43′22″ W; thence north to Point 4 in position 28°47′58″ N, 81°43′22″ W; thence west back to origin. All persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) Buffer Zone. All waters of Lake Dora, excluding the race area, encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 28°47′59″ N, 81°43′41″ W; thence south to Point 2 in position 28°47′53″ N, 81°43′41″ W; thence east to Point 3 in position 28°47′53″ N, 81°43′19″ W; thence north to Point 4 in position 28°47′59″ N, 81°43′19″ W; thence west back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone, or authorized participants transiting to or from the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) Regulations.

(1) All persons and vessels are prohibited from:

(A) Entering, transiting through, anchoring in, or remaining within the race area unless participating in the race.

(B) Entering, transiting through, anchoring in, or remaining within the buffer zone, unless enforcing the buffer zone or an authorized race participant transiting to or from the race area.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7511, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

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

(d) Enforcement Period. This rule will be enforced from 9 a.m. until 5:30 p.m. on June 1–2, 2013 and June 8–9, 2013.

Dated: March 26, 2013.

R.E. Holmes,

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

[FR Doc. 2013–08984 Filed 4–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0097]

RIN 1625–AA08

Special Local Regulations; Mayaguez Grand Prix, Mayaguez Bay; Mayaguez, PR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation on the waters of Mayaguez Bay in Mayaguez, Puerto Rico during the Mayaguez Grand Prix, a high speed boat race. The event is scheduled to take place on Sunday, June 9, 2013. Approximately 30 high-speed power boats will be participating in the races. The special local regulation is necessary for the safety of race participants, participant vessels, spectators, and the general public during the event. The special local regulation will establish the following three areas: (1) One race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; (2) a buffer zone around the race areas, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting through, anchoring in, or remaining within; and (3) a spectator area, where all vessels are prohibited from anchoring and from traveling in excess of wake speed, unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 17, 2013. Requests for public meetings must be received by the Coast Guard on or May 1, 2013.

ADDRESSES: You may submit comments identified by docket number 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 Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@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
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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.

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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–2013–0097 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–2013–0097 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. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Mayaguez Grand Prix.

On June 9, 2013, Puerto Rico Offshore Series, Inc. is sponsoring the Mayaguez Grand Prix, a series of high-speed boat races. The races will be held on the waters of Mayaguez Bay in Mayaguez, Puerto Rico. Approximately 30 high-speed power boats will be participating in the races. It is anticipated that approximately 40 spectator vessels will be present during the races.

C. Discussion of Proposed Rule

The special local regulation encompasses certain waters of Mayaguez Bay in Mayaguez, Puerto Rico. The special local regulation will be effective from 11 a.m. until 3 p.m. on June 9, 2013. The special local regulation consists of the following three areas: (1) One race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; (2) a buffer zone around the race areas, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting through, anchoring in, or remaining within; and (3) a spectator area, where all vessels are prohibited from anchoring and from traveling in excess of wake speed, unless authorized by the Captain of the Port San Juan or a designated representative.

Persons and vessels may request authorization by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16, to: (1) Enter, transit through, anchor in, or remain within the race areas or the buffer zone; (2) anchoring in the spectator area; or (3) traveling in excess of wake speed in the spectator zone. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. 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.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only four hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area and buffer zone, or anchor or travel in excess of wake speed in the spectator area, without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race areas and buffer zone, or anchor in the spectator area, during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by local notice to mariners and broadcast notice to mariners.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Mayaguez Bay encompassed within the special local regulation from 11 a.m. until 3 p.m. on

June 9, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Technical Standards

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

14. 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 creation of a special local regulation in conjunction with a regatta or marine parade to ensure the safety of race participants, participant vessels, spectators, and the general public during the event. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary 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 proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority 33 U.S.C. 1233.

■ 2. Add § 100.35T07–0097 to read as follows:

§ 100.35T07–0097 Special Local Regulations; Mayaguez Grand Prix, Mayaguez Bay; Mayaguez, Puerto Rico.

(a) *Regulated Areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Mayaguez Bay encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°12.283 N, 67°09.602 W; thence northwest to Point 2 in position 18°21.336 N, 67°09.798 W; thence southwest to Point 3 in position 18°11.401 N, 67°10.843 W; thence southeast to point 4 in position 18°11.321 N, 67°10.762 W; thence northeast to point 5 in position 18°11.737 N, 67°09.771 W; thence north back to origin. All persons and vessels, except those persons and vessels

participating in the high-speed boat race, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of Mayaguez Bay encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°12.390 N, 67°09.795 W; thence southwest to Point 2 in position 18°11.398 N, 67°10.902 W; thence southeast to Point 3 in position 18°11.284 N, 67°10.780 W; thence northeast to point 4 in position 18°11.707 N, 67°09.727 W; thence north to point 5 in position 18°12.304 N, 67°09.554 W; thence northwest back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone, or race participants transiting to the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(3) *Spectator Area.* All waters of Mayaguez Bay 200 yards east of an imaginary line connecting the following points: starting at Point 1 in position 18°12.135 N, 67°09.396 W; thence southwest to Point 2 in position 18°11.630 N, 67°09.616 W; thence southwest to Point 3 in position 18°11.156 N, 67°10.670 W. All vessels are prohibited from anchoring and traveling in excess of wake speed in the spectator area. On-scene designated representatives will direct spectator vessels to the spectator area.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.*

(1) Except for those persons and vessels participating in the race, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area. Except for those persons and vessels enforcing the buffer zone, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the buffer area. Except for those persons and vessels who are participating as spectators, all persons are prohibited from entering, transiting through, anchoring in, or traveling in excess of wake speed in the spectator area. Persons and vessels may request authorization to enter, transit through, anchor in, remain within the regulated areas, or to travel in excess of wake speed in the spectator area, by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

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

(d) *Effective Date.* This rule is effective from 11 a.m. until 3 p.m. on June 9, 2013.

Dated: March 22, 2013.

D.W. Pearson,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2013–09021 Filed 4–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0067]

RIN 1625–AA08

Special Local Regulations; Miami Super Boat Grand Prix, Atlantic Ocean; Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a special local regulation on the Atlantic Ocean east of Miami Beach, Florida during the Miami Super Boat Grand Prix. The Miami Super Boat Grand Prix will consist of a series of high-speed boat races scheduled to take place from July 19 through July 21, 2013. The regulation is necessary to ensure the safety of the participants, spectators, and the general public during the high-speed boat races. The special local regulation will establish the following two areas: (1) An event area, where all persons and vessels except those persons and vessels participating in or officiating the race are prohibited from entering, transiting, anchoring, or remaining; and (2) a spectator area, where all vessels are prohibited from anchoring.

DATES: Comments and related material must be received by the Coast Guard on or before May 17, 2013.

Requests for public meetings must be received by the Coast Guard on or before May 1, 2013.

ADDRESSES: You may submit comments identified by docket number 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.

(4) 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 Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@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–2013–0067 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–2013–0067 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 plan to hold a public meeting. But you may submit a request for one on or before April 15, 2013, 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. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during the Miami Superboat Grand Prix.

From July 19 through July 21, 2013, Super Boat International Productions, Inc. is hosting the Miami Super Boat Grand Prix, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean east of Miami Beach, Florida. Approximately 25 high-speed power boats will be participating in the races, and it is anticipated that at least 50 spectator vessels will be present in the area during the races. The high speed of the participant vessels poses a safety hazard to race participants, participant vessels, spectators, and the general public. The special local regulation is necessary to protect race participants, participant vessels, spectators, and the general public from the hazards associated with the high-speed boat races.

C. Discussion of Proposed Rule

This proposed rule would establish a special local regulation that will encompass certain waters of the Atlantic Ocean east of Miami Beach, FL. The special local regulation will be enforced from 9 a.m. until 5 p.m. daily from July 19 through July 21, 2013. The special local regulation establishes the following two areas: (1) An event area, where all vessels except those vessels participating in or officiating the race are prohibited from entering, transiting, anchoring, or remaining within; and (2) a spectator area, where all vessels are prohibited from anchoring.

Persons and vessels may request authorization by contacting the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to enter, transit through, anchor in, or remain within the event area or the buffer zone. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

D. 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. The economic impact of this proposed rule is not significant for the following reasons: (1) This special local regulation will be enforced for a maximum of 8 hours a day for only three days; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated areas during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the respective enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the regulated areas during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Technical Standards

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

14. 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). Due to potential environmental issues, we conducted an environmental assessment last year for both the issuance of the marine event permit and the establishment of this special local regulation. The same environmental assessment is being used for this year's event as it is substantially similar in all aspects and therefore the potential effects and alternatives remain unchanged. After completing the environmental assessment for the issuance of the marine event permit, and the establishment of this special local regulation, we have determined 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 a special local regulation issued in conjunction with a regatta or a marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. The environmental assessment and finding of no significant impact (FONSI) 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 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T07–0067 to read as follows:

§ 100.T07–0067 Special Local Regulation; Miami Super Boat Grand Prix, Atlantic Ocean; Miami Beach, FL.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) Event Area. All waters of the Atlantic Ocean east of Miami Beach, FL encompassed within an imaginary line connecting the following points: starting at Point 1 in position 25°49′14″ N, 80°07′13″ W; thence east to Point 2 in position 25°49′13″ N, 80°06′48″ W;

thence southwest to Point 3 in 25°46′00″ N, 80°07′26″ W; thence west to Point 4 in position 25°46′00″ N, 80°07′51″ W; thence northeast back to origin.

(2) Spectator Area. All waters of the Atlantic Ocean east of Miami Beach, FL encompassed within an imaginary line connecting the following points: starting at Point 1 in position 25°48′57″ N, 80°06′51″ W; thence east to Point 2 in position 25°48′57″ N, 80°06′48″ W; thence southwest to Point 3 in 25°47′27″ N, 80°07′06″ W; thence northwest to Point 4 in position 25°47′28″ N, 80°07′09″ W; thence northeast back to origin.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All vessels except those vessels participating in or officiating the race are prohibited from entering, transiting through, anchoring in, or remaining within the event area without authorization from the Captain of the Port Miami or a designated representative.

(2) All vessels, including spectator vessels, are prohibited from anchoring in the spectator area. On-scene designated representatives will direct spectator vessels to the spectator area.

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

(d) *Enforcement Date.* This rule is effective from 9 a.m. on July 19, 2013, until 5 p.m. on July 21, 2013. This rule will be enforced from 9 a.m. until 5 p.m. daily from July 19 through July 21, 2013.

Dated: March 20, 2013.

J.B. Pruett,

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

[FR Doc. 2013–08990 Filed 4–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133E–4.]

Proposed Priority—National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for a Rehabilitation Engineering Research Center (RERC) on Universal Interfaces and Information Technology Access. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend to use this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 17, 2013.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following address: *marlene.spencer@ed.gov*. You must include "Proposed Priorities for RERCs" and the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

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

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for an RERC competition in FY 2013 and possibly in later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award using this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5133, 550 12th Street, SW., PCP, 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. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research,

demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers (RERCs) Program

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERCs program can be found at: *www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

Universal Interfaces and Information Technology Access

Background

In a society in which activities of daily life and community participation increasingly require information technology (IT) access and use, the inability to interface effectively with IT can be a substantial source of isolation and deprivation for individuals with disabilities (Emiliani, Stephanidis, & Vanderheiden, 2011). IT refers to the broad set of technologies employed to develop, maintain, and use computer systems, software, and networks in order to acquire, process, and distribute information electronically. IT interfaces are the connections between computer systems, software, and networks and other related devices with human users. Individuals with disabilities who lack access to, or are unable to interact effectively with, IT systems are severely limited in opportunities to participate in education, employment, social, civic, and commercial aspects of daily life (National Council on Disability, 2006; Emiliani, Stephanidis, & Vanderheiden, 2011).

Individuals with disabilities face accessibility barriers when they use IT and IT interfaces. Many people are unable to see, hear, manipulate, understand, or read electronic interfaces in their standard formats and presentations (National Council on Disability, 2006; Vicente & Lopez, 2010). For many individuals with disabilities, as well as for the schools, employers, and libraries that might provide accessible IT solutions, the options available to address accessibility barriers are too complicated and expensive (National Council on Disability, 2006; Vanderheiden, 2008). Moreover, while accessible technology vendors once needed to provide access to just one or two computing platforms, a multitude of platforms now exists (Windows, Mac, Linux, Android, etc.). In addition, users face the challenge of working with an increasing number of devices with different and often confusing IT interfaces designed with features that optimize mobility, such as small screens, that may not be compatible with accessibility solutions formerly developed for personal computers. These devices include telephones, tablets, and e-book readers. The rapid development and deployment of IT innovations further complicate access.

The rapid development of technology and computing platforms threatens to expand the digital divide (the gap between those that have access to IT and those who do not) (Vicente & Lopez, 2010). Future advances in accessibility of the Internet and computer systems are necessary so we, as a society, do not exclude individuals with disabilities from the information that they need to be engaged in the workforce and be fully informed and active citizens. One emerging opportunity in this area is the use of cloud computing applications that allow for personalized accessible interfaces for individuals with disabilities. Such interfaces may be accessed from any computer, providing the possibility of much greater choice and independence for individuals with disabilities. These interfaces make it easier for products to comply with widely accepted standards and guidelines for accessibility, such as those implementing Section 508 of the Rehabilitation Act (U.S. Access Board, 2008), the Web Content Accessibility Guidelines of the Web Accessibility Initiative (World Wide Web Consortium, 2008), and the principles of universal design (Center for Universal Design, 1997). By making personalized accessible interfaces available for mainstream IT products, people with disabilities get the benefit of lower cost and greater consumer choice, as compared to having to use products developed only for the use of people with disabilities. Accordingly, NIDRR seeks to fund an RERC that enhances the usability and effectiveness of current and emerging IT devices and their interfaces so that they are accessible to individuals with various disabilities.

References

Center for Universal Design (1997). The Principles of Universal Design. Retrieved from: *http://www.ncsu.edu/www/ncsu/design/sod5/cud/about_ud/udprinciplestext.htm.*

Emiliani, P.L., Stephanidis, C., & Vanderheiden, G. (2011). Technology and inclusion—Past, present and foreseeable future. Technology and Disability 23(3), 101–114.

National Council on Disability. (2006). Over the horizon: Potential impact of emerging trends in information and communication technology on disability policy and practice. Washington, DC.

U.S. Access Board (n.d.)Section 508 Homepage: Electronic and Information Technology. Retrieved from: *http://www.access-board.gov/508.htm.*

Vanderheiden, G. C. (2008). Ubiquitous accessibility, common technology core, and micro assistive technology. ACM Transactions in Accessible Computing 1(2), 10.1–7.

Vicente, M. R., & Lopez, A. J. (2010). A multidimensional analysis of the disability digital divide: some evidence for Internet use. The Information Society 26(1), 48–64.

World Wide Web Consortium (2008). Web Content Accessibility Guidelines (WCAG) 2.0. Retrieved from: *http://www.w3.org/TR/WCAG20/.*

Proposed Priority

Under this priority, the RERC must research, develop, and evaluate innovative solutions to the problem of inaccessibility of current and emerging information technologies and technology interfaces for individuals with disabilities. These solutions may include cloud computing applications that allow for personalized accessible interfaces. The RERC must focus its research and development activities on

promoting access for individuals with disabilities to the multiple technologies used in the home, the community, and the workplace. The RERC must research, develop, and evaluate built-in accessibility and flexibility features in interfaces of mainstream products. The technical approaches developed by the RERC must have the following characteristics: (i) They must make it possible for people with disabilities to access and use the same mainstream IT products as consumers generally, to the greatest extent achievable, rather than requiring people with disabilities to use specialized products; (ii) They must support access and use by people with the widest achievable range of disabilities, rather than being limited only to particular disability groups; (iii) They must provide as much as possible a consistent user interface, when applied to different products; (iv) They must be designed to be extensible, so as to be applicable to new IT products as they emerge; and (v) They must be developed along with methods that would enable developers of IT products to incorporate the new approaches into IT products at reasonable cost. In addition, this RERC must research, develop, and evaluate simple and inexpensive ways to activate and control IT access features for use by individuals with disabilities. This RERC must work collaboratively with the RERC on Telecommunication Access and the RERC on Mobile Wireless Technologies.

General RERC Requirements

Under this priority, the RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved usability and accessibility of products and environments in the RERC's priority research area. The RERC must contribute to this outcome by emphasizing the principles of universal design in its product research and development. For purposes of this section, the term "universal design" means the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

(5) Improved awareness and understanding of cutting-edge developments in technologies within its priority research area. The RERC must contribute to this outcome by identifying and communicating with relevant stakeholders, including NIDRR; individuals with disabilities and their representatives; disability organizations; service providers; editors of professional journals; manufacturers; and other interested parties regarding trends and evolving product concepts related to its priority research area.

(6) Increased dissemination of research in the priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its priority research area.

(7) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, under this priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, a plan to disseminate its research results to individuals with disabilities and their representatives; disability organizations; service providers; professional journals; manufacturers; and other interested parties. In meeting this requirement, each RERC may use a variety of mechanisms to disseminate information, including state-of-the-science conferences, webinars, Web sites, and other dissemination methods; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of

the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years, as projects similar to the one envisioned by the proposed priority have been completed successfully. Establishing new RERCs based on the proposed priority would generate new knowledge through research and development and improve the lives of individuals with disabilities. The new RERCs would generate, disseminate, and promote the use of new information that would improve the options for individuals with disabilities to fully participate in their communities.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

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

Dated: April 12, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–09043 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Order No. 1677; Docket No. RM2013–1]

Revisions to Rules of Practice

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice addresses proposed revisions to the Commission's rules of practice. The revisions (as clarified by an errata issued March 19, 2013) are intended to update existing rules due to recent statutory and regulatory changes; make technical editorial changes; and foster clarity and simplicity to reduce the potential for confusion. The notice also takes related administrative steps, including an invitation for comments on the proposed revisions. Comments will assist the Commission in developing a final rule.

DATES: *Comment date:* Comments due on or before May 17, 2013.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who

cannot submit their views electronically should contact the person identified in the For Further Information Contact section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: *Case related information:* Stephen L. Sharman, General Counsel, 202–789–6820; *Electronic filing assistance: DocketAdmins@prc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Postal Regulatory Commission (Commission) establishes a rulemaking docket pursuant to its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), to consider amendments to the Commission's rules of practice and procedure, 39 CFR part 3001. These amendments propose minor changes that remove obsolete references, adopt new terminology, and make technical edits. As explained below, the passage of the PAEA required significant changes to the Commission's rules to ensure that the rules encompassed the major changes promulgated by the PAEA.[1] The changes proposed by this order further revise the Commission's rules of practice by removing obsolete references brought on by prior rule changes.[2]

The PAEA transformed the Postal Rate Commission into the Postal Regulatory Commission; repealed several key sections of title 39 of the United States Code; and added a number of new statutory provisions to title 39. The result was a major change in the Commission's regulatory responsibilities and authorities. In response to the changes made by the PAEA, the Commission, on October 29, 2007, established a new system for regulating rates that was markedly different from the prior regulatory regime. *See* Order No. 43.

Due to the changes made by the PAEA and subsequent rulemakings, further amendments are required to remove obsolete references, include new terminology, and remove potential confusion from the Commission's rules of practice.

II. Proposed Changes to the Commission's Rules of Practice

The changes proposed in this order fall under three broad categories: (1) Removal of statutory or regulatory references that have been repealed, amended, or removed since the adoption of the PAEA; (2) adoption of changes in terminology consistent with the PAEA and current Commission practice; and (3) minor clarifications and corrections. The following is a section-by-section analysis of the proposed amendments. Each paragraph containing a proposed change is reproduced below the Secretary's signature on this notice.

Rule 3001.5(a) is amended by defining "Act" to encompass title 39 in its entirety.

Rule 3001.5(h) is amended by clarifying that "participant" means any party to the proceeding, including formal intervenors, and by replacing "officer of the Commission who is designated to represent the interests of the general public" with "Public Representative."

Rule 3001.5(j) is amended by deleting obsolete references to 39 U.S.C. 3624 and 3662 and by adding "or any other proceeding noticed by the Commission under §§ 3001.17 and 3001.18(a) of this section" to the definition.

Rule 3001.5(m) is amended by replacing a reference to 39 U.S.C. 404(b) with a reference to 39 U.S.C. 404(d)(5).

Rule 3001.5(o) is amended by replacing "a proceeding conducted pursuant to subpart H of this part" with "a proceeding conducted pursuant to part 3025 of this chapter".

Rule 3001.5(p) is amended by deleting an obsolete definition of Domestic Mail Classification Schedule and reserving the paragraph for future use.

Rule 3001.5(q) is amended by replacing "Office of the Consumer Advocate" with "Public Representative"; "OCA" with "PR"; and "means the" with "means an."

Rule 3001.7(a)(1)(iii) is amended by replacing "Office of Rates, Analysis and Planning" with "Office of Accountability and Compliance."

Rule 3001.7(a)(2)(ii) is amended by replacing "Subpart C" with "Subpart B."

Rule 3001.7(b) is amended to encompass proceedings under section 3661 of the Act; any proceeding noticed and set for hearing by the Commission pursuant to §§ 3001.17 and 3001.18(a); or any proceeding conducted pursuant to part 3025.

Rule 3001.9(a) is amended by replacing "Office of the Secretary" with "Office of Secretary and Administration" and by revising the Postal Regulatory Commission's address to read "901 New York Avenue NW., Suite 200, Washington, DC 20268–0001."

Rule 3001.9(c)(2) is amended by adding "federal" before the word "holiday."

Rule 3001.9(e) is amended to replace "§ 11" with "§ 3001.11(e)."

Rule 3001.10(c) is amended by deleting the "or" that follows "Word.."

Rule 3001.15 is amended by replacing "legal holiday for the Commission" with "federal holiday,"; "or holiday" with "nor a federal holiday,; "less" with "fewer," and "legal holidays of the Commission" with "federal holidays." It is also amended by deleting the sentence that reads "A part-day holiday shall be considered as other days and not as a holiday."

Rule 3001.18(b) is amended by replacing "and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.34 to 3001.39" with "The Commission shall then issue an advisory opinion or final decision, as appropriate." and by inserting a period at the end of the previous sentence.

Rule 3001.18(c) is amended by replacing "and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39" with "The Commission shall then issue an advisory opinion or final decision, as appropriate." and by inserting a period at the end of the previous sentence.

Rule 3001.19 is amended by deleting the word "involved" so that the applicable sentence now reads "Such notice shall be published in the **Federal Register** and served on all participants in the proceeding."

Rule 3001.20a(c) is amended by replacing "Limited participants may file briefs" with "Limited participators may file briefs" and by deleting the reference to 39 U.S.C. 3622(b)(4).

Rule 3001.20b is amended by replacing "§§ 3001.19a and 3001.20" with "§§ 3001.20 and 3001.20a" and "§ 3001.17" with "§ 3001.17(a)."

Rule 3001.21(a) is amended by replacing "initial decision" with "intermediate decision."

Rule 3001.23(a)(7) is amended by replacing "initial or recommended decision" with "intermediate decision."

Rule 3001.23(a)(9) is amended by replacing "initial or recommended decision" with "intermediate decision."

[1] *See, e.g.*, Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2009 (Order No. 43).

[2] *See id.*, Docket No. RM2009–4, Order Eliminating Obsolete Rules of Practice, May 11, 2009 (Order No. 214).

Rule 3001.24(a) is amended by deleting "recommended decision or" and obsolete references to sections 3622 and 3623 of the Act.

Rule 3001.24(d)(6) is amended by deleting obsolete references to sections 3622 and 3623 of the Act.

Rule 3001.25(a) is amended by deleting obsolete references to sections 3622, 3623, and 3662 of the Act.

Rule 3001.27(b) is amended by replacing "through .12" with "through 3001.12".

Rule 3001.30(d) is amended by deleting obsolete references to sections 3622 and 3623 of the Act and by adding "and set for hearing pursuant to § 3001.18(a)" to the end of the first sentence.

Rule 3001.30(e)(2) is amended by replacing the reference to testimony "OCA–T1–17" with "PR–T1–17".

Rule 3001.30(h) is amended by replacing references to "his" with "his/her".

Rule 3001.31(k)(3)(i)(*i*) is amended by replacing "Administrative Office" with "Office of Secretary and Administration".

Rule 3001.31a(c) is amended by deleting "and shall be subject to the provisions of § 3001.42 of this chapter".

Rule 3001.32(f) is amended by replacing "allowed or requested" with "certified pursuant to paragraph (b)(1) of this section"; by replacing both references to "initial decision" with "intermediate decision"; and by replacing "at the conclusion of the proceeding" with "in the participants' briefs in accordance with § 3001.34".

Rule 3001.34(a) is amended by replacing "issuance of recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act" with "issuance of the decision or advisory opinion".

Rule 3001.34(b)(3) is amended by replacing "the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued" with "and the advisory opinion or decision to be issued".

Rule 3001.36 is amended by deleting references to "other designated officers" (including in the rule title) and by replacing references to "initial or recommended decisions" with "intermediate decisions". It is also amended by replacing "shall determine the time and place for oral argument, the issue or issues on which oral argument" with "shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument".

Rule 3001.39(c) is amended by deleting "(initial, recommended or tentative)" and obsolete references to section 3622 and 3623 of the Act, and replacing "recommended decision, advisory opinion or public report" with "intermediate decision".

Rule 3001.40 is amended by deleting the authority citation that follows the rule.

Rule 3001.41 is amended by deleting the authority citation that follows the rule.

Rule 3001.43(a) is amended by deleting "Access to documents being considered at Commission meetings shall be obtained in the manner set forth in § 3001.42".

Rule 3001.43(c)(10) is amended by deleting "as provided by section 3624(a) of title 39" and by replacing "a civil action or proceeding" with "a civil action or appellate proceeding".

Rule 3001.43(e)(4)(i) is amended by replacing "office of the Secretary of the Commission" with "reception area of the Postal Regulatory Commission located".

Rule 3001.43(g)(1)(iii) is amended by replacing both references to the "office of the Secretary" with the "Office of Secretary and Administration".

Rule 3001.43(g)(2)(iii) is amended by replacing both references to the "office of the Secretary" with the "Office of Secretary and Administration".

Rule 3001.72 is amended by replacing "a recommended decision" with "an advisory opinion".

Rule 3001.75 is amended to read "The provisions of § 3001.12 govern the Postal Service's service requirements for proceedings conducted under this subpart. Service must be made on all participants as defined in § 3001.5(h)".

III. Invitation To Comment

Interested persons are invited to comment on the proposed changes to part 3001. Comments are due within 30 days of the date of publication of this notice in the **Federal Register**.

Pursuant to 39 U.S.C. 505, James Waclawski is designated as the Public Representative in this proceeding to represent the interests of the general public.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2013–1 is established for the purpose of receiving comments on the proposed changes to 39 CFR part 3001, as discussed in this order.

2. Interested parties may submit comments no later than 30 days from the date of publication of this notice in the **Federal Register**.

3. Pursuant to 39 U.S.C. 505, James Waclawski is appointed to serve as Public Representative in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Freedom of information, Postal Service, Sunshine Act.

By the Commission.

Shoshana M. Grove,

Secretary.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—Rules of General Applicability

■ 2. Revise 3001.5 to read as follows:

§ 3001.5 Definitions.

(a) *Act* means title 39, United States Code, as amended.

(b) *Postal Service* means the U.S. Postal Service established by the Act.

(c) *Commission* or *Commissioner* means, respectively, the Postal Regulatory Commission established by the Act or a member thereof.

(d) *Secretary* means the Secretary or the Acting Secretary of the Commission.

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

(f) *Person* means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

(g) *Party* means the Postal Service, a complainant, an appellant, or a person who has intervened in a proceeding before the Commission.

(h) *Participant* means any party to the proceeding, including formal intervenors as described in § 3001.20, and the Public Representative and, for the purposes of § 3001.11(e), § 3001.12, § 3001.21, § 3001.23, § 3001.24, § 3001.29, § 3001.30, § 3001.31, and § 3001.32 only, it also means persons who are limited participators.

(i) *Complainant* means a person or interested party who as permitted by

section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) *Hearing* means a hearing under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission under § 3001.17 and § 3001.18(a).

(k) *Record* means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the record for decision.

(l) *Effective date* of an order or notice issued by the Commission or an officer of the Commission means the date of issuance unless otherwise specifically provided.

(m) *Petitioner* means a person who is permitted by 39 U.S.C. 404(d)(5) to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(n) *Commission meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by § 3001.43(d) or § 3001.43(e).

(o) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants and limited participators is not given, but it shall not include requests for status reports on any matter or proceeding covered by subchapter II of chapter 5 of title 5, U.S.C. or a proceeding conducted pursuant to part 3025 of this chapter.

(p) *Reserved.*

(q) *Public Representative* or *PR* means an officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

(r) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or terms of service in accordance with the terms or conditions of the contract. A rate associated with a negotiated service agreement is not rate of general applicability.

(s) *Postal service* refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

(t) *Product* means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.

■ 3. In § 3001.7, revise paragraphs (a) and (b) to read as follows

§ 3001.7 Ex parte communications.

(a) *Definitions*—(1) *Decision-making personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated "decision-making Commission personnel":

(i) The Commissioners and their personal office staffs;

(ii) The General Counsel and his/her staff;

(iii) The Director of the Office of Accountability and Compliance and his/her staff.

(iv) Any other employee who may reasonably be expected to be involved in the decisional process.

(2) *Non-decision-making Commission personnel.* The following categories of person are designated "non-decision-making personnel":

(i) All Commission personnel other than decision-making Commission personnel;

(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or part 3000, subpart B of this chapter.

(b) *Prohibition.* In any agency proceeding conducted under section 3661 of the Act; noticed and set for hearing by the Commission pursuant to § 3001.17 and § 3001.18(a); or any proceeding conducted pursuant to part 3025 of this chapter to the extent required for the disposition of ex parte matters as authorized by law:

* * * * *

■ 4. Revise § 3001.9 to read as follows:

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer, shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained. If a waiver is obtained, a hard copy document may be filed either by mailing or by hand delivery to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing. The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

(b) *Account holder.* In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a principal account holder or an agent account holder (Filing Online account holder). The authority of the principal account holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. The authority of an agent account holder to submit documents for a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in his/her authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on his/her behalf.

(c) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to § 3001.9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or federal holiday, shall be deemed to be filed on the next regular business day.

(d) *Rejected filings.* Any filing that does not comply with any applicable rule or order authorized by the Commission may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary or the Secretary's designee will notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document.

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of

paragraphs (b) and (c) of this section, and the subscription requirements of § 3001.11(e). Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

■ 5. In § 3001.10, revise paragraph (c) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer media.* A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

* * * * *

■ 6. Revise § 3001.15 to read as follows:

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a federal holiday. In computing a period of time which is 5 days or fewer, all Saturdays, Sundays, and federal holidays are to be excluded.

■ 7. Revise § 3001.18 to read as follows:

§ 3001.18 Nature of the proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.9.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to § 3001.34 and § 3001.37. The Commission shall then issue an advisory opinion or final decision, as appropriate.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument. The Commission shall then issue an advisory opinion or final decision, as appropriate. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

■ 8. Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a), the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

■ 9. Revise § 3001.20a to read as follows:

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions:

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the intervenor's interest in the proceeding, and shall conform to the requirements of §§ 3001.9 through 3001.12.

(b) *Oppositions.* Oppositions to notices to intervene as a limited participator may be filed by any participant in the proceeding no later than 10 days after the notice of intervention as a limited participator is filed.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participators may file briefs or proposed findings pursuant to § 3001.34 and § 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under §§ 3001.25 through 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

■ 10. In § 3001.20b, revise the introductory paragraph and paragraph (a) to read as follows:

§ 3001.20b Informal expression of views by persons not parties or limited participators (commenters).

Notwithstanding the provisions of § 3001.20 and § 3001.20a, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17(a), an informal statement of views in writing, in accordance with the following provisions:

(a) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered on the form provided this purpose under the "Contact Us" link on the Commission's Web site, *http://www.prc.gov.*

* * * * *

■ 11. In § 3001.21, revise paragraph (a) to read as follows:

§ 3001.21 Motions.

(a) *Scope and contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an intermediate decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

* * * * *

■ 12. In § 3001.23, revise paragraphs (a)(7), (a)(8), (a)(9), and (a)(10) to read as follows:

§ 3001.23 Presiding officers.

(a) * * *

(7) To dispose of procedural requests or similar matters but not, before their intermediate decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an intermediate decision in accordance with § 3001.38 and § 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

* * * * *

■ 13. In § 3001.24, revise paragraphs (a) and (d)(6) to read as follows:

§ 3001.24 Prehearing conferences.

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its advisory opinion on requests under section 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

* * * * *

(d) * * *

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

* * * * *

■ 14. In § 3001.25, revise paragraph (a) to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3661 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

* * * * *

■ 15. In § 3001.27, revise paragraph (b) to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

* * * * *

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 3001.12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

* * * * *

■ 16. In § 3001.30, revise paragraphs (d), (e)(2), and (h) to read as follows:

§ 3001.30 Hearings.

* * * * *

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act and set for hearing pursuant to § 3001.18(a). With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) * * *

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§ 3001.9 through 3001.12 no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "PR–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

* * * * *

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the

commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of his/her intermediate decision. This section shall not preclude a presiding officer, within his/her discretion, from referring any motion made in hearing to the Commission for ultimate determination.

* * * * *

■ 17. In § 3001.31, revise paragraph (k)(3)(i)(*i*) to read as follows:

§ 3001.31 Evidence.

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Office of Secretary and Administration of the Postal Regulatory Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hardcopy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

■ 18. In § 3001.31a, revise paragraph (c) to read as follows:

§ 3001.31a In camera orders.

* * * * *

(c) *Release of in camera information. In camera* documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

* * * * *

■ 19. In § 3001.32, revise paragraph (f) to read as follows:

§ 3001.32 Appeals from rulings of the presiding officer.

* * * * *

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not certified pursuant to paragraph (b)(1) of this section, objection to the ruling may be raised on review of the presiding officer's intermediate decision, or, if the intermediate decision is omitted, in the participants' briefs in accordance with § 3001.34.

* * * * *

■ 20. In § 3001.34, revise paragraphs (a) and (b)(3) to read as follows:

§ 3001.34 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of the decision or advisory opinion. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) * * *

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service and the advisory opinion or decision to be issued;

* * * * *

■ 21. Revise § 3001.36 to read as follows:

§ 3001.36 Oral argument before the presiding officer.

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in his/her opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. The presiding officer shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

■ 22. In § 3001.39, revise paragraph (c) to read as follows:

§ 3001.39 Intermediate decisions.

* * * * *

(c) *Contents.* All intermediate decisions shall include findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and the appropriate intermediate decision pursuant to the Act. An intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

* * * * *

§ 3001.40 [Amended]

■ 23. Revise § 3001.40 by removing the authority citation.

§ 3001.41 [Amended]

■ 24. Revise § 3001.41 by removing the authority citation.

■ 25. In § 3001.43, revise paragraphs (a), (c)(10), (e)(4)(i), (g)(1)(iii), and (g)(2)(iii) to read as follows:

§ 3001.43 Public attendance at Commission meetings.

(a) *Open Commission meetings.* (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (c) of this section, every portion of every meeting of the Commission shall be open to public observation.

* * * * *

(c) * * *

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or appellate proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in section 554 of title 5, U.S.C. or otherwise

involving a determination on the record after opportunity for a hearing.

* * * * *

(e) * * *

(4) * * *

(i) Publicly posting a copy of the document in the reception area of the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1) * * *

(iii) Ten copies of such requests must be received by the Office of Secretary and Administration no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Office of Secretary and Administration 10 working days after the meeting.

(2) * * *

(iii) Ten copies of such requests should be filed with the Office of Secretary and Administration as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the Office of Secretary and Administration no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

■ 26. Revise § 3001.72 to read as follows:

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and § 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for an advisory opinion in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the **Federal Register.**

■ 27. Revise § 3001.75 to read as follows:

§ 3001.75 Service by the Postal Service.

The provisions of § 3001.12 govern the Postal Service's service requirements for proceedings conducted under this subpart. Service must be made on all participants as defined in § 3001.5(h).

[FR Doc. 2013–09037 Filed 4–16–13; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2013–0233; FRL–9803–1]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements 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 action on four Kansas State Implementation Plan (SIP) submissions. First, EPA is proposing to approve portions of two SIP submissions from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS) for fine particulate matter ($PM_{2.5}$). The CAA requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also proposing to approve two additional SIP submissions from Kansas, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas, and another addressing the requirements applicable to any board or body which approves permits or enforcement orders of the CAA, both of which support requirements associated with infrastructure SIPs.

DATES: Comments must be received on or before May 17, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0233, 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:* Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, KS 66219.

4. *Hand Delivery or Courier:* Deliver your comments to Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, KS 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2013–0233. 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 should be free of any defects or viruses.

Docket: All documents in the electronic 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. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal 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: Ms. Lachala Kemp, Air Planning and Development Branch U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7214; *fax number:* (913) 551–7065; *email address: kemp.lachala@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following questions:

I. What is being addressed in this document?

In today's proposed rulemaking, EPA is proposing action on four Kansas SIP submissions. EPA received the first submission on January 8, 2008, addressing the infrastructure SIP requirements relating to the 1997 $PM_{2.5}$ NAAQS. EPA received the second submission on April 12, 2010, addressing the infrastructure SIP requirements relating to the 2006 $PM_{2.5}$ NAAQS In a previous action EPA approved section 110(a)(2)(D)(i)(I) and (II)—Interstate and international transport requirements of Kansas' January 8, 2008, SIP submittal for the 1997 $PM_{2.5}$ NAAQS (72 FR 10608, May 8, 2007); and EPA disapproved section 110(a)(2)(D)(i)(I)—Interstate and international transport requirements of Kansas' April 12, 2010, SIP submittal for the 2006 $PM_{2.5}$ NAAQS (76 FR 43143, July 20, 2011). Therefore, in today's action, we are not proposing to act on these portions of section 110(a)(2)since they have already been acted upon by EPA. If EPA takes final action as proposed, we will have acted on both the January 8, 2008, and the April 12, 2010, submissions in their entirety excluding those provisions that are not within the scope of today's rulemaking as identified in section IV for both the 1997 and 2006 $PM_{2.5}$ infrastructure SIP submissions.

The third submission was received by EPA on March 1, 2013. This submission revises the Kansas rule found at Kansas Administrative Regulations (KAR) 29–19–350 "Prevention of Significant Deterioration of Air Quality" to incorporate by reference Federal rule changes through July 1, 2011. These changes implement elements of the Prevention of Significant Deterioration (PSD) regulations relating to EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (73 FR 28321, May 16, 2008) and certain elements of the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" rule (75 FR 64864, October 20, 2010). In addition, this rule amendment defers the application of PSD permitting requirements to carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources.

The fourth submission was received by EPA on March 19, 2013. This submittal addresses the conflict of interest provisions in section 128 of the CAA as it relates to infrastructure SIPs described in element E below.[1]

II. What is a section 110(a)(1) and (2) infrastructure SIP?

Section 110(a)(1) of the CAA requires, in part, that states make a SIP submission to EPA to implement, maintain and enforce each of the NAAQS promulgated by EPA after reasonable notice and public hearings. Section 110(a)(2) includes a list of specific elements that such infrastructure SIP submissions must address. 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. These SIP submissions are commonly referred to as "infrastructure" SIPs.

III. What elements are applicable under sections 110(a)(1) and (2)?

On October 2, 2007, EPA issued guidance to address infrastructure SIP elements required under sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.[2] On September 25, 2009, EPA issued guidance to address infrastructure SIP elements required under sections 110(a)(1) and (2) for the 2006 24-hour $PM_{2.5}$ NAAQS.[3] EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources) ; (D) Interstate and international transport [4]; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas; (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection; (K) Air quality and modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.

[1] On March 19, 2013, Kansas submitted its provisions with regards to CAA section 128 as part of its infrastructure SIP submission for the 2008 Ozone and 2010 Nitrogen Dioxide(NO_2) NAAQS. EPA believes that these conflict of interest provisions are applicable to all NAAQS. Therefore, as part of today's rulemaking for the 1997 and 2006 p.m. $_{2.5}$ NAAQS, we are proposing to approve these provisions into the Kansas SIP. See section V for further information.

[2] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007 (2007 Memo).

[3] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)," Memorandum to EPA Regional Air Division Directors, Regions I–X, September 25, 2009 (2009 Memo).

[4] Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); Prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

IV. What is the scope of this rulemaking as it relates to infrastructure SIPs?

The applicable infrastructure SIP requirements are contained in sections 110(a)(1) and (2) of the CAA. EPA is proposing action on each of the requirements of section 110(a)(2)(A) through section 110(a)(2)(M), as applicable, except for the elements detailed in the following paragraphs.

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); (iii) existing provisions for minor source New Source Review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule" (67 FR 80186, December 31, 2002), as amended by the "NSR Reform" final rulemaking on June 13, 2007 (72 FR 32526). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found at 76 FR 41075, 41076–41079 (July 13, 2011). *See also* 77 FR 38239, 38240–38243 (June 27, 2012); and 77 FR 46361, 46362–46365 (August 3, 2012).

In addition to the four substantive areas above, EPA is not acting in this action on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D and on the visibility protection portion of section 110(a)(2)(J). A detailed rationale for not acting on elements of these requirements is discussed within each applicable section of this rulemaking. As described above in section I, EPA is also not acting on portions of section 110(a)(2)(D)(i)—Interstate and international transport, as final actions have already been taken on portions of this element for both the Kansas 1997 and 2006 $PM_{2.5}$ infrastructure SIP submissions.

Finally, as part of this action, EPA is evaluating the state's compliance with the new PSD requirements promulgated in the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," (73 FR 28321, May 16, 2008), and the $PM_{2.5}$ Increment, SILs and SMC Rule, (75 FR 64864, October 20, 2010). Regarding the May 16, 2008 rule, on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (DC Cir.), issued a judgment that remanded two of EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the 2008 rule. The Court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 implementation rule addressed by the Court's decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the Court's decision. Accordingly, EPA's approval of Kansas' infrastructure SIP as to Elements (C), (D)(i)(II), and (J), with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the Court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure SIP submission. As described above, EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which states must submit by the dates statutorily prescribed under part D within subparts 2 through 5, extending as far as ten years following designations for some elements. Given these separate applicable SIP submission dates, EPA concludes that these specific requirements are outside the scope of the infrastructure SIPs.

V. What is EPA's evaluation of how the State addressed the relevant elements of sections 110(a)(1) and (2)?

On July 18, 1997, EPA promulgated new $PM_{2.5}$ primary and secondary NAAQS (62 FR 38652). On October 17, 2006, EPA made further revisions to the primary and secondary NAAQS for $PM_{2.5}$ (71 FR 61144). On January 8, 2008, EPA Region 7 received Kansas' particulate matter infrastructure SIP submission for the 1997 $PM_{2.5}$ standard. On April 12, 2010, EPA Region 7 received Kansas' particulate matter infrastructure SIP submittal for the 2006 $PM_{2.5}$ standard. These SIP submissions became complete as a matter of law on July 8, 2008, and October 12, 2010, respectively. EPA has reviewed both of the State's infrastructure SIP submissions and the relevant statutory and regulatory authorities and provisions referenced in those submittals or referenced in Kansas' SIP.

(A) Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each NAAQS.[5]

The state of Kansas' statutes and regulations authorize the Kansas Department of Health and Environment (KDHE) to regulate air quality and implement air quality control regulations. KDHE's statutory authority can be found in Chapter 65, Article 30 of the Kansas Statutes Annotated (KSA), otherwise known as the Kansas Air Quality Act. KSA Section 65–3003 places the responsibility for air quality conservation and control of air pollution with the Secretary of Health and Environment ("Secretary"). The Secretary in turn administers the Kansas Air Quality Act through the Division of Environment within KDHE. Air pollution is defined in KSA Section 65–3002(c) as the presence in the outdoor atmosphere of one or more air contaminants in such quantities and

[5] The specific nonattainment area plan requirements of section 110(a)(2)(I), are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 1997 or 2006 $PM_{2.5}$ NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

duration as is, or tends significantly to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or would contribute to the formation of regional haze.

KSA Section 65–3005(a)(1) provides authority to the Secretary to adopt, amend and repeal rules and regulations implementing the Kansas Air Quality Act. It also gives the Secretary the authority to establish ambient air quality standards for the state of Kansas as a whole or for any part thereof. KSA Section 65–3005(a)(12). The Secretary has the authority to promulgate rules and regulations to ensure that Kansas is in compliance with the provisions of the Act, in furtherance of a policy to implement laws and regulations consistent with those of the Federal government. KSA Section 65–3005(b). The Secretary also has the authority to establish emission control requirements as appropriate to facilitate the accomplishment of the purposes of the Kansas Air Quality Act. KSA Section 65–3010(a).

Based upon review of the state's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has statutory and regulatory authority to establish additional emissions limitations and other measures, as necessary to address attainment and maintenance of the $PM_{2.5}$ standards. Therefore, EPA believes that the Kansas SIP adequately addresses the requirements of section 110(a)(2)(A) for the 1997 and 2006 $PM_{2.5}$ NAAQS[6] and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(B) Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, KSA Section 65–3007 provides the enabling authority necessary for Kansas to fulfill the requirements of section 110(a)(2)(B). This provision gives the Secretary the authority to classify air contaminant sources which, in his or her judgment, may cause or contribute to air pollution. Furthermore, the Secretary has the authority to require such air contaminant sources to monitor emissions, operating parameters, ambient impacts of any source emissions, and any other parameters deemed necessary. The Secretary can also require these sources to keep records and make reports consistent with the Kansas Air Quality Act. KSA Section 65–3007(b).

Kansas has an air quality monitoring network operated by KDHE and local air quality agencies that collects air quality data that are compiled, analyzed, and reported to EPA. KDHE's Web site contains up-to-date information about air quality monitoring, including a description of the network and information about the monitoring of $PM_{2.5}$. *See, generally, http://www.kdheks.gov/bar/air-monitor/indexMon.html.* KDHE also conducts five-year monitoring network assessments, including the $PM_{2.5}$ monitoring network, as required by 40 CFR 58.10(d). On January 10, 2013, EPA approved Kansas' 2012 ambient air monitoring network. This plan includes, among other things, the locations for the $PM_{2.5}$ monitoring network in Kansas, which currently includes 13 monitors located at 11 sites. Data gathered by these monitors is submitted to EPA's Air Quality System, which in turn determines if the network site monitors are in compliance with the NAAQS.

Within KDHE, the Bureau of Air and Radiation implements these requirements. Along with its other duties, the Monitoring and Planning Section collects air monitoring data, quality assures the results, and reports the data. The data are then used to develop the appropriate regulatory or outreach strategies to reduce air pollution.

Based upon review of the state's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that the Kansas SIP meets the requirements of section 110(a)(2)(B) for the 1997 and 2006 24-hour $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(C) Program for enforcement of control measures (PSD, New Source *Review for nonattainment areas, and construction and modification of all stationary sources):* Section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).[7]

(1) *Enforcement of SIP Measures.* With respect to enforcement of requirements of the SIP, KSA Section 65–3005(a)(3) gives the Secretary the authority to issue orders, permits and approvals as may be necessary to effectuate the purposes of the Kansas Air Quality Act and enforce the Act by all appropriate administrative and judicial proceedings. Pursuant to KSA Section 65–3006, the Secretary also has the authority to enforce rules, regulations and standards to implement the Kansas Air Quality Act and to employ the professional, technical and other staff to effectuate the provisions of the Act. In addition, if the Secretary or the director of the Division of Environment finds that any person has violated any provision of any approval, permit or compliance plan or any provision of the Kansas Air Quality Act or any rule or regulation promulgated thereunder, he or she may issue an order directing the person to take such action as necessary to correct the violation. KSA Section 65–3011.

KSA Section 65–3018 gives the Secretary or the director of the Division of Environment the authority to impose a monetary penalty against any person who, among other things, either violates any order or permit issued under the Kansas Air Quality Act, or violates any provision of the Act or rule or regulation promulgated thereunder. Section 65–3028 provides for criminal penalties for knowing violations.

(2) *Minor New Source Review.* Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller sources that meet the criteria listed in KAR 28–19–300(b) "Construction Permits and Approvals," Kansas has a SIP-approved

[6] For the reasons stated earlier, EPA is not addressing SSM and director's discretion provisions in this rulemaking.

[7] As discussed in further detail below, this infrastructure SIP rulemaking will not address the Kansas program for nonattainment area related provisions, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

permitting program. Any person proposing to conduct a construction or modification at such a source must obtain approval from KDHE prior to commencing construction or modification. If KDHE determines that air contaminant emissions from a source will interfere with attainment or maintenance of the NAAQS, it cannot issue an approval to construct or modify that source (KAR 28–19–301(d) "Construction Permits and Approvals; Application and Issuance").

In this action, EPA is proposing to approve Kansas' infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ standards with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program to the extent that it is inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element (C) (*e.g.*, 76 FR 41076–41079). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

(3) *Prevention of Significant Deterioration (PSD) permit program.* Kansas also has a program approved by EPA as meeting the requirements of Part C, relating to prevention of significant deterioration of air quality. In order to demonstrate that Kansas has met this sub-element, this PSD program must cover requirements for not just $PM_{2.5}$, but for all other regulated NSR pollutants as well. To implement the PSD permitting component of section 110(a)(2)(C) for the 1997 and 2006 $PM_{2.5}$ NAAQS, states were required to submit the necessary SIP revisions to EPA by May 16, 2011, and July 20, 2012, pursuant to EPA's NSR $PM_{2.5}$ Implementation Rule (2008 NSR Rule), (73 FR 28321, May 16, 2008), and EPA's $PM_{2.5}$ Increment—Significant Impact Levels (SILs)—Significant Monitoring Concentration (SMC) rule, (75 FR 64864, October 20, 2010). As described in section IV above, the January 4, 2013, court decision remanding the 2008 rule does not impact the EPA's action as to this element.

The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 NSR Rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to include sulfur dioxide (SO_2) and nitrogen oxide (NO_X) (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations) (*see* 73 FR 28325). The 2008 NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations. The specific references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). The deadline for states to submit SIP revisions to their PSD programs incorporating these new requirements was May 16, 2011 (73 FR 28341).

As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also revised the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations).

Another provision of the 2008 NSR Rule requires states to account for gases that could condense to form particulate matter, known as condensables, for applicability determinations and in establishing emission limits for $PM_{2.5}$ and PM_{10}[8] in NSR permits. EPA provided that states were required to account for $PM_{2.5}$ and PM_{10} condensables beginning on or after January 1, 2011. This requirement is currently codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (73 FR at 28341).

The definition of "regulated NSR pollutant" in the PSD provisions of the 2008 rule inadvertently required states to also account for the condensable PM fraction with respect to one indicator of PM referred to as "particular matter emissions." The term "particulate matter emissions" includes $PM_{2.5}$ and PM_{10} particles as well as larger particles, and is an indicator for PM that has long been used for measuring PM under various New Source Performance Standards (NSPS) (40 CFR part 60).[9] A similar provision addressing condensables was added to the Nonattainment NSR SIP provisions of the 2008 NSR Rule but does not include a requirement to account for "particulate matter (PM) emissions" in all cases (40 CFR 51.165(a)(1)(xxxvii)(D)). On October 12, 2012, EPA finalized a rulemaking to amend the definition of "regulated NSR pollutant" promulgated in the NSR $PM_{2.5}$ Rule regarding the PM condensable provision currently at 40 CFR 51.166(b)(49)(i)(a), 52.21(b)(50)(i)(a), and the EPA's Emissions Offset Interpretative Ruling (*see* 77 FR 65107). The rulemaking removes the inadvertent requirement in the 2008 NSR Rule that the measurement of condensables be generally included as part of the measurement and regulation of "particulate matter emissions." [10]

[8] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.

[9] In addition to the NSPS for PM, it is noted that states regulated "particulate matter emissions" for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

[10] The change finalized in that action does not mean that EPA has entirely exempted the inclusion of the condensable PM fraction as part of accounting for "particulate matter emissions." It may be necessary for PSD sources to count the condensable PM fraction with regard to "particulate matter emissions" where either the applicable NSPS compliance test includes the condensable PM fraction or the applicable implementation plan requires the condensable PM fraction to be counted. *See* 77 FR 65112.

The 2010 $PM_{2.5}$ Increment-Significant Impact Levels (SILS)—Significant Monitoring Concentration (SMC) Rule provided additional regulatory requirements under the PSD SIP program regarding the implementation of the $PM_{2.5}$ NAAQS (*see* 75 FR 64864). As a result, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule required states to submit SIP revisions to adopt the required PSD increments by July 20, 2012. Specifically, the rule required a state's submitted PSD SIP revision to adopt and submit for EPA approval the $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS.

That rule also permitted states, at their discretion, to choose to adopt and submit for EPA approval into the SIP SILs, used as a screening tool (by a major source subject to PSD), to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and a SMC (also a screening tool), used by a major source subject to PSD to determine the subsequent level of data gathering required for a PSD permit application for emissions of $PM_{2.5}$. More detail on the $PM_{2.5}$ PSD Increment-SILs-SMC Rule can be found at 75 FR 64864. In regards to the SILs and SMC provisions of the 2010 $PM_{2.5}$ rule, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA*, No. 10–1413 (filed Dec. 17, 2010), issued a judgment that, *inter alia*, vacated and remanded the provisions concerning implementation of the $PM_{2.5}$ SILs and vacated the provisions adding the $PM_{2.5}$ SMC that were promulgated as part of the 2010 $PM_{2.5}$ PSD Rule.

Accordingly, the only remaining requirements from the 2010 rule are the $PM_{2.5}$ increment and associated provisions discussed below. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." In other words, when a source applies for a PSD SIP permit to emit a regulated pollutant in an attainment or unclassifiable area, the permitting authority implementing the PSD SIP must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum allowable increase" of an air pollutant allowed to occur above the applicable baseline concentration [11] for that pollutant. PSD increments prevent air quality in attainment and unclassifiable areas from deteriorating up to or beyond the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate "significant deterioration" of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable/attainment area in which the source is located, as well as any other attainment or unclassifiable/attainment area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 ug/m^3 (annual average) (40 CFR 51.166(b)(15)(i) and (ii)). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application after a trigger date (which for $PM_{2.5}$ is defined as October 20, 2011, by regulation) and is based on the location of the proposed source and its emissions impact on the area. Once the baseline area is established, subsequent PSD sources locating in that area must consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the operative "baseline date." [12] On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available (*see* 75 FR 64864). As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for $PM_{2.5}$ as a new pollutant [13] for which the NAAQS were established after August 7, 1977,[14] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the "contingent safe harbor" approach (75 FR at 64869 and table at 40 CFR 51.166(c)(1)).

In addition to PSD increments for the 2006 $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment–SILs–SMC Rule amended the definition at 40 CFR 51.166 and 40 CFR 52.21 for "major source baseline date" and "minor source baseline date" to establish the $PM_{2.5}$ NAAQS specific dates (including trigger dates) associated with the implementation of $PM_{2.5}$ PSD increments. See the PSD Increment–SILs–SMC rule for a more detailed discussion on the amendments to these definitions (75 FR 64864). In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans adopting the $PM_{2.5}$ PSD increments to EPA for approval within 21 months from promulgation of the final rule (i.e., by July 20, 2012). Each state was responsible for determining how increment consumption and the setting of the minor source baseline date for $PM_{2.5}$ would occur under its own PSD program. Regardless of when a state begins to require $PM_{2.5}$ increment analysis and how it chooses to set the $PM_{2.5}$ minor source baseline date, the emissions from sources subject to PSD for $PM_{2.5}$ for which construction commenced after October 20, 2010, (major source baseline date) consume the $PM_{2.5}$ increment and therefore should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state's revised PSD SIP program.

To meet the requirements of element (C), in addition to the $PM_{2.5}$ PSD elements that must be incorporated in to the SIP, each state's PSD program must meet applicable requirements for all regulated pollutants in PSD permits. For example, if a state lacks provisions needed to address NO_X as a precursor to ozone, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program for $PM_{2.5}$ will not be considered to be met.

Relating to ozone, the EPA's "Final Rule to Implement the 8-Hour Ozone

[11] Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the same air quality at the time of the first application for a PSD permit in the area.

[12] Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

[13] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. Rather, EPA retained the annual and 24-hour NAAQS for PM_{10} as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally (75 FR 64864).

[14] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule), was published on November 8, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR at 71679, and at 71699–71700). This requirement is currently codified in 40 CFR 51.166(b)(49)(i)(b).

EPA notes that the Kansas SIP provides that ozone precursors (volatile organic compounds (VOCs) and nitrogen oxides) are regulated. The regulations at 40 CFR 52.21(b)(50) specifically state that nitrogen oxides and VOCs are considered precursors for ozone in all attainment and unclassifiable areas. For example, a stationary source that is major for VOCs is also major for ozone for purposes of permitting in nonattainment areas (KAR 28–19–16a(r) "New Source Permit Requirements for Designated Nonattainment Areas"). In addition, a source that undergoes a significant net emissions increase for VOCs is also considered to have undergone a significant net emissions increase for ozone for the purposes of the Kansas air quality regulations (KAR 28–19–200(eee)(6) "General Provisions; Definitions"). The ozone provisions were previously approved by EPA into the Kansas SIP on February 22, 2011 (76 FR 9658).

As a part of today's rulemaking, EPA is proposing to approve amendments to Kansas' PSD regulations for $PM_{2.5}$ into the SIP. See section VI for EPA's analysis of how Kansas' March 1, 2013, submission meets the PSD requirements.

Regarding greenhouse gases (GHG), on June 3, 2010, EPA issued a final rule establishing a "common sense" approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," or "Tailoring Rule," set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities (*see* 75 FR 31514). Without the new threshold provided by the Tailoring Rule, sources with GHG emissions above the statutory thresholds (of 100 or 250 tons per year) would be subject to PSD, which could have potentially resulted in apartment complexes, strip malls, small farms, restaurants, etc. triggering GHG PSD requirements.

With respect to the applicability of the Kansas PSD program to GHG emissions, on February 22, 2011, EPA approved in to the Kansas SIP an amendment that would regulate GHGs under Kansas' PSD program (76 FR 9658). Thus, we have previously determined that the Kansas SIP meets the PSD requirements with respect to GHGs.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS and the March 1, 2013, submission regarding PSD requirements, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, with respect to the requirements of section 110(a)(2)(C) for the 1997 and 2006 24-hour $PM_{2.5}$ NAAQS, EPA is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements, the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements, and the March 1, 2013, submission regarding the PSD requirements. EPA's analysis of the March 1, 2013, submittal is provided in section VI below.

(D) Interstate and international transport:

Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS in another state. Furthermore, section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or to protect visibility. Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); Prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

In this notice, we are not proposing to take any actions related to the interstate transport requirements of section 110(a)(2)(D)(i)(I)—prongs 1 and 2. At this time, there is no SIP submission from Kansas relating to 110(a)(2)(D)(i)(I) for the 1997 or 2006 $PM_{2.5}$ NAAQS pending before the Agency. EPA previously approved the provisions of the Kansas SIP submission addressing the requirements of section 110(a)(2)(D)(i)(I), with respect to the 1997 $PM_{2.5}$ standards, into the Kansas SIP on May 8, 2007 (72 FR 10608). EPA also disapproved the portion of the Kansas SIP submission intended to address section 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ standards (76 FR 43143, July 20, 2011).

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II)—prong 3, EPA notes that Kansas' satisfaction of the applicable infrastructure SIP PSD requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA also notes that the proposed action in that section related to PSD is consistent with the proposed approval related to PSD for section 110(a)(2)(D)(i)(II). Therefore, EPA is proposing to approve the PSD requirements of section 110(a)(2)(D)(i)(II)—prong 3.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II)—prong 4, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo [15] states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, and an approved SIP addressing regional haze.

EPA's final approval of Kansas' regional haze plan "Approval and Promulgation of Implementation Plans; State of Kansas: Regional Haze" was published on December 27, 2011 (76 FR 80754). In this final approval, EPA determined that the Kansas SIP met requirements of the CAA, for states to prevent any future and existing anthropogenic impairment of visibility in Class I areas caused by emissions of air pollutants located over a wide geographic area. Therefore, EPA proposes that Kansas has met the infrastructure SIP requirements of section 110(a)(2)(D)(i)(II) related to visibility protection for the 1997 and 2006 $PM_{2.5}$ NAAQS.

Section 110(a)(2)(D)(ii) also requires that the SIP insure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively.

Section 126(a) of the Act requires new or modified sources to notify

[15] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards "Guidance on SIP Elements Required Under Sections 110(a(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)." Memorandum to EPA Regional Air Division Directors, Regions 1–X, September 25, 2009.

neighboring states of potential impacts from sources within the state. The Kansas regulations address abatement of the effects of interstate pollution. For example, KAR 28–19–350(k)(2) "Prevention of Significant Deterioration (PSD) of Air Quality" requires KDHE, prior to issuing any construction permit for a proposed new major source or major modification, to notify EPA, as well as: any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located; the chief executives of the city and county where the source will be located; any comprehensive regional land use planning agency having jurisdiction where the source will be located; and any state, Federal land manager, or Indian governing body whose lands will be affected by emissions from the new source or modification.[16] *See also* KAR 28–19–204 "General Provisions; Permit Issuance and Modification; Public Participation" for additional public participation requirements. In addition, no Kansas source or sources have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against Kansas with respect to any air pollutant. Thus, the State's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(D)(i)(II)—Prongs 3 and 4 and 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(E) Adequate authority, resources, implementation, and oversight: Section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under State or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the CAA: and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) Section 110(a)(2)(E)(i) requires states to establish that they have adequate personnel, funding, and authority. With respect to adequate authority, we have previously discussed Kansas' statutory and regulatory authority to implement the 1997 and 2006 $PM_{2.5}$ NAAQS, primarily in the discussion of section 110(a)(2)(A) above. Neither Kansas nor EPA have identified any legal impediments in the State's SIP to implementation of these NAAQS.

With respect to adequate resources, KDHE asserts that it has adequate personnel to implement the SIP. The Kansas statutes provide the Secretary the authority to employ technical, professional and other staff to effectuate the purposes of the Kansas Air Quality Act from funds appropriated and available for these purposes. *See* KSA Section 65–3006(b). Within KDHE, the Bureau of Air and Radiation implements the Kansas Air Quality Act. This Bureau is further divided into the Air Compliance & Enforcement Section, Air Permit Section; the Monitoring & Planning Section; and the Radiation and Asbestos Control Section.

With respect to funding, the Kansas Legislature annually approves funding and personnel resources for KDHE to implement the air program. The annual budget process provides a periodic update that enables KDHE and the local agencies to adjust funding and personnel needs. In addition, the Kansas statutes grant the Secretary authority to establish various fees for sources, to cover any and all parts of administering the provisions of the Kansas Air Quality Act. For example, KSA Section 65–3008(f) grants the Secretary authority to fix, charge, and collect fees for construction approvals and permits (and the renewals thereof). KSA Section 65–3024 grants the Secretary the authority to establish annual emissions fees. These emission fees, along with any moneys recovered by the state under the provisions of the Kansas Air Quality Act, are deposited into an air quality fee fund in the state treasury. Moneys in the air quality fee fund can only be used for the purpose of administering the Kansas Air Quality Act.

Kansas also uses funds in the non-Title V subaccounts, along with General Revenue funds and EPA grants under, for example, sections 103 and 105 of the Act, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement the SIP.

(2) Conflict of interest provisions—Section 128

Section 110(a)(2)(E)(ii) also requires that each state SIP meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. Section 128(a)(1) requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body or the head of an agency with similar powers, adequately disclose any potential conflicts of interest. In 1978, EPA issued a guidance memorandum recommending ways that states could meet the requirements of section 128, including suggested interpretations of certain terms in section 128.[17] EPA has not issued further guidance or regulations of general applicability on the subject since that time. However, EPA has recently proposed certain interpretations of section 128 as part of its actions on other infrastructure SIPs consistent with the statutory requirements (*see, e.g.*, (77 FR 44555, July 30, 2012) and (77 FR 66398, November 5, 2012)). We are now proposing these same interpretations in relation to the Kansas SIP.

On March 19, 2013, Kansas submitted to EPA specific provisions of the Kansas statutes that address section 128, for inclusion into the SIP. In today's action, we are also proposing to approve Kansas' March 19, 2013, submission related to sections 110(a)(2)(E)(ii) and 128 of the CAA. Due to the fact that this proposed rule revision is not yet state-effective, Kansas requested that EPA "parallel process" the revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of

[16] KAR 28–19–16k(b) provides similar requirements for construction permits issued in nonattainment areas.

[17] *See* Memorandum from David O. Bickart to Regional Air Directors, "Guidance to States for Meeting Conflict of Interest Requirements of Section 128," Suggested Definitions, March 2, 1978.

the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel. After Kansas submits the formal state-effective rule and SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the state's proposed rule after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision. EPA and Kansas have worked to assure that the state's SIP correctly addresses these requirements.

EPA's analysis consisted of review of Kansas' March 19, 2013, SIP submission and EPA's additional review of Kansas' statutes and authorities. The first step in the analysis consists of identifying boards, bodies and persons responsible for approving permits and enforcement orders and determining the applicability of the section 128 requirements to these entities. The Kansas Air Quality Act does not establish any boards or bodies that are responsible for approving permits or enforcement orders; rather, that authorities lies exclusively with the Secretary (see KSA Section 65–3005(a)(3)). Therefore, EPA believes the requirements of section 128(a)(1) do not apply to Kansas.

To satisfy section 128(a)(2) of the CAA, Kansas submitted to EPA KSA Section 46–247(c) for inclusion into the SIP on March 19, 2013. This provision requires state officers (as defined at KSA Section 46–221), employees and members of boards, councils and commissions under the jurisdiction of the head of any state agency to file written statements of substantial interests (as that term is defined at KSA Section 46–229). Thus, Kansas law requires disclosure of any potential conflicts of interest by the head of an agency responsible for issuing permits and enforcement orders (*i.e.*, KDHE).

EPA believes that the above identified relevant sections of the Kansas statutes directly address the provisions related to section 128(a)(2) of the CAA. We propose to approve the following provisions into the Kansas SIP as they strengthen the SIP with respect to the conflict of interest requirements of CAA section 128:

- KSA Section 46–221
- KSA Section 46–229
- KSA Section 46–247(c)

(3) With respect to assurances that the state has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, KSA Section 65–3005(a)(8) grants the Secretary authority to encourage local units of government to handle air pollution problems within their own jurisdictions and to provide technical and consultative assistance therefore. The Secretary may also enter into agreements with local units of government to administer all or part of the provisions of the Kansas Air Quality Act in the units' respective jurisdictions. In fact, KSA Section 65–3016 allows for cities and/or counties (or combinations thereof) to form local air quality conservation authorities. These authorities will then have the authority to enforce air quality rules and regulations adopted by the Secretary and adopt any additional rules, regulations and standards as needed to maintain satisfactory air quality within their jurisdictions.

At the same time, the Kansas statutes also retain authority in the Secretary to carry out the provisions of the state air pollution control law. KSA Section 65–3003 specifically places responsibility for air quality conservation and control of air pollution with the Secretary. The Secretary shall then administer the Kansas Air Quality Act through the Division of Environment. As an example of this retention of authority, KSA Section 65–3016 only allows for the formation of local air quality conservation authorities with the approval of the Secretary. In addition, although these authorities can adopt additional air quality rules, regulations and standards, they may only do so if those rules, regulations and standards are in compliance with those set by the Secretary for that area. Currently, KDHE oversees the following local agencies that implement that Kansas Air Quality Act: The City of Wichita Office of Environmental Health, Johnson County Department of Health & Environment, Shawnee County Health Agency, and Unified Government of Wyandotte County—Kansas City, Kansas Public Health Department.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS and the March 19, 2013, SIP submission, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(E) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements, and the March 19, 2013, submission relating to section 128 requirements.

(F) Stationary source monitoring system: Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, KSA Section 65–3007 gives the Secretary the authority to classify air contaminant sources which, in his or her judgment, may cause or contribute to air pollution. The Secretary shall require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions, and any other parameters deemed necessary. Furthermore, the Secretary may require these emissions sources to keep records and make reports consistent with the purposes of the Kansas Air Quality Act.

In addition, KAR 28–19–12(A) "Measurement of Emissions" states that KDHE may require any person responsible for the operation of an emissions source to make or have tests made to determine the rate of contaminant emissions from the source whenever it has reason to believe that existing emissions exceed limitations specified in the Kansas air quality regulations. At the same time, KDHE may also conduct its own tests of emissions from any source. KAR 28–19–12(B). The Kansas regulations also require that all Class I operating permits include requirements for monitoring of emissions (KAR 28–19–512(a)(9) "Class I Operating Permits; Permit Content").

Kansas makes all monitoring reports (as well as compliance plans and compliance certifications) submitted as part of a construction permit or Class I or Class II permit application publicly available. *See* KSA Section 65–3015(a); KAR 28–19–204(c)(6) "General Provisions; Permit Issuance and Modification; Public Participation." KDHE uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. Although the Kansas statutes allow a person to request that records or information reported to KDHE be regarded and treated as confidential on the grounds that it constitutes trade secrets, emission data is specifically excluded from this protection. *See* KSA Section 65–3015(b).

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(F) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(G) Emergency authority: Section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in Section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

KSA Section 65–3012(a) states that whenever the Secretary receives evidence that emissions from an air pollution source or combination of sources presents an imminent and substantial endangerment to public health or welfare or to the environment, he or she may issue a temporary order directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice. Upon issuance of this temporary order, the Secretary may then commence an action in the district court to enjoin these acts or practices.

KAR 28–19–56 "Episode Criteria" allows the Secretary to proclaim an air pollution alert, air pollution warning, or air pollution emergency whenever he or she determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. KAR 28–19–57 "Emission Reduction Requirements" imposes restrictions on emission sources in the event one of these three air pollution episode statuses is declared.

With respect to the contingency plan requirements of section 110(a)(2)(G), EPA has issued guidance making recommendations for how states may elect to approach this issue. In that guidance, EPA recommended that, where a state can demonstrate that $PM_{2.5}$ levels have remained below 140.4 micrograms per cubic meter, the state is not required to develop a contingency plan to satisfy element (G). EPA believes that this is a reasonable interpretation of the statute and addresses the $PM_{2.5}$ NAAQS in a way analogous to other NAAQS pollutants. $PM_{2.5}$ monitoring data from monitors across the state have shown that 24-hour $PM_{2.5}$ values have never exceeded 140.4 micrograms per cubic meter in Kansas. Therefore, Kansas is not required to develop a contingency plan for $PM_{2.5}$ at this time. That said, the Kansas regulations provide that any person responsible for the operation of a source of air contamination adjudged to be of major concern with respect to the possible implementation of air pollution emergency episode control procedures either because of the nature or the quantity of its emissions must, at the request of KDHE, prepare an emergency episode plan to be implemented in the event that such an episode is declared. *See* KAR 28–19–58 "Emergency Episode Plans".

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(G) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(H) Future SIP revisions: Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

KSA Section 65–3005(b) specifically states that it is the policy of the state of Kansas to regulate the air quality of the state and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with that of the Federal government. Therefore, the Secretary has the authority to promulgate rules and regulations to ensure that Kansas is in compliance with the provisions of the Federal CAA. KSA 65–3005(b)(1).

As discussed previously, KSA Section 65–3005(a)(1) provides authority to the Secretary to adopt, amend and repeal rules and regulations implementing and consistent with the Kansas Air Quality Act. The Secretary also has the authority to establish ambient air quality standards for the state of Kansas or any part thereof. KSA Section 65–3005(a)(12). Therefore, as a whole, the Secretary has the authority to revise rules as necessary to respond to any necessary changes in the NAAQS.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has adequate infrastructure needed to address section 110(a)(2)(H) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(I) Nonattainment areas: Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of Part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to a different submission schedule than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

(J) Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to

interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) Part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. KSA Section 65–3005(a)(14) grants the Secretary the authority to advise, consult and cooperate with other agencies of the state, local governments, other states, interstate and interlocal agencies, and the Federal government. Furthermore, as noted earlier in the discussion on section 110(a)(2)(D), Kansas' regulations require that whenever it receives a construction permit application for a new source or a modification, KDHE must notify state and local air pollution control agencies, as well as regional land use planning agencies and any state, Federal land manager, or Indian governing body whose lands will be affected by emissions from the new source or modification. *See* KAR 28–19–350(k)(2) "Prevention of Significant Deterioration (PSD) of Air Quality."

(2) With respect to the requirements for public notification in CAA section 127, the infrastructure SIP should provide citations to regulations in the SIP requiring the air agency to regularly notify the public of instances or areas in which any NAAQS are exceeded; advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. As discussed previously with element (G), KAR 28–19–56 "Episode Critera" contains provisions that allow the Secretary to proclaim an air pollution alert, air pollution warning, or air pollution emergency status whenever he or she determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. Any of these emergency situations can also be declared by the Secretary even in the absence of issuance of a high air pollution potential advisory or equivalent advisory from a local weather bureau meteorologist, if deemed necessary to protect the public health. In the event of such an emergency situation, public notification will occur through local weather bureaus.

In addition, information regarding air pollution and related issues, is provided on a KDHE Web site, *http://www.kdheks.gov/bar/*. This information includes air quality data, information regarding the NAAQS, health effects of poor air quality, and links to the Kansas Air Quality Monitoring Network. KDHE also has an "Outreach and Education" Web page (*http://www.kdheks.gov/bar/air_outreach/air_quality_edu.htm*) with information on how individuals can take measures to reduce emissions and improve air quality in daily activities.

(3) With respect to the applicable requirements of Part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection, we note in section VI of this rulemaking how the Kansas SIP meets the PSD requirements, incorporating the Federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to element J after the promulgation of a new or revised NAAQS.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(J) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(K) Air quality and modeling/data: Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Kansas has authority to conduct air quality modeling and report the results of such modeling to EPA. KSA Section 65–3005(a)(9) gives the Secretary the authority to encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, the regulations at KAR 28–19–350 "Prevention of Significant Deterioration (PSD) of Air Quality" incorporate EPA modeling guidance in 40 CFR part 51, appendix W for the purposes of demonstrating compliance or non-compliance with a NAAQS.

The Kansas statutes and regulations also give KDHE the authority to require that modeling data be submitted for analysis. KSA Section 65–3007(b) grants the Secretary the authority to require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions or any other parameters deemed necessary. The Secretary may also require these sources to keep records and make reports consistent with the purposes of the Kansas Air Quality Act. These reports could include information as may be required by the Secretary concerning the location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such information as is relevant to air pollution and available or reasonably capable of being assembled. KSA Section 65–3007(c).

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(K) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(L) Permitting Fees: Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the cost of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the

CAA, relating to operating permits, is approved by EPA.

KSA Section 65–3008(f) allows the Secretary to fix, charge, and collect fees for approvals and permits (and the renewals thereof). KSA Section 65–3024 grants the Secretary the authority to establish annual emissions fees. Fees from the construction permits and approvals are deposited into the Kansas state treasury and credited to the state general fund. Emissions fees are deposited into an air quality fee fund in the Kansas state treasury. Moneys in the air quality fee fund can only be used for the purpose of administering the Kansas Air Quality Act.

Kansas' Title V program, found at KAR 28–19–500 to 28–19–564, was approved by EPA on January 30, 1996 (61 FR 2938). EPA is reviewing the Kansas Title V program, including Title V fee structure, separately from this proposed action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding Kansas' Title V program.

Therefore, EPA believes that the requirements of section 110(a)(2)(L) are met and is therefore proposing to approve the January 8, 2008, submittal regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submittal regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

(M) Consultation/participation by affected local entities: Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

KSA Section 65–3005(a)(8)(A) gives the Secretary the authority to encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefor. The Secretary may also enter into agreements with local units of government to administer all or part of the provisions on the Kansas Air Quality Act in the units' respective jurisdiction. The Secretary also has the authority to advise, consult, and cooperate with local governments. KSA Section 65–3005(a)(14). He or she may enter into contracts and agreements with local governments as is necessary to accomplish the goals of the Kansas Air Quality Act. KSA Section 65–3005(a)(16).

Currently, KDHE's Bureau of Air and Radiation has signed State and/or Local Agreements with the Department of Air Quality from the Unified Government of Wyandotte County-Kansas City, Kansas; the Wichita Office of Environmental Health; the Shawnee County Health Department, the Johnson County Department of Health & Environment; and the Mid-America Regional Council. These agreements establish formal partnerships between the Bureau of Air and Radiation and these local agencies to work together to develop and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.

In addition, as previously noted in the discussion about section 110(a)(2)(J), Kansas' statutes and regulations require that KDHE consult with local political subdivisions for the purposes of carrying out its air pollution control responsibilities.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(M) for the 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to approve the January 8, 2008, submission regarding the 1997 $PM_{2.5}$ infrastructure SIP requirements and the April 12, 2010, submission regarding the 2006 $PM_{2.5}$ infrastructure SIP requirements for this element.

VI. How does the March 1, 2013 Kansas PSD submission satisfy the 2008 $PM_{2.5}$ NSR Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule?

To address the requirements of EPA's May 16, 2008, $PM_{2.5}$ implementation rule and the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule, as described above in section V in the discussion of element (C), Kansas submitted a SIP revision received by EPA on March 1, 2013, which updates its PSD rules. In this SIP submission, Kansas incorporates by reference Federal updates through July 1, 2011. The submission also updated Kansas' PSD rules to establish the allowable $PM_{2.5}$ increments, the optional screening tools (SILs), and significant monitoring concentrations (SMCs). On April 2, 2013, Kansas amended and clarified its submission so that it was no longer intending to include specific provisions relating to the SILs and SMC affected by the January 22, 2013, court decision referenced above. Our analysis of the SIP revision, with respect to both rules, follows.

Specifically, regarding the 2008 $PM_{2.5}$ Implementation Rule, the submitted SIP revision changes include incorporating by reference Federal rule changes through July 1, 2011. The submission is being updated for consistency with 40 CFR 52.21, which established the requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants and promulgated significant emissions rates, and condensables for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X).

As described under element C in section V of this rulemaking, states had an obligation to address condensable PM emissions as a part of the 2008 $PM_{2.5}$ NSR implementation rule. In Kansas' March 1, 2013, SIP submission, Kansas incorporated by reference EPA's definition for regulated NSR pollutant (formerly at 40 CFR 51.166(b)(49)(vi)), including the term "particulate matter emissions," as inadvertently promulgated in the 2008 NSR Rule. EPA is, however, proposing to approve into the Kansas SIP the requirement that condensable PM be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} because it is more stringent than the Federal requirement. Kansas can choose to initiate further rulemaking to ensure consistency with federal requirements.

Specifically, regarding the PSD increments, the submitted SIP revision changes include: (1) The $PM_{2.5}$ increments as promulgated at 40 CFR 51.166(c)(1) and (p)(4) (for Class I Variances) and (2) amendments to the terms "major source baseline date" (at 40 CFR 51.166(b)(14)(i)(c)) and 52.21(b)(14)(i)(c)), "minor source baseline date" (including establishment of the "trigger date") and "baseline area" (as amended at 40 CFR 51.166(b)(15)(i) and (ii) and 52.21(b)(15)(i)). In the March 1, 2013, SIP revision, Kansas incorporates by reference into the SIP the particular definitions from 40 CFR part 51 as referenced above through July 1, 2011.

In today's action, EPA is proposing to approve Kansas' March 1, 2013, revisions to address the provisions relating to both the 2008 $PM_{2.5}$ NSR implementation and the 2010 $PM_{2.5}$ PSD Increments SILs-SMC Rules, except as identified in Kansas' April 2, 2013, letter where Kansas amended and clarified its submission so that it was no longer intending to include specific provisions relating to the SILs and SMC affected by the January 22, 2013, court decision referenced above. As noted in EPA's May 29, 2007, final action on Kansas' PSD program (72 FR 29429), provisions of the incorporated 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, (PCPs) and exemption from the

recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved because in 2005 the DC Circuit Court vacated portions of the rule pertaining to clean units and PCPs, and remanded portions of the rule regarding recordkeeping. In addition, EPA did not approve Kansas' rule incorporating EPA's 2007 revision of the definition of "chemical processing plants" (the "Ethanol Rule,") (72 FR 24060, May 1, 2007) or EPA's 2008 "fugitive emissions rule," (73 FR 77882, December 19, 2008). Otherwise, Kansas' revisions also incorporate by reference the other provisions of 40 CFR 52.21 as in effect on July 1, 2011.

VII. What are the additional provisions of the March 1, 2013, SIP submission that EPA is proposing to take action on?

Within Kansas' March 1, 2013, SIP submission, Kansas amended rule KAR 28–19–350 "Prevention of Significant Deterioration (PSD) of Air Quality," to defer the application of the PSD permitting requirements to CO_2 emissions from bioenergy and other biogenic stationary sources pursuant to the July 20, 2011, EPA final rulemaking "Deferral for Carbon Dioxide (CO_2) Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs" (*see* 76 FR 43490). The Biomass Deferral delays until July 21, 2014, the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereinafter referred to as "biogenic CO_2 emissions") when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of Best Available Control Technology (BACT). Stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHG's (e.g., methane (CH_4) and nitrous oxide (N_2O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO_2 emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of "biogenic CO_2 emissions" include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects when they are a way to address climate change, increase domestic alternative energy production, enhance forest management and create related employment opportunities.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (e.g., tire derived fuels, municipal solid waste (MSW)), the biogenic CO_2 emissions from that combustion are included in the biomass deferral. However, the fossil fuel CO_2 emissions are not. Emissions of CO_2 from processing of mineral feedstocks (e.g., calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil fuel portions of CO_2 emissions, including those methods contained in the GHG Reporting Program (40 CFR part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil fuel CO_2 emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and potential future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with the potential subsequent rulemaking and the Final Tailoring Rule (*e.g.*, a major source determination for Title V purposes or a major modification determination for PSD purposes).

EPA also wishes to clarify that we do not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires. The regulation at 40 CFR 52.21(w) requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the Biomass Deferral action and this proposed approval of the deferral into the Kansas SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO_2 and the framework to properly account for such emissions in Title V and PSD permitting programs based on the study are prospective and unknown. Thus, we are unable to predict which biogenic CO_2 sources, if any, currently subject to the deferral as incorporated into the Kansas SIP could be subject to any permanent

exemptions, or which currently deferred sources could be potentially required to account for their emissions.

Similar to our approach with the Tailoring Rule, EPA incorporated the biomass deferral into the regulations governing state programs and into the Federal PSD program by amending the definition of "subject to regulation" under 40 CFR 51.166 and 40 CFR 52.21 respectively. Kansas implements its PSD program by incorporating section 52.21 by reference in KAR 28–19–350. The Kansas submission incorporates by reference the (CFR) through July 1, 2011, in order to adopt the Biomass Deferral.

Based upon EPA's analysis of the required provisions of the July 20, 2011 Biomass Deferral rule and how Kansas meets these requirements, EPA is proposing to approve the March 1, 2013, Kansas SIP revision in order to adopt the Biomass Deferral.

VIII. What action is EPA proposing?

EPA proposes to approve the infrastructure SIP submissions from Kansas which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 1997 and 2006 NAAQS for $PM_{2.5}$. Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas has the infrastructure to address all applicable required elements of sections 110(a)(1) and(2) (except otherwise noted) to ensure that the 1997 and 2006 $PM_{2.5}$ NAAQS are implemented in the state.

In addition, EPA proposes to approve two additional SIP submissions from Kansas, one addressing the Prevention of Significant Deterioration (PSD) program in Kansas as it relates to $PM_{2.5}$ (unless otherwise noted) and another SIP revision addressing the requirements of section 128 of the CAA. both of which support the requirements associated with infrastructure SIPs.

We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

IX. Statutory and Executive Order Review

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

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.

X. Statutory Authority

The statutory authority for this action is provided by Section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

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

Dated: April 5, 2013.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2013–09053 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0091; FRL–9803–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on January 11, 2013. The SIP revision addresses the requirements of the Clean Air Act (CAA) for all criteria pollutants of the national ambient air quality standards (NAAQS) in relation to State Boards. In the Final Rules section of this **Federal Register**, EPA is approving the Delaware SIP revision as a direct final rule without prior proposal because EPA 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 action, 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 17, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0091 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0091, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650

Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0091. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Delaware; State Board Requirements," that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 3, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–08932 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 226 and 252

RIN 0750–AH85

Defense Federal Acquisition Regulation Supplement: Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs (DFARS Case 2012–D027); Withdrawal

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

ACTION: Proposed rule, withdrawal.

SUMMARY: DoD hereby provides notice of the cancellation of a proposed rule without further action. DoD has determined that the proposed amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) is not a necessary part of the Department's plan to implement a section of the National Defense Authorization Act for Fiscal Year 2012, that requires DoD to encourage contractors to develop science, technology, engineering, and mathematics (STEM) programs.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch: telephone 571–372–6090; email: *dustin.pitsch@osd.mil;* or Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule to amend the DFARS to implement section 862 of the National Defense Authorization Act for Fiscal Year 2012, which requires DoD to encourage contractors to develop science, technology, engineering, and mathematics (STEM) programs. The purpose of this Notice is to advise that the proposed rule is cancelled without further action. At this time, DoD is in the process of reassessing the most effective and efficient methods by which it can encourage contractors to develop science, technology, engineering, and mathematics (STEM) programs.

The cancelled proposed rule is identified by RIN 0750–AH85, Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs. It was published in the **Federal Register** at 78 FR 13604–13606.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–09019 Filed 4–16–13; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 78, No. 74
Wednesday, April 17, 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

Forest Service

Nicolet Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nicolet Resource Advisory Committee will meet in Crandon, WI. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is review projects approved for payment in Fiscal Year 2013.

DATES: The meeting will be held May 21st, 2013 and will begin at 9:30 a.m.

ADDRESSES: The meeting will be held at the Forest County Courthouse, County Boardroom, 200 East Madison Street, Crandon, WI. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chequamegon-Nicolet National Forest, Laona Ranger District, 4978 Hwy 8 West, Laona, WI 54541. Please call ahead to 715–674–4481 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Penny McLaughlin, RAC Coordinator, USDA, Chequamegon-Nicolet National Forest, Laona Ranger District, 4978 Hwy 8 W, Laona, WI 54541; 715–674–4481; email: *pmclaughlin@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review projects approved for payment in Fiscal Year 2013; and (2) Public Comment. The agenda can be reviewed at: *Agenda.Nicolet.RAChttps://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Nicolet.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Individuals wishing to make an oral statement should request in writing by May 10th, 2013 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Penny McLaughlin, RAC Coordinator, Laona Ranger District, 4978 Hwy 8 W, Laona, WI 54541; 715–674–4481or by email to *pmclaughlin@fs.fed.us* or via facsimile to 715–674–2545. The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at the above Web site within 21 days of the meeting.

Dated: April 5, 2013.

Paul I.V. Strong,

Forest Supervisor.

[FR Doc. 2013–08919 Filed 4–16–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nicolet Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nicolet Resource Advisory Committee will meet in Crandon, WI. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is review projects approved for payment in Fiscal Year 2013.

DATES: The meeting will be held June 4th, 2013 and will begin at 9:30 a.m.

ADDRESSES: The meeting will be held at the Forest County Courthouse, County Boardroom, 200 East Madison Street, Crandon, WI. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chequamegon-Nicolet National Forest, Laona Ranger District, 4978 Hwy 8 West, Laona, WI 54541. Please call ahead to 715–674–4481 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Penny McLaughlin, RAC Coordinator, USDA, Chequamegon-Nicolet National Forest, Laona Ranger District, 4978 Hwy 8 W, Laona, WI 54541; 715–674–4481; email: *pmclaughlin@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review projects approved for payment in Fiscal Year 2013; and (2) Public Comment. The agenda can be reviewed at: *Agenda.Nicolet.RAC https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?*

OpenView&Count=1000&RestrictTo Category=Nicolet. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Individuals wishing to make an oral statement should request in writing by May 24th, 2013 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Penny McLaughlin, RAC Coordinator, Laona Ranger District, 4978 Hwy 8 W, Laona, WI 54541; 715–674–4481 or by email to *pmclaughlin@fs.fed.us* or via facsimile to 715–674–2545. The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at the above Web site within 21 days of the meeting.

Dated: April 5, 2013.

Paul I.V. Strong,

Forest Supervisor.

[FR Doc. 2013–08923 Filed 4–16–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Procedures for Considering Requests and Comments from the Public for Textile and Apparel Safeguard Actions on Imports from Oman.

OMB Control Number: 0625–0266.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved collection).

Burden Hours: 24.

Number of Respondents: 6 (1 for Request; 5 for Comments).

Average Hours per Response: 4 hours for a Request; and 4 hours for a Comment.

Needs and Uses: Title III, Subtitle B, Section 321 through Section 328 of the United States-Oman Free Trade Agreement Implementation Act (the "Act") implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Oman Free Trade Agreement (the "Agreement"). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Oman to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8332 (73 FR 80289, December 31, 2008), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Oman, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to section 322(b) of the Act.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov*.

Dated: April 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–08936 Filed 4–16–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–93–2012]

Foreign-Trade Zone 33—Pittsburgh, Pennsylvania, Authorization of Export Production Activity, Tsudis Chocolate Company (Chocolate Confectionery Bars), Pittsburgh, Pennsylvania

On December 4, 2012, Tsudis Chocolate Company, submitted a notification of proposed export production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 33—Site 10, in Pittsburgh, Pennsylvania.

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 77016, 12–31–2012). 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, and further subject to a restriction requiring that all foreign-status liquid chocolate admitted to FTZ 33 must be re-exported.

Dated: April 11, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–09042 Filed 4–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Intent To Rescind Later-Developed Merchandise Circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") preliminarily determines that imports from the People's Republic of China ("PRC") of

certain graphite electrodes, produced and/or exported by Sinosteel Jilin Carbon Co., Ltd. and Jilin Carbon Import & Export Company (collectively, "Jilin Carbon"), with an actual or nominal diameter of 17 inches, and otherwise meeting the description of in-scope merchandise, constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order*.[1]

DATES: *Effective Date:* April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC, 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

The merchandise covered by the order is small diameter graphite electrodes. Small diameter graphite electrodes subject to the order are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 8545.11.0010. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the *Order* is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, "Preliminary Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China" dated concurrently with this notice ("Preliminary Decision Memorandum"), which is hereby adopted by this notice. The written description is dispositive. The Preliminary Decision Memorandum is a proprietary document with a public version, and the public version 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 Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of graphite electrodes from the PRC, produced and/or exported by Jilin Carbon, Beijing Fangda Carbon-Tech Co., Ltd. and Fangda Carbon New Material Co., Ltd., and Fushun Jinly Petrochemical Carbon, with diameters larger than 16 inches but less than 18 inches, and otherwise meeting the description of the scope of the *Order*. We have limited the application of our affirmative preliminary determination to graphite electrodes from the PRC, produced and/or exported by Jilin Carbon, with an actual or nominal diameter of 17 inches because record evidence shows that, among the producers and merchandise subject to this inquiry, Jilin Carbon produced and/or exported 17-inch diameter graphite electrodes to the United States,[2] and we have no record evidence at this time supporting a determination that any other producer in the PRC produces or exports graphite electrodes with diameters larger than 16 inches but less than 18 inches.

Methodology

The Department has made this preliminary finding of circumvention in accordance with section 781(c) of the Tariff Act of 1930, as amended ("Act") and 19 CFR 351.225(i). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination

As detailed in the Preliminary Decision Memorandum, we preliminarily determine, pursuant to section 781(c) of the Act, that imports from the PRC of certain graphite electrodes, produced and/or exported by Jilin Carbon, with a diameter of 17 inches, and otherwise meeting the description of in-scope merchandise, constitutes merchandise altered in form or appearance in such minor respects that it should be subject to the *Order*. This preliminary determination applies only to merchandise produced and/or exported by Jilin Carbon. Because we are recommending an affirmative preliminary determination of circumvention with respect to minor alterations pursuant to section 781(c) of the Act, we do not find it necessary to make a determination with respect to a later-developed merchandise circumvention inquiry pursuant to section 781(d) of the Act and we intend to rescind the later-developed merchandise circumvention inquiry.

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), we are directing U.S. Customs and Border Protection ("CBP") to suspend liquidation of entries of merchandise subject to this inquiry produced and/or exported by Jilin Carbon, and entered, or withdrawn from warehouse, for consumption on or after June 25, 2012, the date of publication of the initiation of this inquiry. We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after June 25, 2012, in accordance with 19 CFR 351.225(l)(2).

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Pursuant to 19 CFR 351.309(d), rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically *via* IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. We expect to issue our final determination of circumvention by September 13, 2013.

This preliminary determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

[1] *See Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 8775 (February 26, 2009) ("*Order*").

[2] *See* Preliminary Decision Memorandum at 3–4.

Dated: April 11, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–09059 Filed 4–16–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; 2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) completed the administrative review on the countervailing duty (CVD) order on certain lined paper products from India for the January 1, 2010, through December 31, 2010, period of review (POR) [1] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The respondents in this administrative review are A.R. Printing & Packaging India Private Limited (AR Printing) and its U.S. importer, Gemstone Printing Inc. (Gemstone). Our analysis of comments received is contained in the Decision Memorandum accompanying this **Federal Register** notice.[2] The final net subsidy rate for AR Printing is listed below in the "Final Results of Review" section.

DATES: *Effective Date:* April 17, 2013.

FOR FURTHER INFORMATION CONTACT: John Conniff at 202–482–1009, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** the CVD order on certain lined paper products from India.[3] On October 11, 2012, the Department published its preliminary results of administrative review of the CVD order on certain lined paper products from India for the POR. On October 22, 2012, the Department received the Government of India's supplemental questionnaire response. On November 9, 2012, the Department postponed the deadline for case briefs.

On January 25, 2013, the Department extended the time limit for completion of the final results by 60 days to April 9, 2013, in accordance with section 751(a)(3)(A) of the Act.[4] On February 1, 2013, the Department issued the Post-Preliminary Decision Memorandum in this review.[5] AR Printing submitted a case brief on February 14, 2013, and petitioner submitted a rebuttal brief on February 22, 2012.

No interested party requested a hearing.

Scope of the Order

The merchandise subject to the order is certain lined paper products. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the *Lined Paper Order*, remains dispositive.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty (CVD) Review of Certain Lined Paper Products from India: Issues and Decision Memorandum for the Final Results of Review" ("Decision Memorandum"), dated concurrently and hereby adopted by this notice. The analysis of changes to the net subsidy rates that the Department has made since the *Preliminary Results* are contained in the Department's Post-Preliminary Decision Memorandum. A list of the issues which parties have raised, and to which we have responded in the Decision Memorandum, is attached to this notice as an Appendix. The 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 Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The signed Decision Memorandum and the electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines a net subsidy rate of 100.40 percent *ad valorem* for AR Printing for the period January 1, 2010, through, December 31, 2010. We adjusted the net subsidy rate to reflect our finding that a program-wide change exists with regard to two subsidy programs to arrive at a cash deposit rate for AR Printing of 94.92 percent *ad valorem*.

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by AR Printing entered, or withdrawn form warehouse, for consumption on or after January 1, 2010, through December 31, 2010, at the *ad valorem* assessment rate listed above. We will also instruct CBP to collect cash deposits for the respondent at the countervailing duty cash deposit rate indicated above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent

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[1] *See Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2010*, 77 FR 61742 (October 11, 2012) (*Preliminary Results*).

[2] *See* Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, concerning the Final Results of Administrative Review of the Countervailing Duty Order on Certain Lined Paper Products from India (Decision Memorandum).

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006) (*Lined Paper Order*).

[4] *See* Extension of Time Limit for Final Results from John Conniff, Senior International Trade Analyst to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated January 25, 2013.

[5] *See* Post-Preliminary Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated February 1, 2013 (Post-Preliminary Decision Memorandum).

[6] *Lined Paper Order*, 71 FR at 56950–51.

company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a 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 the 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.

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 9, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

APPENDIX

[FR Doc. 2013–08900 Filed 4–16–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* Preliminary Decision Memorandum at 14–15, where the Department determined that this program provided countervailable benefits during the POR but was terminated after the POR, effective April 1, 2012.

[8] *See id.*, where the Department determined that this program provided countervailable benefits during the POR but was terminated after the POR, effective April 1, 2012.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Smart Grid Advisory Committee Meeting Cancellation

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of meeting cancellation.

SUMMARY: The meeting of the Smart Grid Advisory Committee (SGAC or Committee) scheduled for Friday, April 19, 2013 from 8:30 a.m. to 5:00 p.m. Eastern Time is cancelled. Notice of this meeting was published in the **Federal Register** on March 26, 2013.

DATES: The SGAC meeting scheduled for Friday, April 19, 2013 from 8:30 a.m. to 5 p.m. Eastern Time is cancelled.

ADDRESSES: The SGAC meeting to be held in the Portrait Room, Administration Building, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, Maryland 20899 is cancelled.

FOR FURTHER INFORMATION CONTACT: Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; telephone 301–975–2254, fax 301–975–4091; or via email at *cuong.nguyen@nist.gov*.

SUPPLEMENTARY INFORMATION:

The Committee was established in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Committee is composed of ten to fifteen members, appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and knowledge of issues affecting Smart Grid deployment and operations. The Committee advises the Director of NIST on carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The Committee provides input to NIST on Smart Grid standards, priorities, and gaps, on the overall direction, status, and health of the Smart Grid implementation by the Smart Grid industry, and on Smart Grid Interoperability Panel activities, including the direction of research and standards activities. Background information on the Committee is available at *http://www.nist.gov/smartgrid/committee.cfm*.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Smart Grid Advisory Committee (SGAC or Committee) meeting scheduled for Friday, April 19, 2013 from 8:30 a.m. to 5:00 p.m. Eastern Time is cancelled. Notice of this meeting was published in the **Federal Register** (78 FR 18322) on March 26, 2013.

Dated: April 10, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–09036 Filed 4–16–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Regulatory Amendment 14

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

ACTION: Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of alternatives for management actions to be included in Regulatory Amendment 14 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 14). In Regulatory Amendment 14, the Council is considering management measures to modify the fishing year for greater amberjack; revise the minimum size limit measurement for gray triggerfish; increase the minimum size limit for hogfish; modify the commercial and recreational fishing years for black sea bass; adjust the commercial fishing season for vermilion snapper; modify the aggregate grouper bag limit; and revise the accountability measures (AMs) for gag and vermilion snapper. The intent of Regulatory Amendment 14 is to achieve optimum yield (OY) for snapper-grouper species and enhance socio-economic opportunities within the snapper-grouper fishery. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the DEIS.

DATES: Written comments on the scope of issues to be addressed in the DEIS will be accepted until May 17, 2013.

ADDRESSES: You may submit comments identified by "NOAA–NMFS–2013–0052" by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0052*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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 publicly 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.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, Southeast Regional Office, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In Regulatory Amendment 14, the Council is considering actions to modify the fishing year for greater amberjack; revise the minimum size limit measurement for gray triggerfish; increase the minimum size limit for hogfish; modify the commercial and recreational fishing year for black sea bass; adjust the commercial fishing season for vermilion snapper; modify the aggregate grouper bag limit; and revise the AMs for gag and vermilion snapper.

Greater Amberjack Fishing Year

The current fishing year for greater amberjack is May 1 through April 30. Regulatory Amendment 14 would examine the effects of alternatives to modify this fishing year, especially with respect to when the commercial annual catch limit (ACL) for greater amberjack is being reached. When the commercial ACL is reached, the a.m. triggered is an inseason closure of the commercial sector. Some fishers have requested that the month of March remain open to harvest, because it is a productive month for fishing (*i.e.*, consumers tend to buy more fish during Lent). Also, greater amberjack migrate out of the Florida Keys by mid-May, thereby offering a limited fishing opportunity for greater amberjack at the start of the current fishing year. In Regulatory Amendment 14, the Council is considering alternatives to the fishing year with the purpose of ensuring commercial harvest opportunities occur during March of each year.

Gray Triggerfish Minimum Size Limit

For Federal waters off the east coast of Florida, the gray triggerfish minimum size limit is 12 inches (30.5 cm) total length. The state of Florida minimum size limit is 12 inches (30.5 cm) fork length. The Council is considering alternatives to use the same length measurement for gray triggerfish in Federal waters off Florida and other South Atlantic states as used in state waters of Florida. A consistent minimum size limit would reduce confusion among the public, better assist law enforcement, and promote efficient management of this species.

Hogfish Minimum Size Limit

The Council is considering alternatives to revise the hogfish minimum size limit, which is 12 inches (30.5 cm), fork length. The Council's Snapper-Grouper Advisory Panel also expressed concern about the harvest of undersized hogfish before they have the opportunity to reproduce.

Black Sea Bass Fishing Year

The Council is considering alternatives to modify the commercial and recreational fishing seasons, which begin on June 1, to coincide with other snapper-grouper species to reduce the likelihood of closures being implemented early in the fishing season and to extend fishing opportunities for both sectors throughout the year.

Vermilion Snapper Fishing Seasons

The commercial fishing season for vermilion snapper is currently split into two seasons, January 1 through June 30, and July 1 through December 31. The Council is considering alternatives to modify the start of the second season to coincide with openings of other snapper-grouper species to extend fishing opportunities for vermilion snapper. An adjustment to the start date of the second season may allow for additional harvest opportunities, as well as reduce the potential for extended seasonal closures as a result of reaching the ACL and triggering AMs.

Vermilion Snapper Recreational AMs

Regulatory Amendment 18 to the FMP, which was approved by the Council in March of 2013, would remove the recreational vermilion snapper spawning season closure that occurs from November through March. The current recreational sector a.m. reduces the recreational sector ACL in the year following an ACL overage by the amount of that ACL overage. Therefore, without the seasonal closure, there is no method in place to close the sector during the fishing year which can lead to an overage of the ACL. In Regulatory Amendment 14, the Council is considering alternatives to revise the recreational sector AMs to ensure the ACL is not exceeded and overfishing does not occur.

Gag Commercial Trip Limits

In Regulatory Amendment 14 the Council is considering commercial trip limit alternatives as a method to extend the fishing season for gag.

Grouper Aggregate Recreational Bag Limit

The current grouper aggregate bag limit is three fish and within this limit,

no more than one fish may be a gag or black grouper, combined. In Regulatory Amendment 14, the Council is considering alternatives to revise this aggregate bag limit to provide for increased recreational harvest opportunities for gag and black grouper.

NMFS, in collaboration with the Council, will develop a DEIS to describe and analyze alternatives to address the management needs described above. Those alternatives will include a "no action" alternative for each action. In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with Regulatory Amendment 14 is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the FEIS, prior to final agency action.

Public Hearings, Times, and Locations

The Council will hold public hearings to discuss the actions included in Regulatory Amendment 14 in August 2013. Exact dates, times, and locations will be announced by the Council. The public will be informed, via a notification in the **Federal Register**, of the exact times, dates, and locations of future scoping meetings and public hearings for Regulatory Amendment 14.

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

Dated: April 12, 2013.

Kara Meckley,

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

[FR Doc. 2013–09052 Filed 4–16–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 11, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

APR 03 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-03, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $210 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay, III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Singapore

(ii) *Total Estimated Value:*

Major Defense Equipment*	$165 million
Other	45 million
Total	210 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 100 AIM–120C7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), AMRAAM Programmable Advanced System Interface Simulator (PASIS), 10 AMRAAM Spare Guidance Sections, 18 AN/AVS–9(V) Night Vision Goggles, H–764G with GEM V Selective Availability Anti-Spoofing Module (SAASM), Common Munitions Built-in-Test Reprogramming Equipment (CMBRE-Plus) in support of a Direct Commercial Sale of new F–15SG aircraft. Also included: containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (BAA)

(v) *Prior Related Cases, if any:* FMS case SAA–$180M–24Mar06; FMS case SAC–$179M–02Nov09

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* 03 April 2013

POLICY JUSTIFICATION

Singapore—AIM–120C7 AMRAAM and Related Support

The Government of Singapore has requested a possible sale of 100 AIM–120C7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), AMRAAM Programmable Advanced System Interface Simulator (PASIS), 10 AMRAAM Spare Guidance Sections, 18 AN/AVS–9(V) Night Vision Goggles, H–764G with GEM V Selective Availability Anti-Spoofing Module (SAASM), Common Munitions Built-in-Test Reprogramming Equipment (CMBRE-Plus) in support of a Direct Commercial Sale of new F–15SG aircraft. Also included: containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services. and other related elements of logistics and program support. The estimated cost is $210 million.

This proposed sale will contribute to the foreign policy and national security of the United States by increasing the ability of the Republic of Singapore to contribute to regional security. Its contributions to counter-piracy and counterterrorism efforts continue to stabilize a critical chokepoint where much of the world's goods and services transit en route to and from the Asia Pacific region. The proposed sale will improve the security of a strategic partner which has been, and continues to be, an important force for political stability and economic progress in the Asia Pacific region. Specifically, this proposed sale will improve the Republic of Singapore Air Force's (RSAF) air to air capability and ability to defend its nation and cooperate with allied air forces

The Republic of Singapore requires these missiles to meet current and future threats of enemy aircraft. Singapore is procuring, via Direct Commercial Sale, new F–15SG aircraft. The proposed sale will enhance RSAF's ability to operate with coalition forces in bilateral and multilateral exercises and potential air defense operations. Singapore will use these capabilities as a deterrent to regional threats and to strengthen its homeland defense. Singapore will have no difficulty absorbing the AIM–120C7s into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon Missile Systems in Tucson, Arizona; Honeywell Aerospace in Phoenix, Arizona; ITT Night Vision in Roanoke, Virginia; and ATK Defense Electronic Systems in Clearwater, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active radio frequency target detection. It can be launched day or night, in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and engage other targets. AMRAAM capabilities include lookdown/shoot down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AMRAAM all-up-round (AUR) is classified Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation up to Secret.

2. The AN/AVS–9 Night Vision Goggles (NVG) are 3rd generation aviation NVG offering higher resolution, high gain, and photo response to near infrared. The hardware and technical data and documentation to be provided are Unclassified.

3. The Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE) is a piece of support equipment used to interface with weapon systems to initiate and report (BIT), results, and upload/download flight software. CMBRE supports multiple munitions platforms with a range of applications that perform preflight checks, periodic maintenance checks, loading of Operational Flight Program (OFP) data, loading of munitions mission planning data, loading of Global Positioning System (GPS) cryptographic keys, and declassification of munitions memory. CMBRE is a system that manages data and information classified up to Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–08949 Filed 4–16–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–04 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 11, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

APR 03 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-04, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $36 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay, III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Singapore

(ii) *Total Estimated Value:*

Major Defense Equipment *	$24 million
Other	$12 million
TOTAL	$36 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 20 AIM–9X–2 SIDEWINDER Block II All Up Round Missiles, 8 CATM–9X–2 Captive Air Training Missiles, 5 CATM–9X–2 Block II Missile Guidance units, 2 AIM–9X–2 Block II Tactical Guidance units, containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (ADF).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 03 April 2013.

POLICY JUSTIFICATION

Singapore—AIM–9X SIDEWINDER Missiles

The Government of the Republic of Singapore has requested a possible sale of 20 AIM 9X–2 SIDEWINDER Block II All Up Round Missiles, 8 CATM–9X–2 Captive Air Training Missiles, 5 CATM–9X–2 Block II Missile Guidance units, 2 AIM–9X–2 Block II Tactical Guidance units, containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $36 million.

This proposed sale will contribute to the foreign policy and national security of the United States by increasing the ability of the Republic of Singapore to contribute to regional security. Its contributions to counter-piracy and counterterrorism efforts continue to stabilize a critical chokepoint where much of the world's goods and services transit en route to and from the Asia Pacific region. The proposed sale will improve the security of a strategic partner which has been, and continues to be, an important force for political stability and economic progress in the Asia Pacific region. Specifically, this proposed sale will improve the Republic of Singapore Air Force's (RSAF) air to air capability and ability to defend its nation and cooperate with allied air forces

The Republic of Singapore requires these missiles to meet current and future threats of enemy aircraft. The proposed sale will enhance RSAF's ability to operate with coalition forces in bilateral and multilateral exercises and potential air defense operations. Singapore will use these capabilities as a deterrent to regional threats and to strengthen its homeland defense. Singapore will have no difficulty absorbing the AIM–9X–2 into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Republic of Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–9X–2 Block II SIDEWINDER Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM–9M and replaces the AIM–9X Block 1 Missile configuration. The missile includes a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software continues to be modified via a pre-planned product improvement (P3I) program in order to improve its counter-countermeasure capabilities. No software source code or algorithms will be released. The missile is classified as Confidential.

2. The sale of AIM–9X–2 under this FMS case will result in the transfer of sensitive technological information and or/restricted information. The equipment, hardware, and documentation are classified Confidential. The software and operational performance are classified Secret. The seeker/guidance control section and the target detector are necessary to support operational use and organizational management are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are classified Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, primarily performance characteristics, engagement algorithms and transmitter specific frequencies, the information could be used to develop countermeasures that might reduce weapon system effectiveness.

[FR Doc. 2013–08950 Filed 4–16–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the National Commission on the Structure of the Air Force

AGENCY: DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is establishing the charter for the National Commission on the Structure of the Air Force (hereinafter referred to as "the Commission"). The Commission has been determined to be in the public interest.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Commission is a non-discretionary federal advisory committee that no later than February 1, 2014, shall submit to the President and the Congressional defense committees a report containing a detailed statement of the findings and conclusions of the Commission as a result of the study required by Section 363(a) of the FY 2013 NDAA, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study.

In considering the structure of the Air Force, the Commission shall give particular consideration to evaluating a structure that:

a. Meets current and anticipated requirements of the combatant commands;

b. Achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each;

c. Ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States;

d. Provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited;

e. Maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air

Force and 1:5 for members of the reserve components of the Air Force; and

f. Maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness.

The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its mission.

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

The Commission, pursuant to Section 362(b)(1) of the FY 2013 NDAA, shall be composed of eight members. In making appointments, consideration should be given to individuals with expertise in reserve forces policy. The Commission's membership shall include:

a. Four appointed by the President;

b. One appointed by the Chairman of the Committee on Armed Services of the Senate;

c. One appointed by the Ranking Member of the Committee on Armed Services of the Senate;

d. One appointed by the Chairman of the Committee on Armed Services of the House of Representatives; and

e. One appointed by the Ranking Member of the Committee on Armed Services of the House of Representatives.

Pursuant to Section 362(b)(2) of FY 2013 NDAA, the appointments of the members of the Commission shall be made not later than 90 days after the enactment of the FY 2013 NDAA.

If one or more appointments under Section 12, subparagraph (a) above is not made by the appointment date specified in Section 362(b)(2) of the FY 2013 NDAA, the authority to make such appointment or appointments shall expire, and the number of members of the Commission shall be reduced by the number equal to the number of appointments so not made. If an appointment under Section 12, subparagraphs (b)–(e) above is not made by the appointment date specified in Section 362(b)(2) of the FY 2013 NDAA, the authority to make an appointment shall expire, and the number of members of the Commission shall be reduced by the number equal to the number otherwise appointable.

Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

The Commission members shall select a Chair and Vice Chair from the total membership.

Commission members who are full-time or permanent part-time Federal officers or employees shall be appointed as regular government employee (RGE) members. Commission members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and serve as special government employee (SGE) members.

Consistent with Section 365(a) of the FY 2013 NDAA, each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under 5 U.S.C. 5315, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of 5 U.S.C., while away from their homes or regular places of business in the performance of services for the Commission.

The DoD, when necessary and consistent with the Commission's mission and DoD policies/procedures, may establish subcommittees, task forces, or working groups to support the Commission. Establishment of subcommittees will be based upon written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DA&M, as the sponsor. All subcommittees, task forces, or working groups shall operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

Such subcommittees shall not work independently of the chartered Commission, and shall report all of their recommendations and advice solely to the Commission for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the chartered Commission. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the committee, directly to DoD or any Federal officer or employee.

All subcommittee members shall be appointed by the Secretary of Defense according to governing DoD policies and procedures even if the member in question is already a member of the Commission. Such individuals, if not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts and consultants, under the authority of 5 U.S.C. 3109, and shall serve as SGE members.

Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service for the life of the subcommittee. With the exception of travel and per diem for official travel related to the Commission or its subcommittees, subcommittee members shall serve without compensation.

The Commission's Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

In addition, the Commission's DFO is required to be in attendance at all meetings of the Commission and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Commission's DFO, a properly approved Alternate DFO, duly appointed to the Commission according to DoD policies and procedures, shall attend the entire duration of meetings of the Commission and its subcommittees.

The DFO, or the Alternate DFO, shall approve all meetings of the Commission and its subcommittees called by the Chair of the Commission; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the National Commission on the Structure of the Air Force membership about the Commission's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of National Commission on the Structure of the Air Force.

All written statements shall be submitted to the Designated Federal Officer for the National Commission on the Structure of the Air Force, and this individual will ensure that the written

statements are provided to the membership for their consideration. Contact information for the National Commission on the Structure of the Air Force's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the National Commission on the Structure of the Air Force. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–09028 Filed 4–16–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0075]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 20, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 17, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA/FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 1, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S190.10

SYSTEM NAME:

DLA Hometown News Releases (June 24, 2011; 76 FR 37082).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Public Affairs Offices of the Defense Logistics Agency. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Information is provided by the subject individual and may include: Name, hometown, branch of service, rank, pay grade, newsworthy event, marital status, names and hometowns of relatives (parents, stepparents, guardians, aunts/uncles, grandparents, and adult siblings), present unit of assignment, job title, years of military service, education data, and photographs."

* * * * *

PURPOSE(S):

Delete entry and replace with "Information is collected and maintained for the purpose of distributing information on activities and accomplishments of DLA military and civilian personnel to hometown newspapers and broadcast stations throughout the United States. Information is provided by the individual and is released with the individual's full cooperation and consent."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace second paragraph with "Information is released to hometown newspapers and broadcast stations throughout the United States for the purpose of showcasing the activities and accomplishments of the DLA military or civilian member."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "News releases are retrieved by the subject individual's last name."

SAFEGUARDS:

Delete entry and replace with "Physical entry is restricted by the use of guards, locks, and administrative procedures. Computers are equipped with "Smart Card" technology that requires the insertion of an embedded identification card and entry of a PIN. All individuals granted access to this system of records have a need to know, are to have taken annual Privacy Act training, and are periodically briefed on their responsibilities regarding safeguarding personal information."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "The Heads of the Defense Logistics Agency Public Affairs Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

[FR Doc. 2013–08917 Filed 4–16–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0054]

Agency Information Collection Activities; Comment Request; Annual Performance Report for Historically Black Colleges and Universities Master's Degree Program (HBCU)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

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.

DATES: Interested persons are invited to submit comments on or before June 17, 2013.

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–0054 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 2E103, 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: Annual Performance Report for Historically Black Colleges and Universities Master's Degree Program (HBCU).

OMB Control Number: 1840–0813.

Type of Review: an extension of an existing information collection.

Respondents/Affected Public: Private sector.

Total Estimated Number of Annual Responses: 18.

Total Estimated Number of Annual Burden Hours: 360.

Abstract: The Department is requesting authorization to annually collect performance report data for the Historically Black Colleges and Universities (HBCU) Masters Degree Program. This information is being collected to comply with the Government Performance and Results Act (GPRA) of 1993, Section 4 (1115), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. EDGAR states that recipients of multi-year discretionary grants must submit an Annual Performance Report (APR) demonstrating that substantial progress has been made towards meeting the approved objectives of the project. Further, the APR lends itself to the collection of quantifiable data for this program. Grantees will be required to report on their progress towards meeting the performance measures established for the HBCU Master's Degree Program.

Dated: April 11, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09009 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Group Projects Abroad Program—Short-Term Projects

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Fulbright-Hays Group Projects Abroad Program—Short-Term Projects

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A.

DATES:

Applications Available: April 18, 2013.

Deadline for Transmittal of Applications: June 13, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (Fulbright-Hays GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Short-term projects may include seminars, curriculum development, or group research or study.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations for this program (34 CFR 664.32). Competitive Preference Priority I is from the regulations for this program (34 CFR 664.32), and Competitive Preference Priority II is from the notice of final priorities published in the **Federal Register** on September 24, 2010 (75 FR 59050).

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:

Specific Geographic Regions of the World.

A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities.

Under 34 CFR 75.105(c)(2)(i), each competitive preference priority is worth a maximum of five points. An applicant can address one or both priorities. We

award up to an additional 10 total points to an application, depending on how well the application meets Competitive Preference Priorities I and II.

Note: In order to receive preference under these competitive preference priorities, the applicant must identify the priority or priorities that it believes it meets and provide documentation supporting its claims.

These priorities are:

Competitive Preference Priority I—Training and Focus on Priority Languages. (5 points)

Applications that propose short-term projects abroad that provide substantive training and thematic focus on any of the 78 priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs): Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority II—Inclusion of K–12 Educators. (5 points)

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

Invitational Priority: For FY 2013 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications from any one of the following:

(a) Minority-Serving Institutions (MSIs), including those that are eligible to receive assistance under Part A or B of Title III or under Title V of the Higher Education Act of 1965, as amended (HEA).

(b) Community colleges (as defined in this notice).

(c) New applicants (as defined in this notice).

Definitions:

Community college is defined in section 312(f) of the HEA (20 U.S.C. 1058(f)); or it means an institution of higher education (as defined in section 101 of the HEA (20 U.S.C. 1001)) that awards degrees and certificates, more than 50% of which are not bachelor's degrees (or an equivalent); or master's, professional, or other advanced degrees.

New applicant means any applicant who has not received a discretionary grant from the Department of Education under a program authorized by Title VI of the HEA or the Fulbright-Hays Act for five years prior to the deadline date for applications under this program.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 664. (c) The notice of final priorities for this program, published in the **Federal Register** on September 24, 2010 (75 FR 59050).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,388,330.

Estimated Range of Awards: Short-term projects: $50,000–$125,000.

Estimated Average Size of Awards: Short-term projects: $86,770.

Maximum Award: We will reject any short-term GPA application that proposes a budget exceeding $125,000 for a single budget period of 18 months. The Assistant Secretary for Postsecondary Education may change the maximum award through a notice published in the **Federal Register**.

Estimated Number of Awards: Short-term projects: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Short-term projects: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) IHEs, (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

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: *http://grants.gov.* 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, 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 as follows: CFDA number 84.021A.

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 listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 40 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, except titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

• The 40-page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, Budget Information—Non-Construction Programs(ED 524); Part IV, assurances, certifications, and the response to section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; the appendices; or the line item budget. However, the page limit does apply to all of the application narrative section (Part III). If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 18, 2013.

Deadline for Transmittal of Applications: June 13, 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* See 34 CFR 664.33. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* 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 Fulbright-Hays GPA Program, CFDA number 84.021A, 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 Fulbright-Hays GPA 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 84.021, not 84.021A).

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 for Fulbright-Hays GPA short-term projects (CFDA 84.021A) to: Pamela Maimer, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street NW., room 6100, Washington, DC 20006–8521. FAX: (202) 502–7860.

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 84.021A), 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 84.021A), 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 suffix 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. *General Information:* For FY 2013, short-term project applications will be reviewed by separate panels according to world area. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all applications will be ranked against each other from the highest to the lowest score for funding purposes. A rank order from highest to lowest score will be developed and will be used for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Evaluation plan (20 points); (e) Adequacy of resources (5 points); (f) Potential impact of the project on the development of the study of modern foreign languages and area studies in American education (15 points); (g) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies (5 points); and (h) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized (10 points). Additional information about these criteria is in the application package for this program.

3. *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).

4. *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 parts 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). 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 in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in 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. Grantees are required to use the electronic data instrument International Resource Information System (IRIS) to complete the final report. 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:* Under the Government Performance and Results Act of 1993, the following measure will be used by the Department to evaluate the success of the program: Percentage of all Fulbright-Hays GPA Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://iris.ed.gov/iris/pdfs/gpa_director.pdf* and *http://iris.ed.gov/iris/pdfs/gpa_participant.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: For Fulbright-Hays GPA Program short-term projects (84.021A): Pamela Maimer, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street NW., Room 6100, Washington, DC 20006–8521. Telephone: (202) 502–7704 or by email: *pamela.maimer@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

The agency contact person does not mail application materials and does not accept applications.

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 disk) on request to the 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 the 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 this 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: April 12, 2013.

Martha Kanter,

Under Secretary for Education.

[FR Doc. 2013–09045 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Hearing Enhancement Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–1.

DATES: *Applications Available:* April 17, 2013.

Date of Pre-Application Meeting: May 8, 2013.

Deadline for Transmittal of Applications: June 17, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, and support the employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers (RERCs) Program

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

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:

Hearing Enhancement.

Note: The full text of this priority is included in the pertinent notice of final priority published in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97.

(b) The Education Department suspension and debarment regulations in 2 CFR part 3485.

(c) The regulations for this program in 34 CFR part 350.

(d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $925,000.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

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, 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 competition as follows: CFDA number 84.133E.

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 competition.

Page Limit: The application narrative (Part III of the application) is where you,

the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended 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).

An applicant should consult NIDRR's currently approved Long-Range Plan (Plan) when preparing its application. The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

3. *Submission Dates and Times:*

Applications Available: April 17, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held May 8, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer as follows:

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

Deadline for Transmittal of Applications: June 17, 2013.

Applications for grants under this competition 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 individual 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* 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 CRR 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/aapplicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition 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 RERC for Hearing Enhancement program, CFDA Number 84.133E–1, 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 RERC 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 84.133, not 84.133E).

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 competition 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 (a Department-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 prevents 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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133E–1) 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 84.133E–1) 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 suffix 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 350.54 and are listed in the application package.

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 parts 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:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

If you use a TDD or a TTY call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call FRS, toll-free, at 1–800–877–8339.

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: April 12, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–09082 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Center on Knowledge Translation for Technology Transfer

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects (DRRPs)—Center on Knowledge Translation for Technology Transfer Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–8.

DATES: *Applications Available:* April 17, 2013.

Date of Pre-Application Meeting: May 8, 2013.

Deadline for Transmittal of Applications: June 17, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPS)

The purpose of DRRPs, which are under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on DRRPS can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

Priorities: This notice contains two absolute priorities for this competition. The *General DRRP Requirements* priority, which applies to DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *DRRP Priority for the Center on Knowledge Translation for Technology Transfer* is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute 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 absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1—Center on Knowledge Translation for Technology Transfer.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project to serve as the Center on Knowledge Translation for Technology Transfer (Center). The Center must conduct rigorous research, development, technical assistance,

dissemination, and utilization activities to increase successful technology transfer of rehabilitation technology products and devices developed by NIDRR-funded technology grantees.

In planning and conducting all activities, the Center must partner with relevant stakeholders such as NIDRR's technology grantees, trade and professional associations, industry representatives, individuals with disabilities, and others.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Increased rate of successful technology transfer of rehabilitation technology products developed by NIDRR-funded technology grantees to the marketplace, into engineering standards, or into other intended applications;

(b) Increased understanding among rehabilitation engineers and others engaged in disability research and development of technology transfer processes and practices that lead to successful transfer of rehabilitation technology products to the marketplace, into engineering standards, or into other intended applications;

(c) Increased capacity of NIDRR's technology grantees to plan and to engage in technology transfer activities.

Absolute Priority 2—General DRRP Requirements. To meet this priority, the Disability and Rehabilitation Research Projects (DRRP) must—

(a) Coordinate on research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer;

(b) Involve individuals with disabilities in planning and implementing the DRRP's research, training, and dissemination activities, and in evaluating its work; and

(c) Identify anticipated outcomes (i.e., advances in knowledge or changes and improvements in policy, practice, behavior, and system capacity) that are linked to the applicant's stated grant objectives.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $925,000.

Maximum Award: We will reject any application that proposes a budget exceeding $925,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

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, 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 as follows: CFDA number 84.133A.

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 competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended 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).

An applicant should consult NIDRR's Plan when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment. Each applicant should clearly indicate, for each application, the domain or domains under which it is applying.

3. *Submission Dates and Times:*

Applications Available: April 17, 2013. Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 8, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and

Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer as follows:

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov. Deadline for Transmittal of Applications:* June 17, 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* 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 Inclusive Cloud and Web Computing DRRP Projects program, CFDA Number 84.133A–8, must be submitted electronically using the Government-wide 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 MSI–ARRT Projects 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 84.133, not 84.133A).

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. Additional, detailed information on how to attach files is in the application instructions.

• 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.

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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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133A–8) 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 84.133A–8) 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 suffix 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 350.54 and are listed in the application package.

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 parts 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:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html*.

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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov*.

If you use a TDD or a TTY call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

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: April 12, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–09062 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Credit Enhancement for Charter School Facilities Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance Number: 84.354A.

SUMMARY: The Secretary intends to use the existing slate of applicants developed for the Credit Enhancement for Charter School Facilities Program in Fiscal Year (FY) 2011 to make new grant awards in FY 2013. The Secretary takes this action because a significant number of high-quality applications remain on the grant slate and, given the limited funding available for the program in FY 2013 relative to the typical grant amount, the Secretary believes the benefits of running a new competition are outweighed by the cost of spending program dollars on peer review.

FOR FURTHER INFORMATION CONTACT: Kristin Lundholm, U.S. Department of Education, 400 Maryland Ave SW., Room 4W221, Washington, DC 20202. Telephone: 202–205–4352 or by email: *kristin.lundholm@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2011, we published a notice in the **Federal Register** (76 FR 13365) inviting applications for new awards for FY 2011 under the Credit Enhancement for Charter School Facilities Program. This notice indicated that, contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2011 and FY 2012 from the list of unfunded applicants from the FY 2011 competition.

We received a significant number of applications for grants under the Credit Enhancement for Charter School Facilities Program in FY 2011, many of which received very high scores, and made one initial award in FY 2011 and two additional awards in FY 2012. Because such a large number of high-quality applications were received, many applications that peer reviewers assigned high scores did not receive funding in FY 2011 or FY 2012.

Based on historical data, the funding available for this program in FY 2013 is comparable to the size of approximately one award under this program. In order to conserve funding that would have been required for a peer review of applications submitted under a new competition, we intend to select FY 2013 grantees from the existing slate of applicants.

Program Authority: 20 U.S.C. 223–7223j.

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: April 12, 2013.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2013–09056 Filed 4–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR13–12–001, PR13–12–002]

Southern California Gas Company; Notice of Amendment

Take notice that on March 29, 2013, Southern California Gas Company ("SoCalGas") filed two amendments to its November 21, 2012, petition for rate approval. SoCalGas states that the first amendment is to implement, pursuant to section 284.123, the rates recently approved by California Public Utilities Commission under its state rate election. The second amendment was made to correct an issue with the legibility of the posted eTariff version.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Thursday, April 18, 2013.

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09014 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13346–003]

Free Flow Power Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–13346–003.

c. *Date filed:* December 3, 2012.

d. *Applicant:* Free Flow Power Corporation (Free Flow Power), on behalf of its subsidiary PayneBridge, LLC.

e. *Name of Project:* Williams Dam Water Power Project.

f. *Location:* At the existing Williams dam owned by the Indiana Department of Natural Resources on the East Fork White River in Lawrence County, Indiana. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ramya Swaminathan, Chief Operating Officer, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; or at (978) 283–2822.

Daniel Lissner, General Counsel, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; or at (978) 283–2822.

Alan Topalian, Regulatory Attorney, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; or at (978) 283–2822.

i. *FERC Contact:* Aaron Liberty at (202) 502–6862 or by email at *Aaron.Liberty@ferc.gov.*

j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed Williams Dam Water Power Project would be located in Lawrence County, Indiana at the existing Williams dam on the East Fork White River. The 21.3-foot-high, 294-foot-long Williams dam is currently owned by the Indiana Department of Natural Resources and impounds a 553-acre reservoir at a normal pool elevation of 472.2 North American Vertical Datum of 1988 (NAVD 88). In addition to the dam, proposed project facilities would include: (1) An 80-foot-long, 21.5-foot-high, 100-foot-wide intake structure with trashracks having 3-inch clear bar spacing; (2) a 126-foot-long, 81-foot-wide powerhouse integral to the dam; (3) four turbine-generator units with a combined installed capacity of 4.0 megawatts; (4) a 40-foot by 40-foot substation; (5) a 265-foot-long, three-phase, 12.5-kilovolt overhead transmission line connecting the project's substation to local utility distribution lines; and (6) other appurtenant facilities.

The proposed project would operate in a run-of-river mode and the water surface elevation of the impoundment would be maintained at the existing normal pool elevation (crest of the dam spillway) or above. The average annual generation would be about 17,850 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09011 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2004–289]

The City of Holyoke Gas & Electric Department; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2004–289.

c. *Date Filed:* March 4, 2013.

d. *Applicant:* The City of Holyoke Gas & Electric Department (HG&E).

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Paul S. Ducheney, Superintendent-Electric Production, HG&E, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9300.

i. *FERC Contact:* Ms. Mary Karwoski at (202) 502–6543, or email: *mary.karwoski @ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: May 13, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2004–289) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Request: HG&E requests Commission approval to grant a non-project use of project lands and waters for the Holyoke Canal System, located in the City of Holyoke, for the testing of new technologies for hydropower generation and to assess potential environmental impacts associated with those technologies.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2004) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09017 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

	Docket Nos.
Carson Cogeneration Company, LP	EG13–11–000
Delano Energy Center, LLC	EG13–12–000
Alpaugh 50, LLC	EG13–13–000
Alpaugh North, LLC	EG13–14–000
Niagara Wind Power, LLC	EG13–15–000
Conestogo Wind, LP	FC13–7–000

Take notice that during the month of March 2013, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09016 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–16–001; Docket No. PR13–17–001; Not Consolidated]

TexStar Transmission, LP; TEAK Texana Transmission Company, LP; Notice of Filings

Take notice that on April 5, 2013, the applicants listed above submitted an amendment to the December 6, 2012, baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Thursday, April 18, 2013.

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09010 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD13–1–000]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2012 Other Federal Agency Cost Submissions

In its *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order) the Commission set forth an annual process for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. Pursuant to the established process, the Director of the Financial Management Division, Office of the Executive Director, on October 10, 2012, issued a letter requesting the OFAs to submit their costs by January 8, 2013 using the OFA Cost Submission Form.

Upon receipt of the agency submissions, the Commission posted the information in eLibrary, and issued, on March 13, 2013, a notice announcing the date for a technical conference to review the submitted costs. On March 28, 2013, the Commission held the technical conference. Technical conference transcripts, submitted cost forms, and detailed supporting documents are all available for review under Docket No. AD13–1. These documents are accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and are available for review in the Commission's Public Reference Room in Washington, DC.

Interested parties may file specific questions and comments on the FY 2012 OFA cost submissions with the Commission under Docket No. AD13–1, no later than April 25, 2013. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact W. Doug Foster at (202) 502–6118 (via email at *doug.foster@ferc.gov*), or Norman Richardson at (202) 502–6219 (via email at *norman.richardson@ferc.gov*).

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09018 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14499–000]

Hamilton Street Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 19, 2013, Hamilton Street Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the existing Chain Dam located on the Lehigh River in Northampton County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Chain Dam Hydroelectric Project would consist of the following: (1) An existing 20-foot-high concrete gravity dam with a 690-foot-long spillway; (2) an existing impoundment having a surface area of 300 acres and a storage capacity of 1,197 acre-feet at an elevation of 190 feet mean sea level (msl); (3) a new 70-foot-long by 40-foot-wide by 35-foot-high powerhouse with three new identical turbine-generator units with an installed capacity of 1,368 kilowatts each, and three identical 20-foot-wide, 10-foot-high, 5-foot-long direct intakes; (4) a new tailrace consisting of a 300-foot-long, 5-foot-high concrete wing wall; (5) a new 4,160-kilovolt transmission line extending 245 feet from the powerhouse to an existing distribution line; and (6) appurtenant facilities. The proposed project would have an annual generation of 18.3 gigawatt-hours.

Applicant Contact: Mark Boumansour, Hamilton Street Hydro, LLC, 1401 Walnut Street, Suite 301,

Boulder, CO 80302; phone: (303) 440–3378.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14499–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09012 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14500–000]

Hamilton Street Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 19, 2013, Hamilton Street Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the existing Hamilton Street Dam located on the Lehigh River in Lehigh County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Hamilton Street Dam Hydroelectric Project would consist of the following: (1) An existing 14-foot-high concrete gravity dam with a 480-foot-long spillway; (2) an existing impoundment having a surface area of 50 acres and a storage capacity of 371 acre-feet at an elevation of 240 feet mean sea level (msl); (3) a new 60-foot-long by 30-foot-wide by 30-foot-high powerhouse with two turbine-generator units having a combined capacity of 2,028 kilowatts and two identical 20-foot-wide, 10-foot-high, 5-foot-long direct intakes; (4) a 500-foot-long section of the existing canal to direct flows to the intakes; (5) a new 40-foot-wide, 100-foot-long tailrace; (6) a new 1,500-foot-long, 4,160-kilovolt transmission line extending from the powerhouse to an existing substation; and (7) appurtenant facilities. The proposed project would have an annual generation of 9.635 gigawatt-hours.

Applicant Contact: Mark Boumansour, Hamilton Street Hydro, LLC, 1401 Walnut Street, Suite 301, Boulder, CO 80302; phone: (303) 440–3378.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14500–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09013 Filed 4–16–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0230; FRL–9384–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review Weight-of-Evidence: Evaluating Results of EDSP Tier 1 Screening.

DATES: The meeting will be held July 30, 2013–August 2, 2013, from approximately 8:30 a.m. to 5 p.m.

Comments. The Agency encourages that written comments be submitted by July 16, 2013, and requests for oral comments be submitted by July 23, 2013. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after July 16, 2013, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before May 2, 2013.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site at *http://www.epa.gov/scipoly/*

sap for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0230, 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.
- *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.html.*

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

If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; fax number: (202) 564–8382; email address: *bailey.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2013–0230 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than July 16, 2013, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after July 16, 2013, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than July 23, 2013, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 20 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Regulatory toxicology/weight-of-evidence risk assessment, ecotoxicology (fish and amphibian toxicology), comparative endocrinology, reproductive physiology, developmental biology/toxicology, thyroid physiology, *in vitro* models, toxicological pathology, amphibian histopathology, morphometrics, quantitative ecology/biostatistics, systems biology, and Baysian statistics. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments

on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 2, 2013. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each Panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 15 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information, and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA established a Science Review Board consisting of at least 60 scientists who are available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

EPA developed the Endocrine Disruptor Screening Program (EDSP) in response to FFDCA section 408(p) which requires EPA to "develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate." 21 U.S.C. 346a(p)(1). In addition, the provision in section 1457 of the Safe Drinking Water Act (SDWA) provides that "the Administrator may provide for testing under the screening program * * * any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance." 42 U.S.C. 300j–17.

Based on recommendations from the Endocrine Disrupter Screening and Testing Advisory Committee (EDSTAC) and, pursuant to the EPA Administrator's discretionary authority, the EPA expanded the program to encompass the estrogen, androgen, and thyroid (E, A, and T) hormonal pathways of the endocrine system and human and ecological effects. Subsequent to review by a joint committee of the EPA's Science Advisory Board (SAB) and the FIFRA SAP, the EDSP embarked on a validation process as mandated to evaluate the relevance and reliability of Tier 1 screening and Tier 2 test methods. As recommended by a FIFRA SAP, the current EDSP Tier 1 screening battery consists of both *in vitro* and *in vivo* assays that provide redundancy within a particular mode or pathway of action and complementary endocrine specific-endpoints sensitive enough to detect effects on E, A, and T signaling through different routes of exposure and across multiple life-stages and taxa. The degree of redundancy and complementary assays/endpoints are intended to provide corroborating information to support an evaluation of the Tier 1 screening results.

EPA issued the first test orders of the EDSP Tier 1 screening on 67 chemicals (List 1 chemicals) between October 29, 2009, and February 26, 2010 (*http://www.epa.gov/endo*). As a result of these test orders, EDSP Tier 1 data were submitted on 50 pesticide active ingredients and 2 pesticide inert ingredients. For some test orders, EPA accepted "other scientifically relevant information" (OSRI) in lieu of specific study data (*http://www.epa.gov/endo*).

In May 2013, the Agency will be holding a FIFIRA SAP meeting to obtain input to ensure that individual assays and the overall battery performed as anticipated toward understanding whether a chemical is impacting E, A, and T pathways. A subset of the List 1 chemicals will be presented to the Panel to evaluate whether each assay can be consistently executed based on the performance criteria and to discuss any issues associated with interpretation of the responses within each assay as well

as the anticipated complementary relationships both within and across the assays. The advice and recommendations of the Panel from the May FIFRA SAP will be critical in how the Agency conducts its weight-of-evidence (WoE) evaluation of the Tier 1 screening results, which is the topic of this FIFRA SAP.

The EPA issued its WoE guidance document in 2011 for evaluating the results of EDSP Tier 1 screening to identify the need for Tier 2 testing. That document can be found at *http://www.regulations.gov* (Docket ID number EPA–HQ–OPPT–2010–0877). Briefly, that document presents a hypothesis-based approach that begins with an evaluation of each study's quality and relevance in addressing the questions for the chemical of interest, and guidance on how to assemble and integrate all lines of evidence (EDSP Tier 1 assays and OSRI, including peer reviewed studies) for that chemical. Thus, Tier 1 screening is combined with other relevant evidence (e.g., 40 CFR part 158 guideline studies) using a WoE analysis intended to determine whether or not a test chemical requires more comprehensive Tier 2 testing or a more targeted and tailored approach.

The Agency will present case studies based on a subset of List 1 chemicals for the Tier 1 test orders to illustrate the decision logic for applying EPA's EDSP WoE guidance (*http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2010-0877-0021*) in interpreting Tier 1 screening results and OSRI. The FIFRA SAP will be asked to comment on interpretative issues that arise during this WoE approach as well as the decision logic that guides the determination of whether higher level testing is needed.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by early July. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 9, 2013.

Steven M. Knott,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2013–08921 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FIFRA Docket No. 661; FRL–9804–2]

Rodenticides; Notice of Intent To Cancel Registrations of, and Notice of Denial of Applications for, Certain Rodenticide Bait Products

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of objections filed and hearing requested.

Notice is hereby given, pursuant to Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136d, and Section 164.8 of the associated Rules of Practice Governing Hearings set forth at 40 CFR part 164, that objections were filed and a hearing was requested in response to the Notice of Intent to Cancel Registration of, and Notice of Denial of Application for, Certain Rodenticide Bait Products, published in the **Federal Register** on February 5, 2013, 78 FR 8123.

This proceeding has been assigned FIFRA Docket No. 661, *In the Matter of Reckitt Benckiser, LLC, et al.*, and the undersigned has been designated to preside. A hearing on the objections filed will be conducted in accordance with the Rules of Practice set forth at 40 CFR part 164. Notice of the hearing date and time will be published when the hearing is scheduled.

An electronic copy of the case file in this proceeding is publically available online at *www.epa.gov/oalj/filings-section6.htm*. The official case file is available for public inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, in the office of the Hearing Clerk, located in Room M1200 of the Ronald Reagan Building, 1300 Pennsylvania Avenue NW., Washington, DC 20004.

Dated: April 4, 2013.

Susan L. Biro,

Chief Administrative Law Judge.

[FR Doc. 2013–09066 Filed 4–16–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2013–0112]

Agency Information Collection Activities; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 12–02—Credit Guarantee Facility Disbursement Approval Request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank has developed an electronic disbursement approval processing system for guaranteed lenders with Credit Guarantee Facilities. After a Credit Guarantee Facility (CGF) has been authorized by Ex-Im Bank and legal documentation has been completed, the Lender will obtain and review the required disbursement documents (e.g. invoices, bills of lading, Exporter's Certificates, etc.) and will disburse the proceeds of the loan for eligible goods and services. The Lender will access and complete an electronic questionnaire through ExIm Online inputting key data and requesting approval of the disbursement. Ex-Im Bank's action (approved or declined) will be posted on the Lender's history page.

This form will enable Ex-Im Bank to identify the specific details of the export transaction. These details are necessary for determining the eligibility of disbursements for approval.

The application can be reviewed at: *www.exim.gov/pub/pending/EIB 12-02 CGF Disbursement Request.pdf.*

DATES: Comments should be received on or before May 17, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB–2013–0012) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–EIB12–02

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The number of respondents: 50.

Time to Complete: 60 minutes.

The frequency of response: Annual.

Total number of responses received: 50.

Reviewing time per hour: 60 minutes.

Responses per year: 50.

Reviewing time per year: 25 hours.

Average Wages per hour: $30.25.

Average cost per year: $756 (time * wages).

Benefits and overhead: 20%.

Total Government Cost: $908.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2013–08979 Filed 4–16–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0101]

Agency Information Collection Activities; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank has developed an electronic disbursement approval processing system for guaranteed lenders with transactions documented under Medium-term Master Guarantee Agreements. After an export transaction has been authorized by Ex-Im Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (e.g. invoices, bills of lading, Exporter's Certificates, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through Ex-Im Bank's automatic application system (ExIm Online). Ex-Im Bank's action (approved or declined) will be posted on the lender's history page.

The information collected will assist in determining that each disbursement under a Medium-Term Guarantee meets all of the terms and conditions for approval.

The application can be reviewed at: *www.exim.gov/pub/pending/eib12-01* MT MGA Disbursement Approval Request.

DATES: Comments should be received on or before May 17, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB–2013–0011) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–EIB12–01.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The number of respondents: 150.

Time To Complete: 30 minutes.

The frequency of response: Annual.

Total number of responses received: 150.

Annual hour burden: 75 Hours.

Reviewing time per hour: 15 minutes.

Responses per year: 150.

Reviewing time per year: 37.5 hours.

Average Wages per hour: $30.25.

Average cost per year: $1,134 (time * wages).

Benefits and overhead: 20%.

Total Government Cost: $1,361.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2013–08980 Filed 4–16–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0106]

Agency Information Collection Activities; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 92–31 Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance policy (Standard Assignment).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form represents the exporter's directive to Ex-Im Bank to whom and where the insurance proceeds should be sent. The forms are typically part of the documentation required by financial institution lenders in order to provide financing of an exporter's foreign accounts receivable. Foreign accounts receivable insured by Ex-Im Bank represent stronger collateral to secure the financing. By recording which policyholders have completed this form, Ex-Im Bank is able to determine how many of its exporter policyholders require Ex-Im Bank insurance policies to support lender financing.

The application can be reviewed at: *www.exim.gov/pub/pending/eib92-31.pdf* Single Buyer Export Credit Insurance Policy.

DATES: Comments should be received on or before May 17, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB–2013–0007) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–EIB92–31.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–31 Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance policy (Standard Assignment).

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Annual Number of Respondents: 150.
Estimated Time per Respondent: 1 hour.
Frequency of Reporting or Use: Annually.
Government Review Time: 1 hour
Total Hours: 150 hours.
Cost to the Government: $4,875.00.
Benefits and Overhead: 28%.
Total Government Cost: $6,240.00.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2013–08983 Filed 4–16–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before June 17, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

Title: Application to Establish Branch or to Move Main Office or Branch.
OMB Number: 3064–0070.
Form Number: None.
Affected Public: Insured financial institutions.
Estimated Number of Respondents: 1540.
Frequency of Response: On occasion.
Estimated Annual Burden Hours per Response: 5 hours.
Total estimated annual burden: 7700 hours
General Description of Collection: Insured depository institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of April, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–09000 Filed 4–16–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before June 17, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

Title: Application to Establish Branch or to Move Main Office or Branch.
OMB Number: 3064–0070.
Form Number: None.
Affected Public: Insured financial institutions.
Estimated Number of Respondents: 1540.
Frequency of Response: On occasion.
Estimated Annual Burden Hours per Response: 5 hours.
Total estimated annual burden: 7700 hours
General Description of Collection: Insured depository institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the

methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of April, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–09001 Filed 4–16–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take the opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On February 4, 2013, the FDIC requested comment for 60 days on a proposal to renew the following information collection: Qualifications for Failed Bank Acquisitions, OMB Control No. 3064–0169. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

DATES: Comments must be submitted on or before May 17, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building. Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Estimated Number of Respondents:

Investor Reports on Affiliates: 20.

Maintenance of Business Records: 5.

Disclosures Regarding Investors and Entities in Ownership Chain: 20.

Frequency of Response:

Investor Reports on Affiliates: 12.

Maintenance of Business Records: 4.

Disclosures Regarding Investors and Entities in Ownership Chain: 4.

Average hours per response:

Investor Reports on Affiliates: 2 hours.

Maintenance of Business Records: 2 hours.

Disclosures Regarding Investors and Entities in Ownership Chain: 4 hours.

Total annual burden: 840 hours.

General Description of Collection: The FDIC's Statement of Policy on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of April 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–09032 Filed 4–16–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 2013.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Christopher C. Reid, Owensboro, Kentucky, as an individual and in concert with a control group consisting of Mr. Reid, Jacob Reid, Lauren Reid Patton, Cathy Switzer, Greg, Mullican, Todd Switzer, Kyle Aud, Bridget Reid, Jennie Parker, Eve Holder, Matt Carter, Darrell Higginbotham, Gary White, all of Owensboro, Kentucky; Jim Davis, Scott Audas, Bob Cummins, Kay Bryant, all of Henderson, Kentucky; Danny Evitts, Scott Johnston, both of Paducah, Kentucky; Kelly Jackson, Alvaton, Kentucky; Tawna Wright, Calhoun Kentucky; and Brad Howard, Bowling Green Kentucky, to retain shares of Independence Bancshares, Inc., and thereby indirectly obtain control of Independence Bank of Kentucky, both of Ownesboro, Kentucky.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. James Day, Menahga and Justin Day, both of Menahga, Minnesota, to each retain voting shares of Menahga Bancshares, Inc., Menahga, Minnesota, and thereby indirectly retain control of

First National Bank of Menahga & Sebeka, Menahga, Minnesota.

Board of Governors of the Federal Reserve System, April 12, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–09031 Filed 4–16–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 19–20, 2013

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 19–20, 2013.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. The Desk is directed to continue purchasing longer-term Treasury securities at a pace of about $45 billion per month and to continue purchasing agency mortgage-backed securities at a pace of about $40 billion per month. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency mortgage-backed securities transactions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on March 19–20, 2013, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

By order of the Federal Open Market Committee, April 10, 2013.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2013–08952 Filed 4–16–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9:00 a.m. (Eastern Time) April 22, 2013.

PLACE: 10th Floor Training 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 March 25, 2013 Board Member Meeting
2. Approval of the Minutes of the October 9, 2012 ETAC Meeting
3. Thrift Savings Plan Activity Reports by the Executive Director
   a. Monthly Participant Activity Report
   b. Quarterly Investment Policy Report
   c. Legislative Report
4. Quarterly Vendor Financials
5. Annual Financial Audit—Clifton Larson Allen (CLA)
6. Office of Enterprise Planning Report
7. Default Investment Fund Option
8. Communications Update
9. Sequestration and the TSP

Parts Closed to the Public

1. Procurement

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: April 15, 2013.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2013–09117 Filed 4–15–13; 11:15 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CIB–2013–03; Docket No. 2013–0002; Sequence 11]

Privacy Act of 1974; Notice of cancellation of System of Record Notice (SORN)

AGENCY: General Services Administration (GSA).

ACTION: Withdrawal of GSA/GOV–8 Excluded Parties List System (EPLS) System of Record Notice (SORN).

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the General Services Administration (GSA), is canceling the following system of record notice: GSA/GOV–8 Excluded Parties List System (EPLS).

DATES: *Effective Date:* April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer: telephone 202–208–1317; email *gsa.privacyact@gsa.gov*.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

The GSA/GOV–8 Excluded Parties List System (EPLS) is being cancelled because the information in the system is now part of the (GSA/GOVT–9) System of Award Management (SAM). The (SORN) was published in the **Federal Register** at 73 FR 22374 on Friday, April 25, 2008.

Dated: April 11, 2013.

James Atwater,

Acting Director, Office of Information Management.

[FR Doc. 2013–09004 Filed 4–16–13; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Applying Novel Methods to Better Understand the Relationship between Health IT and Ambulatory Care Workflow Redesign." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 28th, 2013 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 17, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Applying Novel Methods to Better Understand the Relationship between Health IT and Ambulatory Care Workflow Redesign.

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the project "Applying Novel Methods to Better Understand the Relationship between Health IT and Ambulatory Care Workflow Redesign." The data to be collected consists of interviews and focus groups with clinical, non-clinical, and management staff about their experiences with new health information technology (IT) in an ambulatory care facility. The overall goal of this study is to characterize the relationship between health IT implementation and health care workflow in six (6) small and medium-sized ambulatory care practices implementing patient-centered medical homes (PCMH), with a focus on the influence of behavioral and organizational factors and the effects of disruptive events.

AHRQ is a lead Federal agency in developing and disseminating evidence and evidence-based tools on how health IT can improve health care quality, safety, efficiency, and effectiveness. Health IT has been widely viewed as holding great promise to improve the quality of health care in the U.S. Health IT can improve access to information for both patients and providers, empowering patients to become involved in their own self-care. Increased patient safety can result from health IT when records are shared, medications are reconciled, and adverse event alerts are in place. When health IT improves efficiency, providers can spend more time directly caring for patients, ultimately improving the quality of care patients receive.

In redesigning an ambulatory office practice as a patient-centered medical home (PCMH), health IT is intended to allow for a seamless and organized flow of information among providers. The health IT system is critical, because under the PCMH model, a team of clinicians aims to provide continuous and coordinated care throughout a patient's lifetime.

Unfortunately, health IT systems can fail to generate anticipated results and even carry unintended consequences which undermine usability and usefulness. Directly or indirectly, health IT may create more work, flew work, excessive system demands, or inefficient workflow (the sequence of clinical tasks). Electronic reminders and alerts may be timed poorly. Software may require excessive switching between screens, leading to cognitive distractions for end users. Providers may spend more time on health IT system-related tasks than on direct patient care.

The literature also suggests that the ambulatory health care environment is full of unpredictable yet frequently occurring events requiring actions that deviate from normal practice. Unpredictable events such as interruptions requiring a provider's immediate attention, or disruptions in the normal functioning of the health IT system (exceptions) divert health care workers from the usual course of workflow. The inability of health IT to properly accommodate these events could cause compromises to clinical work.

Because of adverse, unintended and disruptive consequences, developing an understanding of how health IT implementation alters clinical work processes and workflow is crucial. Unfortunately, research is scarce, and methods of investigation vary widely. Empirical evidence of health IT's impact on clinical workflow has been "anecdotal, insufficiently supported, or otherwise deficient in terms of scientific rigor" (Carayon and Karsh, 2010).

This study aims to examine more systematically the impact of health IT on workflow in six (6) small and medium-sized ambulatory care practices varying in their characteristics but all implementing PCMH. All of the practices will be in the process of implementing a new health IT system during the course of the study, but some may have an existing, baseline system such as an electronic health record system. The focus of the study will be on the new systems being implemented. It will employ the complementary quantitative and qualitative methods of previous research. The combination of methods produces quantitative results and allows validation through observation and solicitation of qualitative participant opinions.

The specific goals of this study are to identify 1) the relationship between health IT implementation and ambulatory care workflow; 2) the behavioral and organizational factors and the role they play in mitigating or augmenting the impact of health IT on workflow; and 3) how the impacts of health IT are magnified through disruptive events such as interruptions and exceptions.

This study is being conducted by AHRQ through its contractor, Billings Clinic, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to clinical practice, including primary care and practice-oriented research. 42 U.S.C. 299a(a)(1) and (4).

Method of Collection

To achieve the goals of this project the following data collection will be implemented:

(1) Mapping of Study Practices. This activity will detect any changes made to the physical layout as a result of implementing PCMH and health IT. Practices will be mapped at the beginning of the study and maps will be updated as needed. Recording this information will not burden the clinic staff and is not included in the burden estimates.

(2) Staff Observation. Clinicians (physicians, nurse practitioners, physician assistants, nurses, medical assistants, pharmacists, and case managers) and non-clinical office personnel will be observed to delineate the overall characteristics of clinical workflow before, during, and after health IT implementation. Particular attention will be paid to interruptions and exceptions. If necessary and if the situation allows, observers will as unobtrusively as possible ask clinic staff to clarify certain observed actions. Recording this information will not burden the clinic staff and is not included in the burden estimates.

(3) Before—After Time and Motion Study. This activity quantifies staffs time expenditures on different clinical activities and delineates the sequence of task execution. It will be conducted before and after health IT implementation. This data will be collected by observation only. Recording this information will not

burden the clinic staff and is not included in the burden estimates.

(4) Extraction of Clinical Data. Logs, audits trails, and time-stamped clinical data will be extracted from the health IT system to reconstruct clinical workflow related to the health IT system. This information validates and supplements the data recorded by human observers. Extracting this data will not burden the clinic staff and is not included in the burden estimates.

(5) Semi-Structured Interviews. This data collection will be conducted post-health IT implementation to solicit attitudes and perceptions by health IT end users including clinical staff, non-clinical personnel, and management regarding how health IT has changed their workflow. Particular attention will be paid to behavioral and organizational factors.

(6) Focus Group. A focus group will be conducted post-health IT implementation with the clinical staff, non-clinical personnel, and management team to ensure the research findings, as well as the interpretation of the findings, accurately reflect their experiences using health IT.

On-site data collection will be conducted over a 5-day period during each of three phases. Pre-implementation data collection activities will be conducted prior to user training. During-implementation data collection will begin when staff are instructed to start using the health IT system. Post-implementation data collection will be conducted approximately 3 months after implementation at each study practice.

The qualitative study components of this project, namely staff observations, semi-structured interviews, and focus groups, will generate qualitative data in the form of observation notes and interview transcripts. The time-and-motion study and the electronic clinical data will produce quantitative information in the form of sequences of clinical activities and information about the duration, location, and performer of each action. Mapping will create annotated floor plans delineating the physical layout of each study clinic, which will be incorporated in the collection and analysis of the data of the other study components.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for participation in this study. The semi-structured interview will be completed by 60 respondents across the 6 clinics (10 per practice) and requires one hour. Sixty (60) clinic staff members will be asked to participate in the focus group across all 6 clinics (10 per practice). The focus group requires no more than 45 minutes. The total annual burden is estimated to be 105 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this research. The total annual burden is estimated to be $5,505.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Semi-Structured Interview	60	1	1	60
Focus Group	60	1	45/60	45
Total	120	na	na	105

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Semi-Structured Interview	60	60	$55	$3,300
Focus Group	60	45	49	2,205
Total	120	105	na	5,505

*Based upon the mean of the average wages, National Compensation Survey: wages in the United States July 2010, U.S. Department of Labor, Bureau of Labor Statistics, *http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf*. For the semi-structured interviews, hourly wage is an average including 2 physicians or surgeons ($85.67), 1 registered nurse ($32.42), 2 non-physician providers (measured here as physician assistants, $43.44), and 1 senior administrator (measured here as "Medical and health services managers," $42.28). For focus groups, 3.34 physicians or surgeons ($85.67), 1.66 non-physician providers (measured here as physician assistants, $43.44), 3.34 registered nurses ($32.42), and 1.66 medical assistants ($14.46).

Estimated Annual Costs to the Federal Government

The total cost of this study is $799,014 over a 36-month time period from June 1, 2012 through May 31, 2015 for an annualized cost of $266,338. (Because the project entails gathering data before, during, and after health IT implementation, a period of 21 months is planned for data collection.) Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$135,759	$45,253
Data Collection Activities	177,460	59,153
Data Processing and Analysis	239,426	79,809
Publication of Results	51,779	17,260
Project Management	67,729	22,576
Overhead	126,861	42,287

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Total	799,014	266,338

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 4, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–08833 Filed 4–16–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Standing Workgroup for Quality Indicator Measure Specification

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking nominations for both a time-limited workgroup and a standing workgroup to be convened by an AHRQ contractor. The workgroups shall be comprised of individuals with knowledge of the AHRQ Quality Indicators (QIs), their technical specifications, and associated methodological issues. The overarching goals of each group are to provide feedback to AHRQ regarding refinements to the QIs. The time-limited workgroup is more restricted to specific clinical or methodological issues, while the standing workgroup addresses broader issues related to the measurement cycle.

Because AHRQ did not get a set of candidates with anticipated breadth of diversity of experience as required in response to our notice (*https://www.federalregister.gov/articles/2013/01/28/2013-01348/ahrq-standing-workgroup-for-quality-indicator-measure-specification*) published on January 28, 2013, Volume 78, No. 18, page numbers: 5810 & 5811, AHRQ resubmits the same notice to give opportunity to those interested in this objective.

DATES: Please submit nominations on or before May 3, 2013. Self-nominations are welcome. Third-party nominations must indicate that the individual has been contacted and is willing to serve on the workgroup. Selected candidates will be contacted by AHRQ no later than May 17, 2013. Please include the workgroup of interest. Candidates may apply for both workgroups.

ADDRESSES: Nominations can be sent in the form of a letter or email, preferably as an electronic file with an email attachment, and should specifically address the submission criteria as noted below. Electronic submissions are strongly encouraged. Responses should be submitted to: Pamela Owens, Ph.D., Senior Research Scientist, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Rockville, MD 20850, Email: *PAM.OWENS@AHRQ.hhs.gov*, Phone: (301) 427–1412, Fax: (301) 427–1430.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela Owens, see her information above.

Background

The AHRQ Quality Indicators (AHRQ QIs) are a unique set of measures of health care quality that make use of readily available hospital inpatient administrative data. The QIs have been used for various purposes. Some of these include tracking, hospital self-assessment, reporting of hospital-specific quality or pay for performance. The AHRQ QIs are provider- and area-level quality indicators and currently consist of four modules: the Prevention Quality Indicators (PQIs), the Inpatient Quality Indicators (IQIs), the Patient Safety Indicators (PSIs), and the Pediatric Quality Indicators (PQIs). In response to feedback from the AHRQ QI user community and guidance from NQF, AHRQ is committed to the ongoing improvement and refinement of the QIs in an accurate and transparent manner. For additional information about the AHRQ QIs, please visit the AHRQ Web site at *http://www.qualityindicators.AHRQ.gov*.

SUPPLEMENTARY INFORMATION: These workgroups are being administered by AHRQ's contractor as part of a structured approach to formally and broadly engage stakeholders, and to enhance and expand transparency about the scientific development of the AHRQ QIs.

Time-Limited Workgroup

Time-limited workgroups are formative in nature, providing feedback on significant measure improvement issues and representing a broad range of stakeholders. The focus for this upcoming year will be the Prevention Quality Indicators (PQI). The role of time-limited group members is to: (1) Provide technical guidance on the PQI specifications and rationales, risk adjustment strategies, and other quality measurement issues; (2) provide input on critical information gaps, as well as research methods to address them; (3) provide guidance on draft recommendations for the PQI measure refinements; (4) offer scientifically rigorous recommendations for the evaluation and validation efforts required to ensure the accuracy of the PQIs; and, (5) provide input on and review of the contractor's technical report resulting from the workgroup's discussions.

The time-limited workgroup will consist of 8–12 members consisting of:

- One or more statisticians specialized in the relevant statistical methods and applications
- One or more individuals with expertise in population health, community health care and prevention, and access to and quality of care
- One or more individuals with experience using AHRQ PQI measures for assessing health system performance and public reporting

• One or more individuals with expertise in developing algorithms using ICD–9–CM codes to construct or modify quality indicators using administrative data is desirable, but not mandatory

In addition, the workgroup is expected to include representatives from impacted provider groups and their professional organizations, other stakeholders, consumers and other users, quality alliances, business coalitions, medical or specialty societies, measure developers, accrediting organizations, and public and private payers.

Standing Workgroup

The standing workgroup is part of a structured approach to bring together individuals from multiple disciplines for the purpose of providing technical feedback on proposed updates to the AHRQ QIs. The intent is to collect feedback in a standardized fashion, and to ensure continued improvement of key measurement aspects of the QIs based on new data sources, data enhancements, and methodological advances. The standing workgroup may potentially provide guidance for the development of new indicators or the modification or retirement of existing indicators. Annual topics include: (1) Strategic areas for AHRQ QI program development for the upcoming year, (2) measure specification, software and documentation changes that have been proposed from users, the literature or other sources, (3) results from the analysis of proposed changes and review of recommendations for implementation, and (4) general methodological developments in quality measurement.

The standing workgroup will consist of 8–12 members to form a diverse group of clinicians and other individuals from a variety of disciplines and settings with expertise and interest in quality measurement and improvement. Members of the standing workgroup may include:

• One or more currently practicing clinicians specialized in various disciplines

• One or more individuals with inpatient nursing and/or nursing management experience

• One or more individuals with experience using AHRQ 01 measures for assessing hospital performance and/or public reporting

• One of more individuals with expertise in developing algorithms for relevant quality indicators using administrative data

• One or more individuals with expertise in validating ICD–9–CM codes using chart abstraction (to assess criterion validity), or assessing their accuracy in identifying individuals at risk for specific adverse outcomes (predictive validity)

• One or more individuals with experience using HCUP or similar data for the purpose of quality measurement

• One or more individuals with knowledge of ICD–9–CM and ICD–10–CM coding guidelines and practices

Submission Criteria

To be considered for membership on either workgroup, please send the following information for each nominee:

1. A brief nomination letter highlighting experience and knowledge in the use of the AHRQ QIs, including any experience with the National Quality Forum (NQF) Consensus Development Process, and the workgroup of interest. The nominee's profession and specialty, and the spectrum of his or her experience related to the QIs should be described. Please include full contact information of nominee: name, title, organization, mailing address, telephone and fax numbers, and email address.

2. Curriculum vita (with citations to any pertinent publications related to quality measure development or use).

3. Description of any financial interest, recent conduct, or current or planned commercial, non-commercial, institutional, intellectual, public service, or other activities pertinent to the potential scope of the workgroup, which could be perceived as influencing the workgroup's process or recommendations. The objective is not to prevent nominees with potential conflicts of interest from serving on the workgroups, but to obtain such information so as to best inform the selection of workgroup members, and to help minimize such conflicts.

Nominee Selection Criteria

Selection of standing workgroup members will be based on the following criteria:

• Knowledge of and experience with health care quality measurement using administrative data, including issues of coding, specification, and risk adjustment

• Peer-reviewed publications relevant to developing, testing, or applying health care quality measures based on ICD-coded administrative data

• Knowledge of current quality measurement methodologies published in the literature

• Clinical expertise in the use and applications of the AHRQ QIs

• Knowledge of the NQF measure submission and maintenance process

The selection process will be adapted to ensure that the standing workgroup includes a diverse group of clinicians and other individuals from a variety of disciplines and settings.

Time Commitment

Time-limited and standing workgroup participants will hold a minimum two-year term with an optional extension. The time-limited workgroup will meet by teleconference approximately three times for approximately two hours each year, with a total time commitment including preparation and follow-up time of approximately 8–12 hours. The standing workgroup will meet quarterly by teleconference for approximately two hours with an annual time commitment including preparation and follow-up time of approximately 12–16 hours.

Workgroup Activities

1. Workgroup members will receive pre-meeting material to review and to provide written feedback (1.0 hours).

2. The workgroup meeting will be convened by phone or web conference. Initial feedback and revisions will be discussed during the live meetings along with other relevant topics (2.0 hours).

3. Post meeting, members will review and comment on meeting minutes and associated documents along with any follow-up action items (1 hour).

4. There may be opportunities for workgroup members to collaboratively publish peer-reviewed journal articles or reports based on workgroup activities. However, this is not a mandatory requirement of workgroup members and is not included in the estimated time commitment.

Dated: April 5, 2013.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2013–08834 Filed 4–16–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–13–13QQ]

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

Older Adult Safe Mobility Assessment Tool—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2010, there were 40 million adults aged 65 or older in the U.S., representing 13% of the U.S. population. By 2030, this segment of the population will increase to an estimated 72 million or 20%. People now aged 65 are expected to live well into their 80s with the vast majority preferring to "age in place" (i.e., grow old in their current homes). With most adults aging in place, rather than in retirement or nursing homes, it is absolutely critical to better prepare communities and older Americans for what is on the horizon.

There is widespread agreement that older adults in the U.S. do not adequately plan for their future mobility needs, nor are most aware of existing mobility resources in their communities. Thus, when an individual's mobility becomes impaired they are ill prepared to adapt their lifestyle to their changing needs. A process of mobility assessment would begin to address this situation and aid older adults in meeting their changing mobility needs.

At present there are numerous mobility-related assessments actively used throughout the U.S. Most are designed to collect information from just one particular mobility silo, such as assessments that focus on fall prevention. None of these existing tools cut across mobility silos while focusing on older adults. None create a national picture of older adult safe mobility that captures an individual's physical and emotional health, their social network, or the ease of mobility in their home, transportation, their neighborhood, their city, and beyond. And no existing older adult tools are both mobility holistic and empowerment driven self-administered assessments. The data collected in this project will allow CDC to develop a tool that can help older adults both assess and improve their complete mobility.

This project involves developing, refining and validating a Safe Mobility Assessment Tool that allows older adults to assess their current mobility situation, learn about mobility challenges that may affect them in the future, and receive actionable feedback on how to improve and protect their mobility. The information collected in this project will be used to refine and improve the tool, as well as to conduct feasibility and audience acceptability analysis of the tool. This information will allow CDC to create the most useful Safe Mobility Assessment Tool possible for U.S. older adults.

CDC requests OMB approval to collect both qualitative and quantitative data. Qualitative data collection will include key informant interviews, focus groups, and intercepts in urban and rural communities. In brief, these methods will include key informant interviews of community stakeholders (three stakeholder interviews in two states for a total of six key informant interviews); older adult consumer focus groups (two focus groups in two states with seven people each for a total of fourteen participants); and older adult consumer intercepts (thirty intercepts in two rural locations and ten intercepts in two urban locations for a total of forty intercepts). The qualitative data collection will be used to help inform a quantitative stage of work to include a national sample of geographically and socio-demographically diverse older adults (N = 1,000) who will be recruited and interviewed by telephone. The key informant interviews, focus groups, intercepts and telephone survey data collection will allow us to gain information about the feasibility and usefulness of the Older Adult Safe Mobility Tool; about what impacts the tool may have on older adults (e.g., motivation to change/behavior intent, and changes in knowledge, attitudes, and awareness); about which mobility domains are most valuable to include in the tool (e.g., which are of greatest interest and can be improved by older adults); and about what other areas of the tool could be refined and improved. This information will allow us to create a final version of the Safe Mobility Assessment Tool that can be used by older adults across the U.S. to protect and enhance their mobility.

CDC anticipates that data collection will begin in December 2013 and that all data collection will be completed by July 2014. CDC estimates the following burden for one-time respondents: Key informant interviews will take approximately 30 minutes to complete, focus groups will each take up to 120 minutes, intercept interviews will take up to 20 minutes each, and the telephone survey will involve an on-your-own review of materials (approximately 15 minutes) and a pre-scheduled telephone survey (approximately 12 minutes). CDC plans for 6 individuals to complete the key informant interviews, 14 older adults to participate in the focus groups, and 40 older adults to participate in the intercepts. Additionally, CDC plans to collect information from 1,000 older adults for the telephone survey. Each respondent will only provide information once. Key informant interviews and the quantitative survey will be conducted by telephone. As telephone survey participants are recruited, they may elect to receive stimulus material (i.e., a draft version of the Tool) prior to the survey either by mail or electronically via email, whichever they prefer. In addition, focus group participants may receive communications (confirmation and reminder notices) via email or mail. Email communication will be used with key informant, focus group and telephone survey respondents, however each will be given the option of mail rather than email as their preferred communication method. Email will be provided not only as a courtesy to respondents, for those respondents that prefer email rather than mail, but also, it will allow more open and swift communication between the data collectors and study participants. Additionally, recruitment/screening for the focus groups and telephone surveys, as well as administration of the telephone surveys will use Computer Assisted Telephone Interview (CATI) systems for data collection, which are designed to reduce the burden to respondents.

There are no costs to respondents other than their time.

ESTIMATE ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Key informant interview respondents	Interview guide	6	1	30/60	3
Focus group respondents	Moderator guide	14	1	2	28
Intercept respondents	Intercept script	40	1	30/60	20
Telephone survey respondents	Survey	1,000	1	27/60	450
Total					501

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–08911 Filed 4–16–13: 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–13–0469]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Program of Cancer Registries Cancer Surveillance System—(0920–0469 Reinstatement Exp. 11/30/2012)—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1992, Congress passed the Cancer Registries Amendment Act, which established the National Program of Cancer Registries (NPCR). The NPCR provides support for central cancer registries (CCR) that collect, manage and analyze data about cancer cases. The NPCR-funded CCR, which are located in states, the District of Columbia, and U.S. territories, report information to CDC annually through the National Program of Cancer Registries Cancer Surveillance System (NPCR CSS)(OMB No. 0920–0469, exp. 1/31/2010). Many registries maintain additional data items that are not part of the standard NPCR CSS report to CDC.

The NPCR CSS has allowed CDC to collect, aggregate, evaluate and disseminate cancer incidence data at the national and state level, and is the primary source of information for *United States Cancer Statistics* (*USCS*), which CDC has published annually since 2002. The NPCR CSS also allows CDC to monitor cancer trends over time, describe geographic variation in cancer incidence throughout the country, and provide incidence data on minority populations and rare cancers. These activities and analyses further support CDC's planning and evaluation efforts for state and national cancer control and prevention. Finally, datasets compiled through the NPCR CSS have been made available to investigators for secondary analysis.

CDC plans to request OMB approval to reinstate the NPCR CSS information collection, with changes. First, the frequency of reporting to CDC will be changed from an annual to a semi-annual schedule. The additional report will allow CDC to compile preliminary cancer incidence estimates in advance of the lengthy process of data validation required for each registry's final annual report. Second, data definitions for each report will be updated to reflect changes in national standards for cancer diagnosis, treatment, and coding. These changes will affect the standard reports for all NPCR-funded central cancer registries.

The third set of changes applies to a subset of 10 cancer registries. These CCR received ARRA funding to develop common standards and reporting mechanisms for enhanced description of cases of breast cancer, colorectal cancer, and chronic myelogenous leukemia. The enhanced data items will support more in-depth analysis of treatment strategies and patient outcomes than is currently possible with the standard NPCR CSS information collection. The 10 registries that participated in the enhancement process will begin reporting the additional data items to CDC in 2013 as part of their routine submission. CDC plans to make de-identified data available for comparative effectiveness research.

OMB approval will be requested for three years. Respondents will be 48 NPCR-supported central cancer registries in the U.S. (45 states, the District of Columbia, Puerto Rico, and the Pacific Islands jurisdictions). Information will be reported electronically to CDC twice per year. The first report will consist of a single-year file for data that includes diagnosis 12 months past the close of the diagnosis year. The second report will consist of a cumulative file containing incidence data from the first diagnosis year for which the cancer registry collected data with the assistance of NPCR funds (e.g., 1995) through 24 months past the close of the diagnosis year (e.g., 2010 data submitted in 2012). The estimated burden per response is two hours. Because cancer incidence data are already collected, aggregated and used for analyses at the state level, the additional burden of reporting the information to CDC is modest and the number of data items in the report does not affect the estimated burden per response.

There are no costs to respondents except their time. The total estimated annualized burden hours are 192.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Central Cancer Registries in States, Territories, and the District of Columbia.	Standard NPCR CSS Report	38	2	2
	Enhanced NPCR Report	10	2	2

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–08912 Filed 4–16–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0867]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Experimental Study on the Public Display of Lists of Harmful and Potential Harmful Tobacco Constituents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Experimental Study on the Public Display of Lists of Harmful and Potential Harmful Tobacco Constituents" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On May 8, 2012, the Agency submitted a proposed collection of information entitled "Experimental Study on the Public Display of Lists of Harmful and Potential Harmful Tobacco Constituents" to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0736. The approval expires on March 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08906 Filed 4–16–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0104]

Guidance for Industry on Non-Penicillin Beta-Lactam Drugs: A Current Good Manufacturing Practices Framework for Preventing Cross-Contamination; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Non-Penicillin Beta-Lactam Drugs: A CGMP Framework for Preventing Cross-Contamination." This guidance describes the importance of implementing controls to prevent cross-contamination of finished pharmaceuticals and active pharmaceutical ingredients (APIs) with non-penicillin beta-lactams. This guidance also provides information regarding the relative health risk of, and the potential for, cross-reactivity in the classes of sensitizing beta-lactams (including both penicillins and non-penicillin beta-lactams), beta-lactamase inhibitors, and beta-lactam intermediates and derivatives. Finally, this guidance clarifies that manufacturers should generally utilize separate facilities for manufacture of non-penicillin beta-lactams because those compounds pose health risks associated with cross-reactivity.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paula Katz, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4314, Silver Spring, MD 20993–0002, 301–796–6972.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Non-Penicillin Beta-Lactam Drugs: A CGMP Framework for Preventing Cross-Contamination." This guidance describes the importance of implementing controls to prevent cross-contamination of finished pharmaceuticals and APIs with non-penicillin beta-lactam drugs. This guidance also provides information regarding the relative health risk of, and the potential for, cross-reactivity in the classes of sensitizing beta-lactams (including both penicillins and non-penicillin beta-lactams). Finally, this guidance clarifies that manufacturers should generally utilize separate facilities for manufacture of non-penicillin beta-lactams because those compounds pose health risks associated with cross-reactivity.

Although the existing current good manufacturing practices (CGMP) regulations require separation of manufacturing facilities to avoid cross-contamination, the only class of products for which the regulations specify particular separation

requirements are penicillins. This guidance explains that, due to the potential health risks of cross-contamination, the Agency expects separation for all classes of beta-lactam drugs, including penicillins as well as non-penicillin beta-lactams. Specifically, FDA recommends that manufacturers establish appropriate separation and control systems designed to prevent two types of contamination: (1) The contamination of a non-penicillin beta-lactam by any other non-penicillin beta-lactam and (2) the contamination of any other type of product by a non-penicillin beta-lactam. Accordingly, FDA recommends that the area in which any class of sensitizing beta-lactam is manufactured should be separated from areas in which any other products are manufactured, and should have an independent air handling system.

A draft version of this guidance was published in March 2011 as "Non-Penicillin Beta-Lactam Risk Assessment: A CGMP Framework." This final version was revised in response to docket comments to clarify that this guidance does not provide a formal risk assessment, but, rather, describes FDA's expectations and recommendations for separation strategies to prevent cross-contamination.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on Non-Penicillin Beta-Lactam Drugs: A CGMP Framework for Preventing Cross-Contamination. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: April 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08913 Filed 4–16–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code. as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Health Care and Other Facilities (OMB No. 0915–0309)—Extension

Abstract: The Health Resources and Services Administration's Health Care and Other Facilities (HCOF) program provides congressionally-directed funds to health-related facilities for construction related activities and/or capital equipment purchases. Awarded facilities are required to provide a periodic (quarterly for construction related projects, annually for equipment only projects) update of the status of the funded project until it is completed. The monitoring period averages about three years, although some projects take up to five years to complete. The information collected from these updates is vital to program management staff to determine whether projects are progressing according to the established timeframes, meeting deadlines established in the Notice of Award, and drawing down funds appropriately. The data collected from the updates is also shared with the Division of Grants Management Operations for their assistance in the overall evaluation of each project's progress.

An electronic form is currently being used for progress reporting for the HCOF program. This form provides awardees access to directly input the required status update information in a timely, consistent, and uniform manner. The electronic form minimizes burden to respondents and informs respondents when there are missing data elements prior to submission. We acknowledge a change in the burden estimate due to close out of old projects.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Construction Related	200	4	800	.5	400
Equipment Only	317	1	317	.5	158.5
Total	517		1,117		558.5

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: April 10, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–09026 Filed 4–16–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Data Collection Tool for State Offices of Rural Health Grant Program. (OMB No. 0915–0322)—Extension

Abstract: The mission of the Office of Rural Health Policy (ORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language (Section 711 of the Social Security Act [42 U.S.C. 912]), Congress charged ORHP with administering grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.

In accordance with the Public Health Service Act, Section 338J (42 U.S.C. 254r), the Health Resources and Services Administration proposes to revise the State Offices of Rural Health Grant Program—Funding Opportunity Announcement (FOA) and Forms for the Application. The FOA is used annually by 50 states in preparing applications for Grants under the State Offices of Rural Health Grant Program (SORH) of the Public Health Service Act, and in preparing the required report.

ORHP seeks to continue gathering information from grantees on their efforts to provide technical assistance to clients within their state. SORH grantees would be required to submit a Technical Assistance Report that includes: (1) The total number of technical assistance encounters provided directly by the grantee; and, (2) the total number of unduplicated clients that received direct technical assistance from the grantee. Submission of the Technical Assistance Report would be done via submission to the HRSA Electronic Handbook no later than 30 days after the end of each twelve month budget period.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Technical Assistance Report	50	1	50	12.5	625
Total	50	1	50	12.5	625

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: April 10, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–09029 Filed 4–16–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 217 of the Public Health Service Act (42 U.S.C. 218(a)) and section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health

Dates and Times: May 21, 2013, 8:30 a.m. to 5:00 p.m. May 22, 2013, 8:00 a.m. to 12:00 p.m.

Place: Health Resources and Services Administration, 5600 Fishers Lane, Room 16–49, Rockville, Maryland 20857, Telephone: (301) 443–9820, Fax: (301) 443–9477.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal agricultural workers and their families and to formulate recommendations for the Secretary of Health and Human Services on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under sections 330(g) and 340 of the Public Health Service Act.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on agricultural worker issues, including the status of agricultural workers' health at the local and national levels. Agenda items are subject to change as priorities indicate.

For Further Information Contact: Maria-Thelma Peña, Office of National Assistance and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 15–74, Rockville, Maryland 20857; telephone (301) 594–4976.

Dated: April 10, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–09025 Filed 4–16–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP)

Dates and Times: April 24 and 25, 2013, 9:00 a.m.–5:00 p.m. EST

Place: In-Person with Webinar Format Combined

Status: This advisory council meeting will be open to the public.

Purpose: The purpose of this meeting is to identify the key issues facing nursing workforce development to respond to the Affordable Care Act and health care system redesign, and to formulate policy recommendations for Congress and the Secretary to ensure the nursing workforce is ready to meet these challenges. The objectives of the meeting are: (1) To articulate the key challenges facing nursing workforce development in meeting the health care needs of the nation; (2) to develop goals and priorities for Council action to address these challenges; and (3) to develop recommendations on the activities, initiatives, and partnerships that are critical to advancing 21st century interprofessional education and practice models needed to promote the health of the public. This meeting will form the basis for NACNEP's mandated 12th Annual Report to the Secretary of Health and Human Services and Congress. The meeting will include a presentation and discussion focused around the purpose and objectives of this meeting. The logistical challenges of scheduling this meeting hindered an earlier publication of this meeting notice.

Agenda: The agenda will be available on the NACNEP Web site, noted below, one day prior to the meeting. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Further information regarding NACNEP, including the roster of members, reports to Congress, and minutes from previous meetings are available at the following Web site: *http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/index.html.*

Members of the public and interested parties may register for the meeting by contacting our Staff Assistant, Jeanne Brown, to obtain access information. Registration is first come, first served as space is limited.

For additional information regarding NACNEP, please contact Jeanne Brown, Staff Assistant, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–61, 5600 Fishers Lane, Rockville, Maryland 20857; email *reachDN@hrsa.gov*; or telephone (301) 443–5688.

Dated: April 11, 2013.

Bahar Niakan,

Director, Division of Policy Review and Coordination.

[FR Doc. 2013–09023 Filed 4–16–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2013

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of the Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2013 for Medicare and Medicaid beneficiaries, and beneficiaries of other Federal programs, and for recoveries under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653). The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment shall be available to the extent that those services are provided.

Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)

Calendar Year 2013

Lower 48 States: $2,272
Alaska: $2,591

Outpatient Per Visit Rate (Excluding Medicare)

Calendar Year 2013

Lower 48 States: $330
Alaska: $541

Outpatient Per Visit Rate (Medicare)

Calendar Year 2013

Lower 48 States: $283
Alaska: $515

Medicare Part B Inpatient Ancillary Per Diem Rate

Calendar Year 2013

Lower 48 States: $483
Alaska: $846

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2013 Rates

Consistent with previous annual rate revisions, the Calendar Year 2013 rates will be effective for services provided on/or after January 1, 2013 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: December 19, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2013–09030 Filed 4–16–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request: Topic-based Studies for the Population Assessment of Tobacco and Health (PATH) Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact Kevin P. Conway, Ph.D., Deputy Director, Division of Epidemiology, Services, and Prevention Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 5185; Rockville, MD 20852, or call non-toll free number (301) 443–8755 or Email your request, including your address to: *PATHprojectofficer@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication

Proposed Collection: Topic-based Studies for the Population Assessment of Tobacco and Health (PATH) Study, 0925-New, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The PATH study will establish a population-based framework for the tracking of potential behavioral and health impacts associated with changes in tobacco products in the U.S., including those enacted under the Family Smoking Prevention and Tobacco Control Act (FSPTCA) by the Food and Drug Administration (FDA). NIDA is requesting generic approval from OMB for topic-based studies to rapidly address new and emerging issues related to PATH Study objectives. These topic-based studies will serve two primary purposes: (1) To complement and supplement the main PATH Study; and (2) to inform future content changes to the main PATH Study. These studies will add depth and context to specific issues and topics already being addressed in the main PATH Study and will help inform decisions about potential new topics to include in the next or a future annual wave of data collection. Data collection methods to be used in these topic-based studies include: in-person and telephone surveys; web and smartphone/mobile phone surveys; and focus group and individual in-depth qualitative interviews. Biospecimens may also be collected from adults.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 29,750.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name (Data collection activity)	Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
In-person and telephone surveys	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Web and smartphone/mobile phone surveys	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Focus groups and individual in-depth qualitative interviews.	Adults	1,000	1	2	2,000
	Youth	1,000	1	2	2,000
Biospecimen collection	Adults	1,000	1	15/60	250

Dated: April 10, 2013.

Glenda J. Conroy,

Executive Officer (OM Director), NIDA, NIH.

[FR Doc. 2013–08954 Filed 4–16–13; 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; Small Business: Biobehavioral and Behavioral Processes.

Date: April 17, 2013.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Persan: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: April 25–26, 2013.

Time: 10:00 a.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: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gav.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 11, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisary Committee Policy.

[FR Doc. 2013–08940 Filed 4–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 af Committee: National Advisory Council for Nursing Research.

Date: May 21–22, 2013.

Open: May 21, 2013, 1:00 p.m. to 5:30 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: May 22, 2013, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Cantact Persan: Ann R Knebel, DNSC, RN, FAAN Deputy Director, National Institute of Nursing Research, National Institutes of Health, 31 Center Drive, Building 31, Room 5B05, Bethesda, MD 20892, 301–496–8230, *knebelar@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gav/ninr/a_advisary.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08945 Filed 4–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, April 23, 2013, 08:00 a.m. to April 23, 2013, 04:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on March 28, 2013, 2013–07119.

The location changed from the Hyatt Regency Bethesda to the Hilton Garden Inn Bethesda. The meeting is closed to the public.

Dated: April 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08942 Filed 4–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 USC, as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Feedback-regulated Naloxone Delivery Device to Prevent Opiate Overdose Deaths (2228).

Date: April 22,.2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08944 Filed 4–16–13; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hematology.

Date: May 9–10, 2013.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ai-Ping Zou, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@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: April 11, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08939 Filed 4–16–13; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: May 9, 2013.

Time: 1:00 p.m. to 3:00 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: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@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)

April 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08938 Filed 4–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 National Advisory Board on Medical Rehabilitation Research.

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: National Advisory Board on Medical Rehabilitation Research.

Date: May 2, 2013.

Time: May 2, 2013, 8:30 a.m. to 5:00 p.m.

Agenda: NICHD Director's Report; NCMRR Director's Report; Discussion of a Strategic Plan for NCMRR; Coordinating Rehabilitation Research activities across NIH; Acknowledgement of and comments by retiring Board Members; and other business of the NABMRR.

Place: Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852–1699.

Contact Person: Ralph M. Nitkin, Ph.D., Director, B.S.C.D., Biological Sciences and Career Development, NCMRR, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Boulevard, Room 2A03, Bethesda, MD 20892–7510, (301) 402–4206, *nitkinr@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 10, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08943 Filed 4–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; 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 a meeting of the Fogarty International Center Advisory Board.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract Proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 6, 2013.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Room B2C03, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *EISSR@MAIL.NIH.GOV.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health HHS)

Dated: April 10, 2013.

Michelle Trout,

Program Analyst, Office of Federol Advisory Committee Policy.

[FR Doc. 2013–08941 Filed 4–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–1096]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an approval for the following collection of information: 1625–NEW, United States Coast Guard Academy Introduction Mission Program Application and Supplemental Forms. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 17, 2013.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2012–1096], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

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

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, a copy is available from: Commandant (CG–612), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St SW., Stop 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–475–3929, for questions on these documents. Contact Ms. Barbara Hairston, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–1096], and must be received by May 17, 2013. We will post all comments received, without

change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2012–1096], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to http://www.regulations.gov, and type "USCG–2012–1096" in the "Keyword" box. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2012–1096" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: [1625–NEW].

Privacy Act

Anyone can search the electronic form of all comments received in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (78 FR 3906, January 17, 2013) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: United States Coast Guard Academy Introduction Mission Program Application and Supplemental Forms.

OMB Control Number: 1625–NEW.

Type of Request: New collection.

Respondents: Approximately 2,000 applicants apply annually to attend the AIM Program. Approximately 3,000 individuals will submit letters of recommendation for these applicants.

Abstract: This collection contains the application and all supplemental forms required to be considered to attend the Academy Introduction Mission (AIM) Program at the United States Coast Guard Academy (USCGA). The AIM Program is a one-week summer visitation program for rising high school seniors interested in applying to USCGA.

Forms: None

Burden Estimate: The estimated burden is 9,000 annual hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: April 10, 2013.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–09034 Filed 4–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Test To Allow Customs Brokers To Pre-Certify Importers for Participation in the Importer Self-Assessment Program

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to test allowing customs brokers to pre-certify importers for participation in the Importer Self-Assessment (ISA) program. The test will be known as the Customs Broker Importer Self-Assessment Pre-Certification (Broker ISA PC) test. The primary goal of the Broker ISA PC test is to leverage customs broker relationships to facilitate and promote importer participation in the ISA program, especially for small and medium enterprises. This notice provides the eligibility criteria for voluntary participation in the test, explains the test program application process, describes the broker participant responsibilities, provides information for importer ISA applicants, and discusses the repercussions for misconduct under the test. This notice also invites public comment concerning the test program.

DATES: Communication to CBP indicating interest in participation in this planned test is requested within ten (10) business days from April 17, 2013. Comments may be submitted to the email address indicated in the **ADDRESSES** section below at any time throughout the test.

ADDRESSES: Comments concerning this notice and indication of interest in participation in the Broker ISA PC test program should be submitted via email to *tppb-isa@dhs.gov.* For a comment, please indicate "Broker ISA PC **Federal Register** Notice" in the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Florence Constant, Chief, Partnership Programs, Office of International Trade, U.S. Customs and Border Protection, (202) 863–6537.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) recognizes the importance of licensed customs brokers who serve as intermediaries between CBP and the trading community. Licensed customs

brokers have played a significant role in the success of various CBP commercial initiatives, automation efforts, and security programs. Because of customs brokers' vital role, CBP, in partnership with the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA), worked in January 2011, to develop a program that could benefit both CBP and brokers while addressing the challenges of 21st Century commerce. An outcome of this joint collaborative trade modernization effort is the creation of a role for the broker in CBP's Importer Self-Assessment (ISA) program.

The Broker Importer Self-Assessment Pre-Certification (ISA PC) test will leverage broker relationships to promote participation in the ISA program by allowing selected brokers, referred to as ISA pre-certifiers, to pre-certify importers for the ISA program. Through their communication with importers, the ISA pre-certifiers will provide information on the ISA program and work to expedite the ISA application process for importers who choose to use their services. The aim is that by serving as liaisons between CBP and the trade community, the ISA pre-certifiers will act as a "force multiplier" for CBP in facilitating and expediting legitimate trade, increasing the pool of trusted traders with minimal allocation of CBP resources.

The ISA program was established in 2002 to enable interested importers to participate in a program that allows them to self-assess their own compliance with customs laws and regulations on a continuing basis. *See* 67 FR 41298 (June 17, 2002). The ISA program is a trade facilitation partnership program that recruits trade compliant companies with the goals of reducing both CBP and company resources required during entry and post-entry processes, and of building cooperative relationships that strengthen compliance with trade laws. The ISA program is based on the premise that importers with strong internal controls are more likely to achieve a high level of compliance with customs laws and regulations and the program provides a means for CBP to recognize and support importers who have implemented such systems. Importers who wish to participate in the ISA program may apply directly to CBP and this will not change under this Broker ISA PC test. For more information on the ISA program, please see the Importer Self-Assessment Handbook available online at *www.cbp.gov*.

Broker Importer Self-Assessment Pre-Certification Test Program

Participation in the Broker ISA PC test program is voluntary for customs brokers. Under this test, CBP will select no more than nine (9) licensed customs broker sole proprietorships and/or licensed customs brokerages who apply for this test. After completing the required orientation, ISA pre-certifiers may provide Broker ISA PC services to importers who apply for participation in the ISA program. Interested importers who wish to use the services of a pre-certifier must submit a complete ISA application package to both CBP and the ISA pre-certifier whom they select (once approved, a list of ISA pre-certifiers will be available online at *www.cbp.gov*). More information on the ISA PC Evaluation Process is provided later in this notice. Broker ISA PC services include the evaluation of the importers' customs policies, procedures, and readiness to participate in the ISA program, the submission of evaluation results to CBP, and a "pre-certification" that the importer has demonstrated that they are ready to assume the responsibilities of the ISA program.

Eligibility Requirements

Licensed customs brokerages and licensed customs broker sole proprietorships seeking to participate as ISA pre-certifiers in the Broker ISA PC test program must:

1. Have operated as a licensed customs broker representing importers as a filer (under the licensed broker's filer code) for at least five (5) consecutive years immediately prior to the date of application;

2. Have been C–TPAT certified as a broker for at least three (3) consecutive years immediately prior to the date of application;

3. Have maintained written internal control procedures designed to ensure compliance with CBP related activities;

4. Have been trained in internal control concepts based on the Committee of Sponsoring Organization (COSO) *Internal Control—Integrated Framework* course; and

5. Have a history of compliance with customs laws and regulations.

Customs brokers who participate in the Broker ISA PC test must remain in compliance with all statutory and regulatory requirements, including 19 U.S.C. 1641 and 19 CFR Part 111, when conducting customs business.

Application Process

CBP will limit the initial test phase to no more than nine (9) participants. Any party seeking to participate must submit an email *to tppb-isa@dhs.gov* with the subject heading "Broker ISA PC Participant Request." All emails must be received within ten (10) business days of the date of publication of this notice. Only parties meeting all of the eligibility requirements set forth above should submit a participant request email. CBP will assign a number to each email in the order in which they are received beginning with the number 1 and ending with the total number of emails received. CBP will then use random number generating software to generate nine (9) numbers from the pool of interested brokers. Once the nine (9) candidates are selected at random, CBP will provide each of these candidates with an ISA pre-certifier questionnaire that must be completed and reviewed by CBP. Qualified candidates will be invited to attend the ISA Pre-Certifier Orientation and begin offering Broker ISA PC services.

Procedure to Contest Non-Selection

If, after reviewing the ISA pre-certifier questionnaire, CBP finds any candidate to be unqualified for participation in the Broker ISA PC program, the Executive Director of Trade Policy and Programs will provide that candidate with a written explanation of its determination. The non-selected candidate will be offered the opportunity to appeal the Executive Director's decision within 30 calendar days of receipt of the written decision. Appeals should be forwarded to U.S. Customs and Border Protection, Assistant Commissioner, Office of International Trade, 1400 L Street, NW., Washington, DC 20229–1155. The Assistant Commissioner will issue a final written decision on the candidate's appeal within fifteen (15) working days after receiving a timely filed appeal from the candidate. If no timely appeal is received, the written explanation becomes the final decision of the Agency as of the date that the appeal period expires.

ISA Pre-Certifier Orientation

After determining which candidates are qualified to participate, CBP will invite the selected candidates to attend CBP's ISA Pre-Certifier Orientation. The goal of this orientation is to provide the brokers with training, guidance, and requirements pertaining to the Broker ISA PC participant responsibilities. After successful completion of the orientation, the licensed customs brokers will become ISA pre-certifiers who can conduct ISA PC evaluations.

ISA Pre-Certifier Status

ISA pre-certifier status is non-transferrable. An ISA pre-certifier may

not subcontract with third parties to conduct ISA PC evaluations.

Further Expansion of the Test

Any further expansion of the Broker ISA PC test, including but not limited to the number of participants, will be announced via a separate **Federal Register** notice.

Broker ISA PC Participant Responsibilities

ISA PC Evaluation Process

Interested importers who wish to use the services of a pre-certifier must submit a complete ISA application package (see ISA **Federal Register** notice at 67 FR 41298 (June 17, 2002)) to both CBP and the ISA pre-certifier whom they select (once approved, the list of ISA pre-certifiers will be available online at *www.cbp.gov*). If an importer uses the services of an ISA pre-certifier, they must note this at the time they submit their ISA application. An importer cannot apply solely to CBP and later decide to use the services of an ISA pre-certifier. CBP will begin the review and vetting process, which will include an initial risk assessment, for the application and assign a National Account Manager (NAM) if one has not already been assigned to the importer. The NAM will then provide the importer with its import data that CBP possesses, as well as help to focus the ISA pre-certifier's efforts on the areas for the review.

Once the initial review and vetting is complete, CBP will notify the ISA pre-certifier's primary contact via email. Once an ISA pre-certifier is notified to proceed with the evaluation of the ISA application package, the ISA pre-certifier will:

1. Review the ISA application package to ensure that all required elements are present and complete;
2. Evaluate the importer's written customs-related policies and procedures and identify areas of risk;
3. Assess the design of the importer's internal control for achieving compliance with customs laws and regulations, and develop an expectation about the operating effectiveness of its internal control;
4. Consult with the importer, if necessary, on best practices and improvement considerations;
5. Assess the adequacy of the importer's risk-based self-testing plan; and
6. Conclude the ISA PC evaluation and determine the importer's ISA readiness.

Once the ISA pre-certifier completes its evaluation, it is required to prepare and submit to CBP an ISA Evaluation Report based on CBP guidelines, with the following supporting documentation:

- Written risk assessment;
- Summary of the walk-through conducted of the entry process; and
- Synopsis of the importer's risk-based self-testing plan.

If required, the ISA pre-certifier will provide additional information or clarification concerning the evaluation to CBP. The ISA Evaluation Report will be processed for certification and approval in accordance with established ISA program procedures. CBP maintains and reserves the right to approve or disapprove any ISA application.

Annual Reporting Requirements

On an annual basis, the ISA pre-certifier will be required to submit a report to CBP attesting to its continued commitment to adhere to the requirements of the Broker ISA PC test program. The annual submission will, at a minimum, include the following information:

1. Personnel changes that impact the Broker ISA PC test program;
2. Organizational and procedural changes;
3. Continued proficiency training, seminars, etc., taken by the ISA pre-certifier;
4. ISA applicant name(s) and importer of record number(s) for completed and pending ISA PC evaluations conducted during the last year and of any ISA PCs in progress; and
5. Any broker penalties incurred during the last 12-month period.

Confidentiality Requirements

All records pertaining to the business of ISA applicants serviced by an ISA pre-certifier are to be considered confidential business records of the ISA applicant. The ISA pre-certifier must not disclose the contents of, or any information connected with, the records to any third parties other than personnel involved with the ISA program from CBP's Offices of International Trade and Field Operations and from U.S. Immigration and Customs Enforcement—Homeland Security Investigations, as necessary.

Recordkeeping Requirements

All records made or acquired by ISA pre-certifiers pertaining to the Broker ISA PC test program must be stored and maintained separately from records subject to recordkeeping requirements under 19 CFR part 111 and 19 CFR part 163. CBP reserves the right to request all ISA PC evaluation supporting documentation. Records shall be retained for at least five (5) years after the final date of approval or rejection of the ISA application.

Information for Importer ISA Applicants

Importers interested in applying to participate in the ISA program have the option of using the Broker ISA PC services (most likely for a fee) of any ISA pre-certifier to facilitate participation in the ISA program. Alternatively, importers may continue to apply for participation in the ISA program without using the services of an ISA pre-certifier. CBP will compile a list of ISA pre-certifiers that are available to the public and will post this list on CBP's Web site. *www.cbp.gov*. CBP will continue to conduct ISA evaluations for importers that apply for ISA participation and do not choose to use the services of an ISA pre-certifier.

A key benefit of using the services of an ISA pre-certifier is the facilitation of the ISA application process. It is expected that use of an ISA pre-certifier's ISA PC services will reduce the time period from application to presentation to the ISA Review Board from the average processing time for CBP which is between nine (9) and 12 months to between 90 and 120 days. The importer will initiate the CBP process by submitting its ISA application to CBP and also sending a copy to its chosen ISA pre-certifier. The importer must indicate on the cover letter the name of the ISA pre-certifier it selected for the evaluation; otherwise the ISA application will be evaluated by CBP.

ISA Application Review

Upon receipt of the ISA application, CBP will review it for completeness and accuracy. CBP will verify that the importer meets threshold eligibility criteria and notify the ISA pre-certifier whether or not to proceed with Broker ISA PC services. The ISA pre-certifier will conduct evaluations of the importer's written procedures, self-testing plan, and overall system of internal control in accordance with CBP's ISA evaluation guidelines. Please refer to the "ISA PC Evaluation Process" section above for a more detailed description of the process. The role of the ISA pre-certifier will be to evaluate the design of the importer's internal control, which involves determining if internal control is documented, logical, reasonably complete, and is likely to prevent or detect non-compliance in identified risk areas. At the conclusion of its evaluation, the ISA pre-certifier will draft an ISA Evaluation Report on the importer's readiness to participate in

the ISA program and submit it to CBP. If the ISA pre-certifier finds that the importer is ready to assume the responsibilities of the ISA program, the ISA pre-certifier will pre-certify the importer. CBP will review the ISA pre-certifier's evaluation report and applicable supporting documentation and then make a final determination on whether the importer is approved and certified to participate in the ISA program. CBP will notify the ISA pre-certifier and the importer of its final determination.

Final ISA Approval Process

Once the ISA pre-certifier submits the ISA Evaluation Report, CBP will review and verify the soundness of the report and the supporting documentation provided. CBP will provide the ISA pre-certifier with feedback on the ISA Evaluation Report and allow time to resolve any issues or questions. The ISA Evaluation Report will be submitted to the ISA Review Board, an independent body consisting of representatives from U.S. Immigration and Customs Enforcement, as well as the CBP Offices of Field Operations and International Trade, for final approval during periodic meetings. The ISA pre-certifier will provide the ISA Review Board with a summary of the ISA Evaluation Report results and support the conclusion as to the importer's readiness to assume the responsibilities of the ISA program and answer any related questions that the Board may have.

Request for Reconsideration for Rejected ISA Applications

If during the final ISA approval process, the ISA Review Board determines that an ISA application should not be approved, it will inform the Partnership Programs Branch, which will issue a written notice to the ISA pre-certifier and ISA applicant indicating the reason(s) for the rejection. The ISA pre-certifier and/or ISA applicant may submit a written request for reconsideration if the reason(s) for the rejected ISA application has been corrected within 90 days of receipt of the notice. The request for reconsideration should be forwarded to U.S. Customs and Border Protection, Executive Director, Trade Policy & Programs, Office of International Trade, 1400 L Street NW., Washington, DC 20229–1155.

A final written decision on the request for reconsideration will be issued within 45 days of receipt of the request. The ISA pre-certifier and/or applicant may respond to denials, in writing, to the Assistant Commissioner, Office of International Trade, at the following address: U.S. Customs and Border Protection, Assistant Commissioner, Office of International Trade, 1400 L Street NW., Washington, DC 20229–1155.

Misconduct Under the Test

The Executive Director of Trade Policy and Programs may revoke a broker's participation privileges under the Broker ISA PC test program if the licensed broker serving as an ISA pre-certifier:

1. Obtains participation in the program through false statement, act, or omission;
2. Commits an act that would constitute a misdemeanor or felony;
3. Refuses to cooperate with CBP in response to any inquiry, audit, or investigation;
4. Fails to meet the program eligibility requirements outlined in this **Federal Register** notice or fails to abide by the terms, conditions and obligations of this test ;
5. Submits an ISA Evaluation Report that contains misstatements of fact;
6. Evaluates the importer's ISA application package contrary to Broker ISA PC evaluation procedures and agreed upon processes;
7. Submits ISA Evaluation Reports that are consistently inadequate and require additional evaluation or documentation to support the conclusion of the importer's readiness to participate in the ISA program;
8. Has their entry filer code revoked;
9. Incurs excessive broker penalties; or
10. Fails to comply with applicable laws and regulations.

If the Executive Director of Trade Policy and Programs believes that there is a basis for revocation of an ISA pre-certifier's participation privileges, a written notice of removal with a description of the facts warranting removal will be provided to the ISA pre-certifier. The ISA pre-certifier will be offered the opportunity to appeal the Executive Director's decision within 30 calendar days of receipt of the written notice providing for proposed revocation. Appeals should be forwarded to U.S. Customs and Border Protection, Assistant Commissioner, Office of International Trade, 1400 L Street NW., Washington, DC 20229–1155. The Assistant Commissioner will issue a final written decision on the discontinuance within fifteen (15) working days after receiving a timely filed appeal from the ISA pre-certifier. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

In the case where CBP proposes to suspend or revoke a broker's license or a criminal charge is filed against the broker, CBP may immediately discontinue the ISA pre-certifier's participation privileges upon written notice to the ISA pre-certifier. The notice will contain a description of the facts or conduct warranting the immediate action. The ISA pre-certifier will be offered the opportunity to appeal CBP's decision within ten (10) calendar days of receipt of the written notice providing for immediate discontinuance. The immediate discontinuance will remain in effect during the appeal period. CBP will issue a final written decision on the discontinuance within fifteen (15) working days after receiving a timely filed appeal from the ISA pre-certifier. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

Evaluation of Test

CBP will review the effectiveness and feasibility of the Broker ISA PC test program one (1) year after the date of the ISA Pre-Certifiers Orientation. Based on the results and lessons learned from the test, CBP will determine if the Broker ISA PC will be fully implemented as a permanent program.

Dated: April 11, 2013.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2013–08968 Filed 4–16–13; 8:45 am]

BILLING CODE 9111–14–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–877]

Certain Omega-3 Extracts From Marine or Aquatic Biomass and Products Containing the Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 29, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Neptune Technologies & Bioressources, Inc. of Canada and Acasti Pharma Inc. of Canada. An amended complaint was filed on March 21, 2013. A supplement to the amended complaint was filed on

April 1, 2013. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain omega-3 extracts from marine or aquatic biomass and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,278,351 ("the '351 patent") and U.S. Patent No. 8,383,675 ("the '675 patent"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on April 10, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain omega-3 extracts from marine or aquatic biomass and products containing the same by reason of infringement of one or more of claims 1–46 and 94 of the '351 patent and claim 1 of the '675 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Neptune Technologies & Bioressources Inc., 545 Promenade du Centropolis, Suite 100, Laval, Québec, Canada H7T 0A3;

Acasti Pharma Inc., 545 Promenade du Centropolis, Suite 100, Laval, Québec, Canada H7T 0A3.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Aker BioMarine AS, Fjordallen 16, Vika, 0115 Oslo, Norway;

Aker BioMarine Anarctic USA. Inc., 10 Newport Way NW., Suite D, Issaquah, WA 98027;

Aker BioMarine Antarctic AS, J.M. jonasens vei 99, 8340, Stamsund, Norway;

Enzymotec Limited, Sagi 2000, Industrial Zone K'far Baruch, Israel;

Enzymotec USA, Inc., 55 Madison Avenue, Suite 400, Morristown, NJ 07960;

Olympic Seafood AS, Vågsplassen 6090, Fosnavåg, Norway;

Olympic Biotec Ltd., 79 Appleby Highway Richmond, 7050, New Zealand;

Avoca, Inc., 841 Avoca Farm Road, Merry Hill, NC 27957;

Rimfrost USA, LLC, 841 Avoca Farm Road, Merry Hill, NC 27957;

Bioriginal Food & Science Corp., 102 Melville Street, Saskatoon, SK, S7J 0R1 Canada.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: April 11, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–08963 Filed 4–16–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–878]

Certain Electronic Devices Having Placeshifting or Display Replication Functionality and Products Containing Same; Institution of investigation pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 12, 2013, under section 337 of the Tariff Act of 1930, as amended, 19

U.S.C. 1337, on behalf of Sling Media, Inc. of Foster City, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having placeshifting or display replication functionality and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,877,776 ("the '776 patent"); U.S. Patent No. 8,051,454 ("the '454 patent"); U.S. Patent No. 8,060,909 ("the '909 patent"); U.S. Patent No. 7,725,912 ("the '912 patent"); U.S. Patent No. 8,266,657 ("the '657 patent"); and U.S. Patent No. 8,365,236 ("the '236 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 10, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic devices having placeshifting or display replication functionality and products containing same by reason of infringement of one or more of claims 18–24, 26, 28–30, 32–40, 42, and 43 of the '776 patent; claims 7, 9–12, 14, 15, and 17 of the '909 patent; claims 1, 2, 4, and 6–20 of the '454 patent; claims 58–68, 70, 71, 73, 74, 103, 104, 106, and 108 of the '912 patent; claim 81 of the '657 patent; and claims 1–8 and 15–20 of the '236 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Sling Media, Inc., 1051 East Hillsdale Boulevard, Suite 500, Foster City, CA 94404.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Belkin International, Inc., 12045 East Waterfront Drive, Playa Vista, CA 90094.

Monsoon Multimedia, Inc., 1730 South Amphlett Boulevard, Suite 101, San Mateo, CA 94402.

C2 Microsystems, Inc., 2833 Junction Avenue, Suite 101, San Jose, CA 95134.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: April 11, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–08964 Filed 4–16–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *John F. Ashe, Jr., Dianne Ashe, and Wayne D. Raether, d/b/a County Line Grading*, Civil Action No.13–cv–246, was lodged with the United States District Court for the Western District of Wisconsin on April 10, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against John F. Ashe, Jr., Dianne Ashe, and Wayne D. Raether, d/b/a County Line Grading, pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. 1319(b), to obtain injunctive relief from the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Laurel A. Bedig, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 7611, Washington, DC 20044 and refer to *United States* v. *John F. Ashe, Jr., Dianne Ashe, and Wayne D. Raether, d/b/a County Line Grading*, DJ # 90–5–1–1–19322.

The proposed Consent Decree may be examined at the Clerk's Office, United

States District Court for the Western District of Wisconsin, Robert W. Kastenmeier United States Courthouse, 120 North Henry Street, Room 320, Madison, WI 53703–2559. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2013–08969 Filed 4–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Chiropractic Associates, Ltd. of South Dakota Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of South Dakota in *United States of America* v. *Chiropractic Associates Ltd, of South Dakota,* (CASD), Civil Case No. 13–CV–4030–LLP. On April 8, 2013, the United States filed a Complaint alleging that CASD and its members formed a conspiracy to gain more favorable fees and other contractual terms by agreeing to coordinate their actions, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint, enjoins CASD from establishing prices or terms for chiropractic services.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of South Dakota. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be filed with the Court and posted on the U.S. Department of Justice, Antitrust Division's Web site, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

Patricia A. Brink,

Director of Civil Enforcement.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendant Chiropractic Associates, Ltd. of South Dakota ("CASD" or the "Defendant") to obtain equitable and other relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. 1. Plaintiff alleges as follows:

I. Nature of the Action

1. CASD is an association of approximately 300 chiropractors who compete with each other in the sale of chiropractic services. CASD's members compromise approximately 80 percent of all chiropractors practicing in South Dakota. On behalf of its members, CASD contracts with health insurers and other payers (collectively, "payers").

2. Since 1997, all of CASD's members have entered into membership agreements with CASD that give CASD the right to collectively negotiate rates on their behalf with payers.

3. Since 1997, CASD has negotiated contracts on behalf of its members with at least seven payers. These contracts set the prices and price-related terms between CASD's members and those payers. CASD's conduct has raised the prices of chiropractic services and decreased the availability of chiropractic services in South Dakota.

4. The United States, through this suit, asks this Court to declare CASD's conduct illegal and to enter injunctive relief to prevent further injury to consumers of chiropractic services.

II. Defendant

5. CASD is a company organized and doing business under the laws of the State of South Dakota, with its principal place of business in Brookings.

III. Jurisdiction, Venue, and Interstate Commerce

6. Plaintiff brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain the Defendant's violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

7. The Court has subject-matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

8. The Defendant has consented to personal jurisdiction and venue in this District. The Court also has personal jurisdiction over the Defendant, and venue is proper in the District of South Dakota under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b), because the Defendant is found, has transacted business, and committed acts in furtherance of the alleged violations in this District. A substantial part of the events giving rise to Plaintiff's claims occurred in this District.

9. The Defendant engages in interstate commerce, and its activities—including the conduct alleged in this Complaint—substantially affect interstate commerce. The Defendant's conduct increased prices for chiropractic services that some non-South Dakota residents traveled to South Dakota to purchase, and for which a number of payers paid across state lines.

IV. Other Conspirators

10. Various persons not named as defendants in this action have participated as conspirators with the Defendant in the offenses alleged and have performed acts and made statements in furtherance of the alleged conspiracies.

V. Defendant's Illegal Conduct

11. Since 1997, CASD has required that chiropractors joining the association enter into a membership agreement (called a "Provider Agreement") that authorizes CASD to negotiate the fees that CASD's chiropractors charge payers for health-care related services and products.

12. For years, CASD has had a stated goal of leveraging its contracts with a large share of South Dakota chiropractors to negotiate higher fees from payers for chiropractor members. One CASD official stated that "the first thing that we felt was very important to us was to establish a fair reimbursement for a full scope of practice." Thus, CASD sought to "[h]ave a membership large enough to negotiate fair and equitable contracts with insurance companies, including Fair Fee Schedules (minimum of 130% of Medicare)[.]"

13. Since 1997, CASD has negotiated at least seven contracts with payers that fix the prices and other price-related terms for all CASD members dealing with those payers. In these negotiations, CASD, acting on behalf of its members, made proposals and counterproposals on price and price-related terms, accepted and rejected offers, and

entered into payer contracts that contractually bound all of CASD's members.

14. CASD's practice of negotiating contracts on behalf of its members has increased prices for chiropractic services in South Dakota.

VI. No Integration

15. CASD's negotiation of contracts on behalf of its members is not ancillary to any procompetitive purpose of CASD or reasonably necessary to achieve any efficiencies. Other than CASD members who are part of the same practice groups, CASD members do not share any financial risk in providing chiropractic services, do not significantly collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, do not integrate their delivery of care to patients, and do not otherwise integrate their activities to produce significant efficiencies.

VII. Violation Alleged

16. Plaintiff reiterates the allegations contained in paragraphs 1 to 15. Beginning at least as early as 1997, and continuing to date, CASD and its members have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The combination and conspiracy consisted of an understanding and concert of action among CASD and its members that CASD would coordinate their negotiations with payers to enable the collective negotiation of higher fees from these payers. CASD's actions raised prices for the sale of chiropractic services and decreased the availability of chiropractic services.

VIII. Request for Relief

17. To remedy these illegal acts, the United States of America asks that the Court:

(a) adjudge and decree that the Defendant entered into unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(b) enjoin the Defendant; its successors, assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and each entity over which it has control; their directors, officers, managers, agents, representatives, and employees; and all other persons acting or claiming to act in active concert or participation with one or more of them, from:

i. continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, or other arrangement having the same effect as the alleged violations or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through price fixing of chiropractic services, or collective negotiation on behalf of competing independent chiropractors or chiropractor groups; and

ii. directly or indirectly communicating with any chiropractor or payer about any actual or proposed payer contract;

(c) award the United States its costs in this action; and

(d) award such other and further relief, including equitable monetary relief, as may be appropriate and the Court deems just and proper.

DATE: April , 2013

FOR PLAINTIFF
UNITED STATES OF AMERICA:
/s/

WILLIAM J. BAER
Assistant Attorney General
Antitrust Division
/s/

LESLIE C. OVERTON
Deputy Assistant Attorney General
Antitrust Division
/s/

PATRICIA A. BRINK
Director of Civil Enforcement
Antitrust Division
/s/

PETER J. MUCCHETTI
Chief, Litigation I Section
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Competitive Impact Statement

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States has filed a civil antitrust Complaint, alleging that Chiropractic Associates, Ltd. of South Dakota ("CASD") violated Section 1 of the Sherman Act, 15 U.S.C. 1. CASD negotiated at least seven contracts with payers [1] that set prices for chiropractic services on behalf of CASD's members. This conduct caused consumers to pay higher fees for chiropractic services.

At the same time the United States filed the Complaint, the United States filed a Stipulation and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of CASD's conduct. Under the proposed Final Judgment, which is explained more fully below, CASD is enjoined from contracting with payers on behalf of chiropractors and from facilitating joint contracting among chiropractors.

The United States and CASD have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation of Antitrust Laws

A. The Defendant

CASD is an association of approximately 300 chiropractors, many of whom compete with each other in the sale of chiropractic services. CASD's members comprise over 80 percent of all

[1] A "payer" is a person or entity that purchases or pays for all or part of a physician's services for itself or any other person and includes, but is not limited to, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers.

chiropractors practicing in South Dakota.

B. The Alleged Violations

CASD negotiated contracts with payers on behalf of competing chiropractors with the purpose and effect of increasing fees paid to CASD and its members. This conduct raised prices to consumers of chiropractic services. One CASD official stated that "the first thing that we felt was very important to us was to establish a fair reimbursement for a full scope of practice." Thus, CASD sought to "[h]ave a membership large enough to negotiate fair and equitable contracts with insurance companies, including Fair Fee Schedules (minimum of 130% of Medicare)[.]"

Since 1997, CASD has negotiated at least seven contracts with payers that set the prices and other terms for all of CASD's members dealing with those payers. In these negotiations, CASD made proposals and counterproposals to payers, and accepted and rejected offers, without consulting CASD's physician members regarding the prices that they would accept. Additionally, CASD entered into contracts with payers on behalf of all members.

CASD requires that each chiropractor joining the association enter into a membership agreement (called a "Provider Agreement") that authorizes CASD to negotiate the fees that CASD's chiropractors charge payers for health-care related services and products. Upon joining CASD, therefore, a chiropractor explicitly gives contracting authority to CASD and charges the price that CASD sets in its contracts with payers. CASD's practice of negotiating contracts on behalf of its members increased prices for chiropractic services in South Dakota.

Antitrust law treats naked agreements among competitors that set prices as per se illegal.[2] Where competitors economically integrate in a joint venture, however, such agreements, if reasonably necessary to accomplish the procompetitive benefits of the integration, are analyzed under the rule of reason.[3] CASD's negotiation of contracts on behalf of its members was not ancillary to any procompetitive purpose of CASD or reasonably necessary to achieve any efficiencies. Other than CASD members who are part of the same practice groups, CASD members do not share any financial risk in providing chiropractic services, do not significantly collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, do not integrate their delivery of care to patients, and do not otherwise integrate their activities to produce significant efficiencies.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and restore competition in the sale of chiropractic services in South Dakota. Section IV of the proposed Final Judgment would enjoin CASD from:

(A) providing, or attempting to provide, any services to any physician regarding such physician's actual, possible, or contemplated negotiation or contracting with any payer, or other dealings with any payer;

(B) acting, or attempting to act, in a representative capacity, including as a messenger or in dispute resolution (such as arbitration);

(C) communicating, reviewing, or analyzing, or attempting to communicate, review, or analyze with or for any physician, except as otherwise allowed, about (1) that physician's, or any other physician's, negotiating, contracting, or participating status with any payer; (2) that physician's, or any other physician's, fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any physician and any payer;

(D) facilitating communication or attempting to facilitate communication, among or between physicians, regarding any proposed, contemplated, or actual contract or contractual term with any payer, including the acceptability of any proposed, contemplated, or actual contractual term, between such physicians and any payer;

(E) entering into or enforcing any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any payers or physicians to raise, stabilize, fix, set, or coordinate prices for physician services, or fixing, setting, or coordinating any term or condition relating to the provision of physician services;

(F) requiring that CASD physician members negotiate with any payer through CASD or otherwise restricting, influencing, or attempting to influence in any way how CASD physician members negotiate with payers;

(G) coordinating or communicating, or attempting to coordinate or communicate, with any physician, about any refusal to contract, threatened refusal to contract, recommendation not to participate or contract with any payer, or recommendation to boycott, on any proposed or actual contract or contract term between such physician and any payer;

(H) responding, or attempting to respond, to any question or request initiated by any payer or physician relating to (1) a physician's negotiating, contracting, or participating status with any payer; (2) a physician's fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any physician and any payer, except to refer a payer to a third-party messenger[4] and otherwise to state that the Final Judgment prohibits any additional response; and

(I) training or educating, or attempting to train or educate, any physician in any aspect of contracting or negotiating with any payer, including, but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any payer for such physician's services, and dispute resolution such as arbitration, except that CASD may, provided it does not violate other prohibitions of the Final Judgment, (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to physicians regarding the regulatory structure (including legislative developments) of workers' compensation, Medicaid, and Medicare, except Medicare Advantage.

But the Final Judgment does not enjoin CASD from providing

[2] *See* Statement 8(B)(1) of the 1996 Statements of Antitrust Enforcement Policy in Health Care *available at http://www.justice.gov/atr/public/guidelines/1791.htm.*

[3] *Id.* (further explaining that "In accord with general antitrust principles, physician network joint ventures will be analyzed under the rule of reason, and will not be viewed as per se illegal, if the physicians' integration through the network is likely to produce significant efficiencies that benefit consumers, and any price agreements (or other agreements that would otherwise be per se illegal) by the network physicians are reasonably necessary to realize those efficiencies.")

[4] A messenger is a person or entity that operates a messenger model, which is an arrangement designed to minimize the costs associated with the contracting process between payers and health-care providers. Messenger models can operate in a variety of ways. For example, network providers may use an agent or third party to convey to purchasers information obtained individually from providers about the prices or price-related terms that the providers are willing to accept. In some cases, the agent may convey to the providers all contract offers made by purchasers, and each provider then makes an independent, unilateral decision to accept or reject the contract offers. *See* Statement 9(C) of the 1996 Statements of Antitrust Enforcement Policy in Health Care, *available at http://www.justice.gov/atr/public/guidelines/1791.htm.*

credentialing services [5] and utilization review services.[6] Credentialing services can provide an efficient and cost-effective way to ensure that physicians are qualified, competent, and properly licensed. Utilization review services can provide a mechanism to monitor and control utilization of health care services, control costs, and assure quality of care. Consequently, the provision of these services could potentially benefit consumers.

With limited exceptions, Section V of the proposed Final Judgment requires CASD to terminate all payer contracts at the earlier of (1) CASD's receipt of a payer's written request to terminate its contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such payer contract, or (3) three months from the date the Final Judgment is entered. Furthermore, the Final Judgment immediately makes void any clause in a provider agreement that disallows a physician from contracting individually with a Payer.

Section VI of the proposed Final Judgment permits CASD to engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CC) ¶ 13,153. Moreover, nothing in the proposed Final Judgment prohibits CASD or its members from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and its progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions.

To promote compliance with the decree, Section VII of the proposed Final Judgment requires that CASD provide to its members, directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of services to physicians, copies of the Final Judgment and this Competitive Impact Statement and to institute mechanisms to facilitate compliance. For a period of ten years following the date of entry of the Final Judgment, CASD must certify annually to the United States whether it has complied with the provisions of the Final Judgment.

[5] The proposed Final Judgment defines "credentialing services" to mean a service that recognizes and attests that a physician is both qualified and competent, and that verifies that a physician meets standards as determined by an organization by reviewing such items as the individual's license, experience, certification, education, training, malpractice and adverse clinical occurrences, clinical judgment, and character by investigation and observation.

[6] The proposed Final Judgment defines "utilization review services" to mean a service that CASD provides to a Payer that establishes mechanisms to monitor and control utilization of health care services and that is designed to control costs and assure quality of care by monitoring over-utilization of health care services, provided that such mechanisms are not used or designed to increase costs or utilization of health care services.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against CASD.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and CASD have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against CASD. The United States is satisfied, however, that the relief in the proposed Final Judgment will prevent the recurrence of violations alleged in the Complaint and preserve competition for payers and consumers of chiropractic services in South Dakota. Thus, the proposed Final Judgment would achieve all or substantially all of the relief that the United States would have obtained through litigation, while avoiding the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the

defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.*, 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.").[7]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' "prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Alum. Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[9]

[7] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[8] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"); *see generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

[9] *See United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298 at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April ___, 2013.

Respectfully submitted,

Richard Mosier
(D.C. Bar No. 492489),
Attorney for the United States, Litigation I Section, Antitrust Division, United States Department of Justice,
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Telephone: (202) 307–0585,
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EXHIBIT A

Final Judgment

Whereas, Plaintiff, the United States of America, filed its Complaint on April____, 2013, alleging that Defendant, Chiropractic Associates, Ltd. of South Dakota, engaged in conduct in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1, and Plaintiff and Defendant have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas, this Final Judgment does not constitute any admission by Defendant that the law has been violated or of any issue of fact or law, other than an admission that the jurisdictional facts alleged in the Complaint are true;

And Whereas, the essence of this Final Judgment is to restore competition, as alleged in the Complaint, and to restrain Defendant from participating in any unlawful conspiracy to increase fees for Physician services;

And Whereas, the United States requires Defendant to be enjoined from rendering services to, or representing, any Physician pertaining to such Physician's dealing with any Payer, for the purpose of preventing future violations of Section 1 of the Sherman Act;

And Whereas, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, Plaintiff requires Defendant to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint.

And Whereas, Defendant has represented to the United States that the actions and conduct restrictions can and will be undertaken and that it will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of law or fact, and upon consent of Plaintiff and Defendant, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) "Communicate" means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner;

(B) "Credentialing Services" means a service that recognizes and attests that a physician is both qualified and competent, and that verifies that a physician meets standards as determined by an organization by reviewing such items as the individual's license, experience, certification, education, training, malpractice and adverse clinical occurrences, clinical judgment, and character by investigation and observation;

(C) "Defendant" or "CASD" means the Chiropractic Associates, Ltd. of South Dakota, a company organized and doing business under the laws of South Dakota; its successors, assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and each entity over which it has control, including Chiropractic Associates of North Dakota, LLC, Chiropractic Associates of Minnesota, LLC, Chiropractic Associates of Iowa, LLC; and their directors, officers, managers, agents, representatives, and employees;

(D) "Messenger" means the Defendant when it Communicates to a Payer any information Defendant has received from a Physician, or Communicates to any Physician any information Defendant receives from any Payer;

(E) "Participating Provider Agreement" means a contract entered into by a Physician with CASD that allows the Physician to participate in a Payer Contract;

(F) "Payer" means any Person that purchases or pays for all or part of a Physician's services for itself or any other Person and includes, but is not limited to, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(G) "Payer Contract" means a contract entered into by a Payer with CASD that sets the prices and price-related terms between CASD's Physician members and the Payer;

(H) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity;

(I) "Physician" means a doctor of chiropractic medicine (DC), a doctor of allopathic medicine (M.D.), or any other practitioner of chiropractic, allopathic, or other medicine;

(J) "Third-Party Messenger" means a Person other than Defendant that uses a "messenger model" as set forth in Statement 9(C) of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep (CC) ¶ 13,153, provided that the messenger model does not create or facilitate an agreement among competitors on prices or price-related terms;

(K) "Utilization Review Services" means a service that Defendant provides to a Payer that establishes mechanisms to monitor and control utilization of health care services and that is designed to control costs and assure quality of care by monitoring over-utilization of health care services, provided that such mechanisms are not used or designed to increase costs or utilization of health care services.

III. Applicability

This Final Judgment applies to Defendant and to any Person, including any Physician, in active concert or participation with Defendant, who receives actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Defendant is enjoined from, in any manner, directly or indirectly:

(A) Providing, or attempting to provide, any services to any Physician regarding such Physician's actual, possible, or contemplated negotiation or contracting with any Payer, or other dealings with any Payer;

(B) acting, or attempting to act, in a representative capacity, including as a Messenger or in dispute resolution (such as arbitration), for any Physician with any Payer;

(C) Communicating, reviewing, or analyzing, or attempting to Communicate, review, or analyze with or for any Physician, except as consistent with Section VI(A), about (1) that Physician's, or any other Physician's, negotiating, contracting, or participating status with any Payer; (2) that Physician's, or any other Physician's, fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any Physician and any Payer;

(D) facilitating Communication or attempting to facilitate Communication, among or between Physicians, regarding any proposed, contemplated, or actual contract or contractual term with any Payer, including the acceptability of any proposed, contemplated, or actual contractual term, between such Physicians and any Payer;

(E) entering into or enforcing any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any Payers or Physicians to raise, stabilize, fix, set, or coordinate prices for Physician services, or fixing, setting, or coordinating any term or condition relating to the provision of Physician services;

(F) requiring that CASD Physician members negotiate with any Payer through CASD or otherwise restricting, influencing, or attempting to influence in any way how CASD Physician members negotiate with Payers;

(G) coordinating or Communicating, or attempting to coordinate or Communicate, with any Physician, about any refusal to contract, threatened refusal to contract, recommendation not to participate or contract with any Payer, or recommendation to boycott, on any proposed or actual contract or contract term between such Physician and any Payer;

(H) responding, or attempting to respond, to any question or request initiated by any Payer or Physician relating to (1) a Physician's negotiating, contracting, or.

participating status with any Payer; (2) a Physician's fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any Physician and any Payer, except to refer a Payer to a Third-Party Messenger and otherwise to state that this Final Judgment prohibits any additional response; and

(I) training or educating, or attempting to train or educate, any Physician in any aspect of contracting or negotiating with any Payer, including, but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any Payer for such Physician's services, and dispute resolution such as arbitration, except that Defendant may, provided it does not violate Sections IV(A) through IV(H) of this Final Judgment, (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to physicians regarding the regulatory structure (including legislative developments) of workers' compensation, Medicaid, and Medicare, except Medicare Advantage.

Provided however, that Section IV does not enjoin Defendant from providing Credentialing Services and Utilization Review Services.

V. Required Conduct

(A) Defendant must terminate, without penalty or charge, and in compliance with any applicable laws, any Payer Contracts at the earlier of (1) receipt by Defendant of a Payer's written request to terminate such Payer Contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such Payer Contract, or (3) three months from the date the Final Judgment is entered.

Provided however, a Payer Contract to be terminated pursuant to Section V(A)(2) of this Final Judgment may extend beyond any such termination, renewal, or anniversary date, by up to three months from the date the Final Judgment is entered, if:

(a) The Payer submits to Defendant a written request to extend such Payer Contract to a specific date no later than three months from the date that this Final Judgment is entered; and

(b) Defendant had determined not to exercise any right to terminate.

Provided further, that any Payer making such request to extend a Payer Contract retains the right, pursuant to Section V(A) of this Final Judgment, to terminate the Payer Contract at any time.

(B) Defendant must terminate, without penalty or charge, and in compliance with any applicable laws, any Participating Provider Agreement and all other contracts relating to Payers with any CASD members at the earlier of (1) receipt by Defendant of any Physician member's written request to terminate such Participating Provider Agreement, (2) the date all Payer Contracts applicable to a Physician member are terminated pursuant to Section V(A), or (3) three months from the date the Final Judgment is entered. Defendant may distribute a revised membership agreement to its Physician members that omits any reference to collectively contracting with Payers or other services prohibited by Section IV, and that otherwise does not violate this Final Judgment.

VI. Permitted Conduct

(A) Defendant may engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CC) ¶ 13,153.

(B) Nothing in this Final Judgment shall prohibit Defendant, or any one or more of CASD's members, from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965), and their progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions.

VII. Compliance

To facilitate compliance with this Final Judgment, Defendant shall:

(A) Distribute by first-class mail within 30 days from the entry of this Final Judgment a copy of the Final Judgment; the Competitive Impact Statement; and a cover letter that is identical in content to Exhibit A to:

(1) All of CASD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to Physicians; and

(2) all of CASD's Physician members;

(B) distribute by first-class mail within 30 days from the entry of this Final Judgment a copy of the Final Judgment; the Competitive Impact Statement; and a cover letter that is identical in content to Exhibit B to the chief executive officer of each Payer with whom CASD has contracted since January 1, 2002, regarding contracts for the provision of Physician services;

(C) distribute a copy of this Final Judgment and the Competitive Impact Statement to:

(1) any Person who succeeds to a position with CASD described in Section VII(A)(1), in no event shall such distribution occur more than 15 days later than such a Person assumes such a position; and

(2) any Physician who becomes a member of CASD, in no event shall such distribution occur more than 15 days later than such Physician becomes a member;

(D) conduct an annual seminar explaining to all of CASD's directors, officers, managers, agents, employees, and representatives, the restrictions contained in this Final Judgment and the implications of violating the Final Judgment;

(E) maintain an internal mechanism by which questions about the application of the antitrust laws and this Final Judgment from any of CASD's directors, officers, managers, agents, employees, and representatives can be answered by counsel as the need arises;

(F) within ten days of receiving a Payer's written request to terminate a Payer Contract pursuant to Section V(A) of this Final Judgment, distribute, by first-class mail, return receipt requested, a copy of that request to each Physician in such Payer Contract as of the date that CASD receives such request to terminate; and

(G) maintain for inspection by Plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed.

VIII. Certification

(A) Within 30 days after entry of this Final Judgment, Defendant shall certify to the Chief of the Litigation I Section, Antitrust Division, United States Department of Justice, that it has provided a copy of this Final Judgment to all Persons described in Sections VII(A) and VII(B) of this Final Judgment.

(B) For a period of ten years following the date of entry of this Final Judgment, Defendant shall certify to the Chief of the Litigation I Section, Antitrust Division, United States Department of Justice, annually on the anniversary date of the entry of this Final Judgment that each, respectively, and all of CASD's directors, officers, managers, agents, employees, and representatives, if applicable, have complied with the provisions of this Final Judgment.

IX. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other Persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and upon five days notice to Defendant, be permitted:

(1) Access during CASD's regular business hours to inspect and copy, or, at the United States' option, to require that Defendant provide copies of all books, ledgers, accounts, records and documents in its possession, custody, or control, relating to any matters contained in this Final Judgment;

(2) to interview, either informally or on the record, any of CASD's officers, directors, employees, agents, managers, and representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

(3) to obtain from Defendant written reports or responses to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

(B) No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any Person other than authorized representatives of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at any time Defendant furnishes information or documents to the United

States. Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

X. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XII. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

UNITED STATES DISTRICT JUDGE

Exhibit A

[Letterhead of CASD]
[Name and Address of Member]
Dear Member:

The United States District Court for the District of South Dakota has entered a Final Judgment prohibiting the Chiropractic Associates, Ltd., of South Dakota ("CASD") from collectively contracting with payers or engaging in other anticompetitive activities. A copy of the Final Judgment and a Competitive Impact Statement prepared in accordance with the Antitrust Penalties and Procedures Act, 15 U.S.C. 16, are enclosed.

In order that you may readily understand the terms of the Final Judgment, we have set forth its essential provisions and describe its application to CASD's payer contracting activities, although you must realize the Final Judgment is controlling, rather than the following explanation of provisions.

(1) CASD is prohibited from negotiating or contracting with payers on behalf of any physician, except to provide credentialing and utilization review services.

(2) CASD is prohibited from reviewing or analyzing any contractual terms between a physician and a payer, and is prohibited from communicating about a physician's negotiation or contracting with any payer.

(3) CASD is prohibited from engaging in conduct that promotes members' collective boycotts or refusals to contract with payers.

(4) CASD may not require that CASD members negotiate with payers through CASD.

(5) CASD may not respond to any question or request initiated by a payer relating to (a) a physician's negotiating, contracting, or participating status with any payer; (b) a physician's fees or reimbursement rates; or (c) any proposed or actual contract or contract term between any physician and any payer, except to refer a payer to a third-party messenger and otherwise to state that the Final Judgment prohibits any additional response. Provided however, that the Final Judgment does not enjoin CASD from providing credentialing services and utilization review services.

(6) All of CASD's contracts with payers currently in effect generally must be cancelled upon, whichever comes first, written request by a payer to terminate, the termination date, renewal date, or anniversary date of such contract, or within three months from the date of the entry of the Final Judgment.

(7) All of CASD's contracts with its members currently in effect must be cancelled upon, whichever comes first, written request by a member to terminate, when all payer contracts between CASD and a payer applicable to that member have been terminated, or within three months from the date of the entry of the Final Judgment. Provided, however, that nothing shall prohibit CASD and its member from entering into new membership agreements that comply with the terms of the Final Judgment. CASD will send you under separate cover a new membership agreement that complies with the terms of the Final Judgment.

(8) CASD members and its practice groups may immediately contract individually with payers.

If you have any questions, please do not hesitate to contact me.

Sincerely,

[Appropriate CASD representative]

Exhibit B

[Letterhead of CASD]
[Name and Address of Payer's CEO]
Dear [_____]:

Enclosed is a copy of a Final Judgment, issued by the United States District Court for the District of South Dakota, and a Competitive Impact Statement, issued in accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, against the Chiropractic Associates, Ltd., of South Dakota.

Pursuant to Section V Paragraph A of the Final Judgment, all payer contracts with CASD will terminate at the earlier of (1) receipt by CASD of a payer's written request to terminate such contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such contract, or (3) three months from the date the Final Judgment is entered. CASD members and their practice groups may immediately contract individually with payers.

If your contract expires prior to a date that is three months from the date the Final Judgment is entered, you may request an extension of the contract to a date no later than three months from the date the Final Judgment is entered. If you choose to extend the term of the contract to the extent permitted by the Final Judgment, you may later terminate the contract at any time.

Any request to either to terminate or extend the contract should be made in writing, and should be sent to me at the following address: [address].

Sincerely,

[Appropriate CASD representative]

[FR Doc. 2013–09035 Filed 4–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterans Supplement to the Current Population Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Veterans Supplement to the Current Population Survey," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before May 17, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMAIN,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free

number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Veterans Supplement to the Current Population Survey (CPS) is conducted annually. This supplement is co-sponsored by the U.S. Department of Veterans Affairs (VA) and by the U.S. DOL's Veterans' Employment and Training Service (VETS). Data collected through this supplement is used by the co-sponsors to determine policies that better meet the needs of our Nation's veteran population. The supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. In addition, location of service questions separately identify Afghanistan, Iraq, and Vietnam veterans. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information about veterans' participation in various transition and employment training programs. Respondents are veterans who are not currently on active duty or are members of a household where a veteran lives.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0102. The current approval is scheduled to expire on June 30, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 10, 2013 (78 FR 2292).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0102. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Veterans Supplement to the Current Population Survey.

OMB Control Number: 1220–0102.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 10,000.

Total Estimated Number of Responses: 10,000.

Total Estimated Annual Burden Hours: 333.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 10, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–08925 Filed 4–16–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,339]

Mondelez Global LLC, Business Services Center, Including On-Site Leased Workers From Abacus Service Corporation, Advantech Solutions, American Cybersystems, Inc., Collabera, Hewlett-Packard, Kelly Services, Kforce, Inc., Lancesoft, Inc., Northbound, LLC, Pitney Bowes, Inc., RCG Information Technology, Inc., Robert Half International, Sunrise Systems, Synectics, Inc. and the Fountain Group Including Workers Whose Wages Were Reported Through Kraft Foods, Inc., San Antonio, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 20, 2013, applicable to workers of Mondelez Global LLC, Business Services Center, including on-site leased workers from Abacus Service Corporation, American CyberSystems, Inc., Collabera, Kelly Services, Kforce, Inc., Lancesoft, Northbound, LLC, RCG Information Technology, Inc., Robert Half International, Sunrise Systems, Synectics, Inc., and The Fountain Group and workers whose unemployment insurance (UI) wages were reported through Kraft Foods, Inc., San Antonio, Texas. The workers are engaged in activities related to the supply of accounts payable, travel and expense, and administration, including the continuous improvement team.

New information obtained by the Department revealed that workers from several additional leasing agencies are part of the certified worker group at Mondelez Global LLC, Business Services Center, San Antonio, Texas. The leasing agencies are: Advantech Solutions, Hewlett-Packard, and Pitney Bowes, Inc. The leased workers from the aforementioned agencies worked on-site at Mondelez Global LLC, Business Services Center, San Antonio, Texas.

The intent of the Department's certification is to include all leased workers on-site at Mondelez Global LLC, Business Services Center, San Antonio, Texas, who were adversely affected by the subject firm's acquisition of like or directly competitive services from a foreign country. The amended

notice applicable to TA–W–82,339 is hereby issued as follows:

"All workers of Mondelez Global LLC, Business Services Center, including on-site leased workers from Abacus Service Corporation, Advantech Solutions, American CyberSystems, Inc., Collabera, Hewlett-Packard, Kelly Services, Kforce, Inc., Lancesoft, Northbound, LLC, Pitney Bowes, Inc., RCG Information Technology, Inc., Robert Half International, Sunrise Systems, Synectics, Inc., and The Fountain Group and workers whose unemployment insurance (UI) wages were reported through Kraft Foods, Inc., San Antonio, Texas, who became totally or partially separated from employment on or after January 11, 2012, through February 20, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC this 3rd day of April, 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–08929 Filed 4–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,156]

Johnstown Specialty Castings, Inc., A Subsidiary of WHEMCO, Johnstown, PA; Notice of Negative Determination on Reconsideration

The initial investigation, initiated on February 8, 2012, on behalf of workers of Johnstown Specialty Castings, Inc., a subsidiary of WHEMCO, Johnstown, Pennsylvania (subject firm) resulted in a negative determination, issued on January 8, 2013. The Department's notice of negative determination was published in the **Federal Register** on February 6, 2013 (78 FR 8591).

The group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), can be satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm have decreased absolutely;

(ii)(I) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) Imports of articles like or directly competitive with articles—

(aa) Into which one or more component parts produced by such firm are directly incorporated, or

(bb) Which are produced directly using services supplied by such firm, have increased; or

(III) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) There has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) Such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) The shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Initial investigation

The initial investigation began when a representative from United Steelworkers, Local 2632, filed a petition for Trade Adjustment Assistance (TAA), dated November 6, 2012, on behalf of workers and former workers of the subject firm. The workers are engaged in employment related to the production of steel castings, slag pots, steel rolls, steel sleeves, and mill liners.

The negative determination was based on the findings that there was less than a significant number or proportion of worker separations at the subject firm during the relevant time period (November 2011 through October 2012).

Reconsideration Investigation

By application dated February 2, 2013, the petitioner requested administrative reconsideration of the Department's negative determination regarding the eligibility of the subject worker group to apply for adjustment assistance.

In the request for reconsideration, the petitioner stated that "When (the petition was) filed * * * temporary layoffs had just started * * * On January 23, 2013, Whemco * * * sent a WARN notice letter * * * stating new layoffs will begin March 4, 2013 * * *."

On February 25, 2013, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration in order to conduct further investigation to determine worker eligibility. The Department's Notice was published in the **Federal Register** on March 8, 2013 (78 FR 15048).

In the course of the reconsideration investigation, the Department carefully reviewed previously-submitted information and collected additional information from the subject firm to address the petitioner's allegation.

According to 29 CFR 90.2, *Layoff* means a suspension from pay status for lack of work initiated by the employer and expected to last for no less than seven (7) consecutive calendar days; *Significant number or proportion of the workers* means that (a) in most cases the total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total unemployment of five percent (5 percent) of the workers or 50 workers, whichever is less; or (b) at least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers would ordinarily have to be affected; and *Threatened to begin* means, in the context of impending total or partial separations, the date on which it could reasonably be predicted that separations were imminent.

The information collected on reconsideration confirmed that, during the relevant time period, there were no layoffs, or a threat of layoffs, at the subject firm. Therefore, Section 222(a)(1) has not been met because a significant number or proportion of the workers at the subject firm did not become totally separated or partially separated during the period under investigation.

Conclusion

After careful review of the Trade Act of 1974, as amended, applicable regulation, and information obtained during the initial and reconsideration investigations, I determine that workers and former workers of Johnstown Specialty Castings, Inc., a subsidiary of WHEMCO, Johnstown, Pennsylvania, are ineligible to apply for adjustment assistance.

Signed in Washington, DC, on this 3rd day of April, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–08930 Filed 4–16–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,197; TA–W–82,197A]

Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Seatac, WA; Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Sioux City, IA; Notice of Revised Determination on Reconsideration

By application dated March 8, 2013, a State of Washington workforce official and three workers requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Seatac, Washington (TA–W–82,197) and Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Sioux City, Iowa (TA–W–82,197A) (collectively referred to as "the subject firm"). There are no on-site leased workers at the subject firm. The subject workers are engaged in employment related to the supply of call center services. The determination was issued on January 11, 2013. The Department's Notice of determination was published in the **Federal Register** on February 8, 2013 (78 FR 8591).

Based on a careful review of previously-submitted information and additional information received during the reconsideration investigation, the Department determines that the petitioning workers have met the statutory criteria for TAA.

The Department determines that a significant number or proportion of the workers at the subject firm have been partially or totally separated, or threatened with such separation.

The Department also determines that worker separations at the subject firm are related to a shift to foreign countries of a portion of the supply of services like or directly competitive with the call center services supplied by the subject workers, and that the shift in the supply of these services contributed importantly to worker separations at the subject firm.

For purposes of the Trade Act, as amended, the term *contributed importantly* means a cause which is important but not necessarily more important than any other cause.

Conclusion

After careful review, I determine that workers of Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Seatac, Washington (TA–W–82,197) and Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Sioux City, Iowa (TA–W–82,197A), who were engaged in employment related to the supply of call center services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Seatac, Washington (TA–W–82,197) and Delta Air Lines, Inc., Reservation Sales and Customer Care Call Center, Sioux City, Iowa (TA–W–82,197A) who became totally or partially separated from employment on or after November 28, 2011, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 4th day of April, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–08928 Filed 4–16–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,776]

HCL America, Inc., a Subsidiary of HCL Technologies Limited, Including On-Site Leased Workers From Xerox Corporation, V Dart Inc., KRG Technologies Inc., Genuent Inc., Including Workers Whose Unemployment Insurance (UI) Wages are Reported Through Genuent IT Fluency, Also Known as Genuent, Formerly Know as Segula Technologies, BMC Corporation Professional Services and Fusion Storm, Webster, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 3, 2012, applicable to the workers of HCL America Inc., a subsidiary of HCL Technologies Limited, Webster, New York (subject firm). Workers are engaged in activities related to the supply of application support and development services and infrastructure services (hardware/software testing) for clients. The Department's Notice of determination was published in the **Federal Register** on August 16, 2012 (77 FR 49459). The notice was amended on February 6, 2013 to include at the Wilsonville, Oregon facility that operated in conjunction with workers at the Webster, New York facility. The amended notice was published in the **Federal Register** on February 22, 2013 (78 FR 12358–12359).

New information revealed that in January of 2012, Genuent, acquired Segula Technologies. Genuent workers separated from employment at the Webster, New York location of HCL America, Inc., a subsidiary of HCL Technologies Limited had their wages reported through a separate unemployment insurance (UI) tax account under the name Genuent IT Fluency, also known as Genuent, formerly known as Segula Technologies.

Accordingly, the Department is amended this certification to include workers of the subject firm whose unemployment insurance (UI) wages are reported through Segula Technologies

The intent of the Department's certification is to include all workers of HCL America, Inc., Webster, New York (TA–W–81,776) and Wilsonville, Oregon (TA–W–81,776A), who were all adversely affected by an acquisition of application support and development services and infrastructure services from India.

The amended notice applicable to TA–W–81,776 is hereby issued as follows:

All workers of HCL America Inc., a subsidiary of HCL Technologies Limited, including on-site leased workers from Xerox Corporation, V Dart, Inc., KRG Technologies, Inc., Genuent, Inc., including workers whose unemployment insurance (UI) wages are reported through Genuent IT Fluency, also known as Genuent, formerly known as Segula Technologies, BMC Corporation Professional Services, and Fusion Storm, Webster, New York (TA–W–81,776) and all workers of HCL America, Inc., a subsidiary of HCL Technologies Limited, Wilsonville, Oregon (TA–W–81,776A), who became totally or partially separated from employment on or after July 3, 2011 through August 3, 2014, and all workers in the group threatened with partial or total separation from employment on August 3, 2012 through August 3, 2014, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 3rd day of April, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–08927 Filed 4–16–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Wage and Hour Division

RIN 1235–0021

Proposed Extension of the Employment Information Form Information Collection

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Employment Information Form. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 17, 2013.

ADDRESSES: You may submit comments identified by Control Number 1235–0021, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.*, which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206; 207; 211; 212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. 213, *et al.* FLSA section 11(a) provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the FLSA, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA. 29 U.S.C. 211(a).

Other Federal laws the WHD administers provide similar authority. These Acts include the: Walsh-Healey Public Contracts Act (41 U.S.C. 38); McNamara-O'Hara Service Contract Act (41 U.S.C. 353(a)); Davis-Bacon Act (40 U.S.C. 3141 *et seq.*, pursuant to Reorganization Plan No. 14 of 1950, and Related Acts); Consumer Credit Protection Act (15 U.S.C. 1676); Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1862(a)); Employee Polygraph Protection Act (29 U.S.C. 2004(a)(3)); Family and Medical Leave Act (29 U.S.C. 2616(a)); Immigration and Nationality Act H–2A program (8 U.S.C. 1188(g)); the Immigration and Nationality Act H–2B program (8 U.S.C. 1184(c)(14(B) and the Immigration and Nationality Act H–1C program (8 U.S.C. 1182(m)(2)(E)(ii)). The regulatory provisions authorizing the filing of complaints under these laws and how the agency acts upon the concerns can be found at 29 CFR 4.191, 5.6, 500.1(e), 501.1(c), 501.5, 801.7(a)(3), 825.401; 41 CFR 50–201.1202; and 20 CFR 655.1200(b).

WHD staff use Form WH–3 as a guide for obtaining optional information from complainants (e.g., current and former employees, unions, and competitor employers) about alleged employer violations of the labor standards provisions of the above-cited Acts. Complainants generally provide the optional information requested on the form to WHD staff over the telephone or in-person. Where the information provided does not support a potential WHD enforcement action, complainants are advised and referred to the appropriate agency for further assistance. When the WHD schedules a complaint-based investigation, the agency makes the completed Form WH–3 part of the investigation case file. The form is printed in both English and Spanish.

The Wage and Hour Division (WHD) uses this information to determine whether covered employers have complied with various legal requirements of the laws administered by the Wage and Hour Division. The WHD seeks approval to renew this information collection related to the Employment Information Form.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection that requires employers to make, maintain, and preserve records in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Employment Information Form.

OMB Number: 1235–0021.

Affected Public: Business or other for-profit, not-for-profit institutions, farms.

Agency Numbers: Form WH–3.

Total Respondents: 35,000.

Total Annual Responses: 35,000.

Estimated Total Burden Hours: 11,667.

Estimated Time per Response: 20 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (operation/maintenance): $0.

Dated: April 11, 2013.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2013–09040 Filed 4–16–13; 8:45 am]

BILLING CODE 4510–27–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2013–4]

Review of Copyright Royalty Judges Determination

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice.

SUMMARY: The Register of Copyrights issues the following decision identifying and correcting an erroneous resolution of a material question of substantive law under title 17 that underlies or is contained in the Copyright Royalty Judges' final determination of rates and terms of royalty payments for the use of sound recordings in transmissions made by Preexisting Subscription Services.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, Senior Counsel to the Register, or Stephen Ruwe, Attorney Advisor Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Royalty Judges ("CRJs"), who constitute the Copyright Royalty Board ("CRB"), are required by 17 U.S.C. 803(b) to issue determinations of rates and terms for royalty payments due for the public performance of sound recordings in certain digital transmissions by licensees, including Preexisting Subscription Services ("PSS") and Satellite Digital Audio Radio Services ("SDARS"), in accordance with the provisions of 17 U.S.C. 114 and 112(e). Pursuant to 17 U.S.C. 801(b)(1), the rates applicable to PSS and SDARS are to be reasonable and shall be calculated by the CRJs to achieve the following objectives:

> (A) To maximize the availability of creative works to the public.
>
> (B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.
>
> (C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.
>
> (D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 801(b)(1); *see also* 17 U.S.C. 114(f)(1)(B) (specifying that CRJs shall consider factors set forth in section 801(b)(1) in establishing rates for PSS and SDARS).

On February 14, 2013, the CRJs issued a final determination of rates and terms of royalty payments for the use of sound recordings in transmissions made by PSS and SDARS ("Final Determination"). For PSS, for the period 2013 through the end of 2017, the CRJs established a phased-in royalty rate commencing at 8.0% of gross revenues and rising to 8.5% in 2014. For SDARS, the CRJs established a phased-in rate commencing at 9.0% gross revenues and escalating to 11.0% by 2017.

Under 17 U.S.C. 802(f)(1)(D), the Register of Copyrights may review for legal error the resolution by the CRJs of a material question of substantive law under title 17 that underlies or is contained in a final determination of the CRJs. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the CRJs was in material error, the Register of Copyrights shall issue a written decision correcting such legal error. 17 U.S.C. 802(f)(1)(D). The Register's correction, which must specifically identify the legal conclusion of the CRJs determined to be erroneous, is to be published in the **Federal Register** along with the CRJs' final determination. *Id.* "As to conclusions of substantive law involving an interpretation of the statutory provisions of [title 17], the decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings * * *." *Id.*

The Register concludes that the CRJs' determination of rates for royalty payments to be paid by PSS pursuant to 17 U.S.C. 114 for the use of sound recordings did not properly consider the four statutory factors as required under 17 U.S.C. 801(b)(1). The CRJs' misinterpretation of the applicable statutory standard constitutes an erroneous resolution of a material question of substantive law under title 17 that underlies or is contained in the final determination.

Copyright Royalty Judges' Determination Setting Rates and Terms for Preexisting Subscription Services

On January 5, 2011, the CRJs announced the commencement of proceeding 2011–1 CRB PSS/Satellite II ("PSS SDARS II") to determine the reasonable rates and terms applicable to PSS and SDARS for the period January 1, 2013 through December 31, 2017. 76 FR 591, Jan. 5, 2011. Pursuant to 17 U.S.C. 804(b)(3)(B), the CRJs gave notice of a request for petitions to participate. *Id.* By the time of the commencement of the PSS SDARS hearing, of the original participants, only Music Choice, Sound Exchange, and Sirius XM remained as non-settling participants in the proceeding. Final Determination at 2. On May 25, 2012, these participants submitted a stipulation to the CRJs in which they agreed to § 112 license rates and terms, and the proceeding continued with respect to the § 114 rates and terms. *Id.* at 2. On December 14, 2012, the CRJs issued their Initial Determination in the proceeding. *Id.* at 3. SoundExchange and Sirius XM filed motions for a rehearing asserting various errors of fact and law, both of which were denied on January 30, 2013. Order Denying Motions for Rehearing, Docket No. 2011–1 CRB PSS/Satellite II (Jan. 30, 2013). On February 14, 2013, the

CRJs issued their Final Determination of rates and terms for PSS and SDARS.[1]

This review concerns the CRJs' interpretation and application of the statutory criteria of § 801(b)(1) in establishing rates for PSS, which involved the participants Music Choice and SoundExchange.[2] As set forth above, under 17 U.S.C. 801(b)(1), the rates established for PSS under section 114(f)(1)(B) are to be reasonable and calculated to achieve each of four statutory objectives. 17 U.S.C. 801(b)(1); *see also* 17 U.S.C. 114(f)(1)(B) (specifying that CRJs shall consider factors set forth in § 801(b)(1) in establishing rates for PSS and SDARS); *accord SoundExchange, Inc.* v. *Librarian of Congress*, 571 F.3d 1220, 1222 (D.C. Cir. 2009) (setting forth statutory standard).

In the proceeding, Music Choice proposed a PSS royalty rate of 2.6% of gross revenues. Final Determination at 9. SoundExchange, for its part, proposed a rate of 15% of gross revenues for the first year of the licensing period, increasing to 45% by 2017. *Id.* The CRJs concluded that these proposals "were so far apart, and so far from the current rate, that they cannot even be said to describe a 'zone of reasonableness.'" *Id.* at 16. In light of this assessment, the CRJs determined that "[t]he only remaining guidance the Judges have upon which to base the new rates is the current royalty rate of 7.5% of PSS *Gross Revenues*. This rate approximates the middle of the wide spectrum proposed by the parties. It is the rate against which the Judges will test the section 801(b) policy factors." *Id.* at 16–17.[3]

This approach stands in contrast to the CRJs' methodology in the previous PSS SDARS proceeding ("PSS SDARS I"), as well as in the SDARS portion of the instant proceeding, pursuant to which the CRJs applied the statutory factors to a range of potentially applicable rates determined to lie within the "zone of reasonableness" in order to ascertain which rates among those considered should be adopted. *See* 73 FR 4080, 4094–98, Jan. 24, 2008 (identifying 2.35% to 13% as the zone of reasonableness and applying the statutory factors to adopt rates within that zone); Final Determination at 49–62 (analyzing SDARS rates within a "zone of reasonableness").[4] As this process has been explained by the Court of Appeals for the D.C. Circuit, " 'To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all [the] objectives adequately but to differing degrees, the [Board] is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the [Board] if it lies within a zone of reasonableness." *Recording Indus. Ass'n* v. *Librarian of Congress*, 608 F.3d 861, 865 (D.C. Cir. 2010) (alterations in original).[5]

Here, instead of analyzing a range of potentially acceptable rates for PSS under the section 801(b)(1) factors, the CRJs instead chose to apply the four statutory objectives to only the existing statutory rate of 7.5%. In the case of the first section 801(b) factor—maximizing the availability of creative works—the CRJs determined that "the policy goal of maximizing creative works to the public is reasonably reflected in the current rate and, therefore, no adjustment is necessary." Final Determination at 22. With respect to the second factor, however—affording fair return/fair income to copyright owners and users—the CRJs concluded, in light of a prospective increase in Music Choice's usage of sound recordings, that "a 1% upward adjustment of the benchmark (from 7.5% to 8.5% of *Gross Revenues*), phased in during the early part of the licensing period, is appropriate to serve the policy of fair return/fair income." *Id.* at 25. Turning to the third factor—the relative roles of copyright owners and users—the CRJs reverted to the 7.5% rate, opining that "[u]pon careful weighing of the evidence * * * no adjustment [to the current 7.5% rate] is warranted." *Id.* at 27. With respect to the fourth factor—minimizing disruptive impact—"the Judges [were] not persuaded by the record testimony or the arguments of the parties that the current PSS rate [of 7.5%] is disruptive to a degree that would warrant an adjustment, either up or down." *Id.* at 29.

In sum, the CRJs' analysis yielded conflicting results. An upward adjustment to the current 7.5% rate was found to be warranted under factor two, while factors one, three and four indicated that the rate should remain the same. Following this mixed review of the 7.5% rate under the statutory factors, the CRJs—without any explanation of how these disparate results might be reconciled—chose to adopt a "phased-in" rate structure starting at 8.0% in 2013, and increasing to 8.5% for the years 2014 through 2017. *Id.*[6]

On March 15, 2013, the Copyright Office issued a Notice of Review for Legal Error in Docket No. 2011–1 CRB ("Notice"). In the Notice, the Office sought comments, *inter alia*, on whether the PSS rates in the final determination "were properly evaluated under each of the four statutory objectives as required by 17 U.S.C. 801(b)(1)." Notice at 2; 17 U.S.C. 802(f)(1)(D) (in conducting review for legal error, Register is to take into account the views of the participants).[7]

The Office received responses to this question from the two interested parties, Music Choice and SoundExchange.[8] In its comments, Music Choice asserted that because the CRJs had erroneously selected 7.5% from the PSS SDARS I determination as the benchmark rate for their consideration, the evaluation of the four policy objectives based on this

[1] The Final Determination reflected the views of two of the three CRJs. The third CRJ, Judge Roberts, filed a separate opinion concurring in part and dissenting in part. In referencing the "CRJs" in the course of discussing the majority opinion, the Register is referring to the two majority judges.

[2] Sirius XM participated in proceeding only with respect to rates for SDARS.

[3] At a different point in the opinion, the CRJs observed that the benchmark evidence submitted by the PSS parties in support of their proposals, which included licensing agreements with various third parties and expert analysis thereof, "failed to provide the means for determining a reasonable rate for the PSS, other than, perhaps to indicate the extreme ends of the range of reasonable rates." Final Determination at 20. This statement appears to contradict somewhat the CRJs' earlier conclusion, described above, that the parties had failed to establish any zone of reasonableness whatsoever. What is clear, however, is that in applying the § 801(b)(1) factors, the CRJs did not consider a range of 2.6% to 15%, or any other range of possible rates, but instead assessed only the singular rate of 7.5% under each of the four statutory factors. *See Id.* at 20–29.

[4] In its motion for rehearing, SoundExchange took issue with the way in which the CRJs defined the zone of reasonable rates for SDARS, as the Final Determination appears to suggest two possible ranges. *Compare* Final Determination at 48–49 (suggesting zone was 7% to 22.32%), with Final Determination at 61 (suggesting 12%–13% as the top of the zone of reasonableness). In rejecting SoundExchange's motion, the CRJs stated that "the Judges determined that the zone of reasonableness had a floor of 7% * * * and an upper bound 'that can be no more than 22.32%.'" Order Denying Motions for Rehearing at 3. The rates established by the CRJs for SDARS after considering the statutory factors fell within both possible zones. Final Determination at 68.

[5] The Register does not mean to suggest that there is only one conceivable approach to satisfy the statutory criteria, but merely to point out an established methodology for testing potential rates against the section 801(b)(1) factors. *Cf.* Mechanical and Digital Phonorecord Rate Determination Proceeding, 74 FR 4510, 4522–26, Jan. 26, 2009 (considering specific penny rates for the reproduction and distribution of musical works under section 801(b)(1) and finding that such rates satisfied all four factors without any need for adjustment).

[6] The phase-in was designed to "moderate any potential negative impact the rate increase might have on the PSS." Final Determination at 29.

[7] The Register's Notice posed additional questions to the participants. With regard to those additional questions, the Register has closed her review for legal error without reaching any conclusions. No inferences or precedential value shall be drawn from the Register's decision to not to express any conclusions on those questions.

[8] Sirius XM responded to the Notice but did not weigh in on the PSS issue.

selection was also necessarily erroneous. Letter from Paul M. Fakler to Office of the General Counsel at 12 (Mar. 22, 2013). Music Choice observed that "[i]n taking this approach, the Judges departed from longstanding precedent, in which a range of reasonable rates is established and then a rate is selected from within that range by balancing the four policy objectives * * *." *Id.* (citing Librarian's PSS Determination, 63 FR 25394, 25405–06, May 8, 1998).

In similar fashion, SoundExchange argued that applying the statutory factors to the "incorrect starting point" of the 7.5% rate established in PSS SDARS I was "utterly meaningless." Letter from Michael B. DeSanctis to Office of the General Counsel at 5 (Mar. 25, 2013). As expressed by SoundExchange: "Simply put, it is a clearly erroneous application of the section 801(b)(1) factors to apply them as adjustments to a rate that is not a marketplace rate and that is wholly unsupported by the record evidence." *Id.*[9]

Review of Copyright Royalty Judges' Determination

Section 801(b)(1) provides that the rates adopted by the CRJs "shall be calculated to achieve" the four statutory objectives. Under a plain reading of the statutory provision, the rates selected by the CRJs must be determined to satisfy each of the four criteria in order to fulfill the statutory purpose.

As interpreted by the Court of Appeals for the District of Columbia Circuit, "the natural reading of the language of section 801(b)(1) is that the royalty rate is to be 'calculated to achieve the following objectives' in the sense of being designed or adapted for the achievement of those objectives * * *." *Recording Indus. Ass'n.* v. *Copyright Royalty Tribunal,* 662 F.2d 1, 8 n.19 (D.C. Cir. 1981). That court has further explained that "[t]he statutory factors pull in opposing directions, and reconciliation of these objectives is committed to the Tribunal [now CRB] as part of its mandate to determine 'reasonable' royalty rates." *Id* at 9.; *see also Recording Indus. Ass'n* v. *Librarian of Congress,* 608 F.3d at 864 ("When establishing terms and rates * * * the Copyright Act requires the Board to balance four general and sometimes conflicting policy objectives.");

[9] Although in their comments the responding parties expressed significant concern about the CRJs' selection of the PSS statutory rate generated by PSS SDARS I as the relevant benchmark for PSS SDARS II, the Register does not mean to suggest any view on this aspect of the proceeding, or on the merits of the rates ultimately selected by the CRJs.

Recording Indus. Ass'n v. *Librarian of Congress,* 176 F.3d 528, 533 (D.C. Cir. 1999) ("'[R]easonable rates' are those that are calculated with reference to the four statutory criteria.").

Accordingly, in prior rate proceedings governed by section 801(b)(1), the CRJs (and their predecessor ratesetting bodies, the Copyright Royalty Tribunal and the copyright arbitration royalty panels) have assessed potentially applicable rates including the ultimately selected rates under each of the four statutory factors to ensure that the chosen rates would achieve the four policy objectives. *See, e.g.,* Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 73 FR 4094–4098, Jan. 24, 2008; Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, 63 FR 25405–09, May 8, 1998; Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords 46 FR 10466, 10479–81, Feb. 3, 1981; Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884, 889, Jan. 5, 1981.

In this case the CRJs did not do this.[10] Rather, in the instant proceeding, the existing statutory rate of 7.5% for PSS was found by the CRJs to meet the factors set forth in § 801(b)(1)(A), (C) and (D), with no adjustment warranted. But the CRJs also determined that the 7.5% rate should be adjusted upward for the period in question (initially to 8.0% and later to 8.5%) in light of the fair return/fair income factor set forth in section 801(b)(1)(B). Thus, the CRJs did not consider the ultimately selected rates of 8.0% and 8.5% against the policy goals of section 801(b)(1)(A), (C) or (D), or determine that the chosen rates in fact fulfill these three policy objectives.

Proper consideration of the four statutory criteria set forth in section 801(b)(1) lies at the heart of the process for establishing reasonable rates according to Congress' design. The Register therefore concludes that the CRJs' misinterpretation of section 801(b)(1), and consequent failure to evaluate the actual rates chosen for PSS under each of the section 801(b)(1) factors, constitutes a material error of substantive law.

[10] Under the statutory framework, the CRJs are required to "act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights), and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802 (f)(1)(D)) * * * and decisions of the court of appeals * * *." 17 U.S.C. 803(a)(1).

CRJs' Continuing Jurisdiction

The Register notes that the CRJs enjoy continuing jurisdiction to amend their final determination. Under section 803(c)(4), "The Copyright Royalty Judges may issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the **Federal Register**." The Register encourages the CRJs to consider whether the error identified herein is amenable to correction pursuant to their continuing jurisdiction.

Conclusion

Having reviewed the resolution by the Copyright Royalty Judges for legal error, the Register of Copyrights hereby concludes that the rates set for royalty payments for the use of sound recordings in transmissions made by PSS must be found to satisfy all of the section 801(b)(1) factors. The CRJs' failure to determine that the selected rates fulfill each of the four statutory objectives constitutes legal error. This decision shall be binding as precedent upon the CRJs.

Dated: April 9, 2013.

Maria A Pallante,

Register of Copyrights.

[FR Doc. 2013–09005 Filed 4–16–13; 8:45 am]

BILLING CODE 1410–30–P

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Tuesday, 7 May 2013, from 10:30 a.m. to 5:45 p.m.; Wednesday, 8 May 2013, from 8:30 a.m. to 5:30 p.m.; Thursday, 9 May 2013, from 8:30 a.m. to 5:00 p.m. The Commission and the Committee also will meet in executive

session on Tuesday, 7 May 2013, from 8:30 to 10:00 a.m.

PLACE: The Pacific Room, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive; La Jolla, CA 92037; (858) 546–7000.

STATUS: The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will limited to discussions of internal agency practices, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters with a focus on issues related to the Pacific Coast. Although subject to change, issues that the Commission plans to consider at the meeting include marine mammal-fishery interactions, disturbance of marine mammals from sound, growing pinniped populations on the West Coast, vessel strikes of large whales, and the status and conservation of southern resident killer whales, North Pacific right whales, North pacific humpback whales, beaked whales, southern sea otters, and gray whales. In addition, the Commission plans to consider several international conservation issues including the International Whaling Commission, the vaquita, Antarctic management and the Southern Ocean Research Program, the International Union for Conservation of Nature, the Mekong River dolphin, southern right whale, Southeast Asia marine mammals, and the eastern tropical Pacific Ocean and effects of the tuna fishery on dolphin stocks. The Commission also will review issues related to conducting marine mammal surveys and other scientific studies under declining budgets.

CONTACT PERSON FOR MORE INFORMATION: Mark D. Richardson, Special Assistant to the Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *mrichardson@mmc.gov*.

Dated: April 15, 2013.

Timothy J. Ragen,

Executive Director.

[FR Doc. 2013–09167 Filed 4–15–13; 4:15 pm]

BILLING CODE 6820–31–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, April 18, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Quarterly Insurance Fund Report.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2013–09125 Filed 4–15–13; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by June 17, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for National user facilities managed by the NSF Division of Materials Research.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Overview of This Information Collection

The NSF Division of Materials Research (DMR) supports a number of National user facilities that provide specialized capabilities and instrumentation to the scientific community on a competitive proposal basis. In addition to the user program, these facilities support in-house research, development of new instrumentation or techniques, education, and knowledge transfer.

The facilities integrate research and education for students and post-docs involved in experiments, and support extensive K–12 outreach to foster an interest in Science Technology Engineering and Mathematics (STEM) and STEM careers. Facilities capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

National User Facilities will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. User facilities will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting (RPPR) module in Research.gov. These indicators are both quantitative and descriptive and may include, for example, lists of successful proposal and users, the characteristics of facility personnel and students; sources of financial support and in-kind support; expenditures by operational component; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students supported through the facility or users of the facility; descriptions of significant advances and other outcomes of this investment. Such reporting requirements are included in the cooperative agreement which is binding between the academic institution and the NSF.

Each facility's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships,

(5) diversity, (6) management, and (7) budget issues.

For each of the categories the report will describe overall objectives and metrics for the reporting period, challenges or problems the facility has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Facilities are required to file a final report through the RPPR. Final reports contain similar information and metrics as annual reports, but are retrospective.

Use of the Information: NSF will use the information to continue funding of the DMR national user facilities, and to evaluate the progress of the program.

Estimate of Burden: 200 hours per facility for three national user facilities for a total of 600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the DMR user facilities.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on 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.

Dated: April 12, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–08997 Filed 4–16–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by June 17, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Nanoscale Science and Engineering Centers (NSECs).

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Overview of This Information Collection

The Nanoscale Science and Engineering Centers (NSECs) Program supports innovation in the integrative conduct of research, education, and knowledge transfer. NSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. NSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

NSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. NSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

NSECs will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, NSECs will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in Research.gov and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the NSEC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

NSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, but are retrospective.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 200 hours per center for thirteen centers for a total of 2600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the thirteen NSECs.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to

enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on 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.

Dated: April 12, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–08993 Filed 4–16–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Early Career Doctorates Survey; Extension of Public Comment Period; Correction

AGENCY: National Science Foundation.

ACTION: Notification of extension of public comment period; correction.

SUMMARY: The National Science Foundation published a notice on April 12, 2013, at 78 FR 21979, seeking comments on establishing the Early Career Doctorates Survey. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Please send comments to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Correction

In the **Federal Register** of April 12, 2013, in FR Doc. 2013–08619, on page 21979, in the third column, correct the **DATES** caption to read:

DATES: Comments on this notice will now be accepted until June 10, 2013.

Dated: April 12, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–09002 Filed 4–16–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (RS); Meeting of the Acrs Subcommittees on Reliability and PRA; Revision to Notice of Meetings

The ACRS Subcommittee on Reliability and PRA originally scheduled for the morning of April 24, 2013, has been moved to the afternoon of April 23, 2013, 1:00 p.m. until 5:00 p.m.

This notice was previously published in the **Federal Register** on Monday, April 8, 2013 [78 FR 20958].

Further information regarding these meetings can be obtained by contacting the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) between 8:15 a.m. and 5:00 p.m.

Dated: April 9, 2013.

Antonio Dias,

Technical Adviser, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–09024 Filed 4–16–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 204–3.
OMB Control No. 3235–0047, SEC File No. 270–42.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Rule 204–3 (17 CFR 275.204–3) under the Investment Advisers Act of 1940." (15 U.S.C. 80b). Rule 204–3, the "brochure rule," requires advisers to deliver their brochures and brochure supplements at the start of an advisory relationship and to deliver annually thereafter the full updated brochure or a summary of material changes to their brochure. The rule also requires that advisers deliver an amended brochure or brochure supplement (or just a statement describing the amendment) to clients only when disciplinary information in the brochure or supplement becomes materially inaccurate. The brochure assists the client in determining whether to retain, or continue employing, the adviser. The information that Rule 204–3 requires to be contained in the brochure is also used by the Commission and staff in its enforcement, regulatory, and examination programs. This collection of information is found at 17 CFR 275.204–3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 10,754 advisers registered with the Commission as of January 2, 2013. The Commission has estimated that compliance with rule 204–3 imposes a burden of approximately 31 hours annually based on an average adviser having 1,200 clients. Based on this figure, the Commission estimates a total annual burden of 331,456 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: April 11, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08977 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form S–6.
OMB Control No.: 3235–0184, SEC File No. 270–181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Form S–6 (17 CFR 239.16), for Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2 (17 CFR 274.13)." Form S–6 is a form used for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") of securities of any unit investment trust ("UIT") registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") on Form N–8B–2.[1] Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the statement be effective before any securities are sold. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities.

Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. As a result, most UITs update their registration statements under the Securities Act on an annual basis in order that their sponsors may continue to maintain a secondary market in the units. UITs that are registered under the Investment Company Act on Form N–8B–2 file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses.

The purpose of Form S–6 is to meet the filing and disclosure requirements of the Securities Act and to enable filers to provide investors with information necessary to evaluate an investment in the security. This information collection differs significantly from many other federal information collections, which are primarily for the use and benefit of the collecting agency. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The Commission estimates that there are approximately 1,287 initial registration statements filed on Form S–6 annually and approximately 1,268 annual post-effective amendments to previously effective registration statements filed on Form S–6. The Commission estimates that the hour burden for preparing and filing an initial registration statement on Form S–6 is 45 hours and for preparing and filing a post-effective amendment to a previously effective registration statement filed on Form S–6 is 40 hours. Therefore, the total burden of preparing and filing Form S–6 for all affected UITs is 108,635 hours.

The information collection requirements imposed by Form S–6 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 11, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08973 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

[1] Form N–8B–2 is the form used by UITs other than separate accounts that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor to register under the Investment Company Act pursuant to Section 8 thereof.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy,Washington, DC 20549–0213.

Extension: Rule 7d–1.
OMB Control No. 3235–0311, SEC File No. 270–176.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collection of information to the Office of Management and Budget for extension and approval.

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–7(d)) (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 (17 CFR 270.7d–1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order

permitting those foreign funds' registration under the Act.

The rule requires a Canadian fund that wishes to register to file an application with the Commission that contains various undertakings and agreements by the fund. The requirement of the Canadian fund to file an application is a collection of information under the Paperwork Reduction Act. Certain of the undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file with the Commission agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) the fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file with the Commission an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) the fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) the fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C. 77a), and the Securities Exchange Act of 1934 (15 U.S.C. 78a), as applicable; and

(5) the fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

As noted above, under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act)." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Rule 7d–1 also contains certain information collection requirements that are associated with other provisions of the Act. These requirements are applicable to all registered funds and are outside the scope of this request.

The Commission believes that one foreign fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, certain fund agreements, designations of the fund's custodian as service agent, and the fund's list of affiliated persons. The Commission staff estimates that each year under the rule, the active registrant and its directors, officers, and service providers engage in the following collections of information and associated burden hours:

For the fund and its investment adviser to maintain records in the United States: [1]
0 hours: 0 minutes of compliance clerk time.

- For the fund to update its list of affiliated persons:
  2 hours: 2 hours of support staff time.
- For new officers, directors, and service providers to enter into and file agreements requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations:
  0.5 hours: 7.5 minutes of director time;
  2.5 minutes of officer time;
  20 minutes of support staff time.
- For new officers, directors, and investment advisers who are not residents of the United States to file irrevocable designation of the fund's custodian as agent for process of service:
  0.25 hours: 5 minutes of director time;
  10 minutes of support staff time.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 2.75 hours.[2] We estimate that directors perform 0.21 hours of these burden hours at a total cost of $945,[3] officers perform 0.04 of these burden hours at a total cost of 17.32,[4] and support staff perform 2.5 of these burden hours at a total cost of $150.[5] Thus, the Commission estimates the aggregate annual cost of these burden hours associated with rule 7d–1 is $1112.32.[6]

If a fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no foreign fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d–1 does not mandate these applications. The active registrant has filed a substantive supplemental application in the past three years. Therefore, the Commission staff estimates that the rule would impose an additional collection information burden of 5 hours on a fund to comply with the Commission's application process at a cost of $5957.[7] The staff

[1] The rule requires an applicant and its investment adviser to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant and its investment adviser, however, already maintain the registrant's records in the United States and in no other jurisdiction. Therefore, maintenance of the registrant's records in the United States does not impose an additional burden beyond that imposed by other provisions of the Act. Those provisions are applicable to all registered funds and the compliance burden of those provisions is outside the scope of this request.

[2] This estimate is based on the following calculation: (0 + 2 + 0.5 + 0.25) = 2.75 hours.

[3] The director estimates are based on the following calculations: (7.5 minutes + 5 minutes)/60 minutes per hour = 0.21 hours; and 0.21 hours × $4500/hour = $945. The per hour cost estimate is based on estimated hourly compensation for each board member of $500 and an average board size of 9 members.

[4] The officer estimates are based on the following calculations: 2.5 minutes/60 minutes per hour = 0.04 hours; 0.04 hours × $433/hour = $17.32. The per hour cost estimate, as well as other internal time cost estimates for management and professional earnings, is based on the figure for chief compliance officers found in SIFMA's *Management & Professional Earnings in the Securities Industry 2011*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[5] The support staff estimates are based on the following calculations: 2 hours + 20 minutes + 10 minutes = 2.5 hours; and 2.5 hours × $60/hour = $150. The per hour cost estimate, as well as other internal time cost estimates for office salaries, is based on the figure for compliance clerks found in SIFMA's *Management & Professional Earnings in the Securities Industry 2011*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[6] This estimate is based on the following calculation: $1112.32 = $945 + $17.32 + $150.

[7] The staff estimates that, on average, the fund's investment adviser spends approximately 4 hours to review an application, including 3.5 hours by an

understands that funds also obtain assistance from outside counsel to comply with the Commission's application process and the cost burden of using outside counsel is set forth below.

Therefore, the Commission staff estimates that the aggregate annual burden hours of the collection of information associated with rule 7d–1 is 7.75 hours, at a cost of $7069.32.[8] The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules and forms.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions, designations for service of process, and the list of affiliated persons). Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful.

These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no fund has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

As indicated above, a Canadian or fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d–1 does not mandate these applications. The active registrant filed a substantive supplemental application in the past three years. As noted above, the staff understands that funds generally use outside counsel to prepare the application. The staff estimates that outside counsel spends 10 hours preparing a supplemental application, including 8 hours by an associate and 2 hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as $400 per hour, based on information received from funds, intermediaries and their counsel. The Commission staff therefore estimates that the fund would obtain assistance from outside counsel at a cost of $4000.[9]

We request written comment on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 11, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08976 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

assistant general counsel at a cost of $407 per hour, 0.5 hours by an administrative assistant, at a cost of $65 per hour, and the fund's board of directors spends an additional 1 hour at a cost of $4500 per hour for a total of 5 hours, at a total cost of $5957. This estimate is based on the following calculation: (3.5 hours × $407 per hour) + (0.5 hours × $65 per hour) + (1 hour × $4500 per hour) = $5957.

[8] These estimates are based on the following calculations: 2.75 + 5 = 7.75 hours; $1112.32 + $5957 = $7069.32.

[9] This estimate is based on the following calculation: 10 hours × $400 per hour = $4000.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 206(4)–7; OMB Control No. 3235–0585; SEC File No. 270–523.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Investment Advisers Act rule 206(4)–7 (17 CFR 275.206(4)–7), Compliance procedures and practices." Rule 206(4)–7 requires each investment adviser registered with the Commission to (i) Adopt and implement internal compliance policies and procedures, (ii) review those policies and procedures annually, (iii) designate a chief compliance officer, and (iv) maintain certain compliance records. The rule is designed to protect investors by fostering better compliance with the securities laws. The collection of information under rule 206(4)–7 is necessary to assure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Investment Advisers Act of 1940. The information collected under this rule may also assist Commission staff in assessing investment advisers' compliance programs.

This collection of information is mandatory. The information collected pursuant to the rule 206(4)–7 is reviewed by the Commission's examination staff; it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 10,773 advisers registered with the Commission as of February 1, 2013. The Commission has estimated that compliance with rule 206(4)–7 imposes an annual burden of approximately 87 hours per respondent. Based on this figure, the Commission estimates a total

annual burden of 937,251 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: April 11, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08978 Filed 4–16–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 6a–3. SEC File No. 270–0015, OMB Control No. 3235–0021.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Act") sets out a framework for the registration and regulation of national securities exchanges. Under Rule 6a–3 (17 CFR 240.6a–3), one of the rules that implements Section 6, a national securities exchange (or an exchange exempted from registration as a national securities exchange based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of securities sold on the exchange each month.

The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The Commission estimates that each respondent makes approximately 25 such filings on an annual basis at an average cost of approximately $52.50 per response. Currently, 19 respondents (17 national securities exchanges and two exempt exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 237.5 hours (25 filings/respondent per year × 0.5 hours/response × 19 respondents) and $24,937.50 ($52.50/response × 25 responses/respondent per year × 19 respondents) per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: April 12, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–08994 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 0–4.

OMB Control No. 3235–0633, SEC File No. 270–569.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Rule 0–4 (17 CFR 275.0–4) under the Investment Advisers Act of 1940 ("Act" or "Advisers Act") (15 U.S.C. 80b-1 *et seq.*) entitled "General Requirements of Papers and Applications," prescribes general instructions for filing an application seeking exemptive relief with the Commission. Rule 0–4 currently requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an

exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0–4 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0–4 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0–4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–4 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

The requirements of rule 0–4 are designed to provide Commission staff with the necessary information to assess whether granting the orders of exemption are necessary and appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Act.

Applicants for orders under the Advisers Act can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives up to 9 applications per year submitted under rule 0–4 of the Act seeking relief from various provisions of the Advisers Act and, in addition, up to 7 applications per year submitted under Advisers Act rule 206(4)-5, which addresses certain "pay to play" practices and also provides the Commission the authority to grant applications seeking relief from certain of the rule's restrictions. Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on respondents. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required. Based on conversations with applicants and attorneys, and recent analyses by the Commission,[1] the cost for applications ranges from approximately $12,800 for preparing a well-precedented, routine (or otherwise less involved) application to approximately $200,000 to prepare a complex or novel application. We estimate that the Commission receives 2 of the most time-consuming applications annually, 4 applications of medium difficulty, and 10 of the least difficult applications subject to rule 0–4.[2] This distribution gives a total estimated annual cost burden to applicants of filing all applications of $702,000 [(2x$200,000) + (4x$43,500) + (10x$12,800)]. The estimate of annual cost burden is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The requirements of this collection of information are required to obtain or retain benefits. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 11, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08975 Filed 4–16–13; 8:45 am]

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[1] *See Family Offices,* Investment Advisers Act Release No. 3220 (June 22, 2011), at section IV.A ("We estimate that a typical family office will incur legal fees of $200,000 on average to engage in the exemptive order application process, including preparation and revision of an application and consultations with Commission staff.") Although the Commission may receive fewer exemptive applications from family offices in light of rule 202(a)(11)(G)-1, which defines family offices that are now excluded from regulation under the Advisers Act, the costs to prepare family office applications may be representative of the costs required to prepare other more complex and novel applications. *See also Political Contributions by Certain Investment Advisers,* Investment Advisers Act Release No. 3043 (July 1, 2010), at section V.D. (estimating that applications filed under Advisers Act rule 206(4)-5 "will cost approximately $12,800").

[2] The estimated 10 least difficult applications include the estimated 7 applications per year submitted under Advisers Act rule 206(4)-5. The Commission previously estimated that these applications will cost approximately $12,800 each. *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69362; File No. 600–23]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Amended Application for Registration as a Clearing Agency

April 11, 2013.

I. Introduction

On April 5, 2013, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") an amended Form CA–1 [1] seeking permanent registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934 [2] ("Act") and Rule 17Ab2–1 thereunder.[3] The Commission is publishing this notice to solicit comments from interested persons regarding this amended Form CA–1.[4] The Commission will consider any comments it receives in making its determination whether to grant FICC's request for permanent registration as a clearing agency. The Commission will grant FICC permanent registration only if it concludes that

[1] *See* Letter from Donaldine Temple, Senior Associate Counsel and Corporate Secretary, FICC, to Joseph P. Kamnik, Assistant Director, Division of Trading and Markets (April 4, 2013). The amendment filed by FICC updates all of the information required by Form CA–1 and incorporates by reference all information submitted in connection with FICC's prior application and amendments thereto, to the extent this previously submitted information remains accurate.

[2] 15 U.S.C. 78q–1.

[3] 17 CFR 240.17Ab2–1(a).

[4] The descriptions set forth in this notice regarding the structure and operations of FICC have been largely derived from information contained in FICC's amended Form CA–1 application and publicly available sources. The application and non-confidential exhibits thereto are available on the Commission's Web site.

FICC has satisfied all requirements of the Act.[5]

II. Background

On December 13, 1986, the Mortgage Backed Securities Clearing Corporation ("MBSCC") filed with the Commission a Form CA–1 [6] seeking registration as a clearing agency. The Commission granted MBSCC a temporary registration on February 2, 1987,[7] and extended this temporary registration on several occasions thereafter.[8] On October 16, 1987, the Government Securities Clearing Corporation ("GSCC"), filed with the Commission a Form CA–1 [9] seeking registration as a clearing agency. The Commission granted GSCC a temporary registration on May 24, 1988,[10] and extended this temporary registration on several occasions thereafter.[11] GSCC filed an amended Form CA–1 on November 15, 2002, in which it explained that it intended to acquire MBSCC.[12] On January 1, 2003, GSCC acquired MBSCC and named the resulting entity FICC.[13] At the time of the merger, both GSCC and MBSCC were operating under temporary registrations with the Commission, and FICC has operated under a temporary registration since that time. The temporary registrations granted to MBSCC and GSCC exempted them from certain requirements imposed by Section 17A of the Act.[14] Specifically, both MBSCC and GSCC were exempted from compliance with the Act's fair representation requirement,[15] and GSCC was further exempted from the Act's participation requirements.[16] The exemptions granted to MBSCC and GSCC have since been removed because the Commission determined that both clearing agencies satisfied the statutory requirements from which the entities were previously exempted.[17] Thus, FICC is now subject to all requirements applicable to registered clearing agencies.

Following GSCC's acquisition of MBSCC, the Commission extended FICC's temporary registration on several occasions.[18] The Commission most recently extended FICC's temporary registration on June 20, 2011.[19] At that time, the Commission explained that it would consider whether to grant FICC permanent registration after the Commission acted upon FICC's proposal to introduce central counterparty and guarantee settlement services to FICC's Mortgage-Backed Securities Division. The Commission approved FICC's request to allow its Mortgage-Backed Securities Division to act as a central counterparty and settlement guarantor on March 9, 2012.[20] FICC's temporary registration expires on June 30, 2013.[21]

III. Overview of FICC

FICC is a wholly owned subsidiary of the Depository Trust & Clearing Corporation ("DTCC"), and is generally administered as an industry-owned utility on an at-cost basis. FICC is comprised of two separate divisions, the Government Securities Division ("FICC/GSD") and the Mortgage-Backed Securities Division ("FICC/MBSD"). Each Division has its own set of rules and membership.

FICC/GSD is the sole clearing agency in the United States acting as a central counterparty for cash-settled U.S.

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[5] *See* 15 U.S.C. 78q–1(b)(3).

[6] Securities Exchange Act Release No. 23929 (December 23, 1986), 52 FR 373–01 (January 5, 1987) (File No. 600–22).

[7] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218–01 (February 10, 1987) (File No. 600–22).

[8] Securities Exchange Act Release No. 25957 (August 2, 1988), 53 FR 29537–01 (August 2, 1988) (File No. 600–19); Securities Exchange Act Release No. 27079 (July 31, 1989), 54 FR 32412–01 (August 7, 1989) (File No. 600–22); Securities Exchange Act Release No. 28492 (September 28, 1990), 55 FR 41148–03 (October 9, 1990) (File No. 600–19); Securities Exchange Act Release No. 29751 (September 27, 1991), 56 FR 50602–01 (October 7, 1991) (File Nos. 600–19 and 600–22); Securities Exchange Act Release No. 31750 (January 21, 1993), 58 FR 6424–02 (January 28, 1993) (File Nos. 600–19 and 600–22) (noting that, "[d]ue to an inadvertent administrative error by MBSCC," MBSCC failed to request an extension of its temporary registration prior to the expiration of its last extension on September 30, 1992); Securities Exchange Act Release No. 33348 (December 15, 1993), 58 FR 68183–01 (December 23, 1993) (File Nos. 600–19 and 600–22); Securities Exchange Act Release No. 35132 (December 21, 1994), 59 FR 67743–01 (December 30, 1994) (File Nos. 600–19 and 600–22); Securities Exchange Act Release No. 37372 (June 26, 1996), 61 FR 35281–02 (July 5, 1996) (File No. 600–22); Securities Exchange Act Release No. 38784 (June 27, 1997), 62 FR 36587–01 (July 8, 1997) (File No. 600–22); Securities Exchange Act Release No. 39776 (March 20, 1998), 63 FR 14740–02 (March 26, 1998) (File No. 600–22); Securities Exchange Act Release No. 42568 (March 23, 2000), 65 FR 16980–01 (March 30, 2000) (File No. 600–22); Securities Exchange Act Release No. 44089 (March 21, 2001), 66 FR 16961–02 (March 28, 2001) (File No. 600–22); Securities Exchange Act Release No. 44831 (September 21, 2001), 66 FR 49728–01 (September 28, 2001) (File No. 600–22); Securities Exchange Act Release No. 45607 (March 20, 2002), 67 FR 14755–01 (March 27, 2002) (File No. 600–22); Securities Exchange Act Release No. 46136 (June 27, 2002), 67 FR 44655–01 (July 3, 2002) (File No. 600–22).

[9] Securities Exchange Act Release No. 25129 (November 16, 1987), 52 FR 44659–01 (November 20, 1987) (File No. 600–23).

[10] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839 (May 24, 1987) (File No. 600–23).

[11] Securities Exchange Act Release No. 29236 (May 24, 1991), 56 FR 24852 (May 31, 1991) (File No. 600–23); Securities Exchange Act Release No. 32385 (June 3, 1993), 58 FR 32405 (June 9, 1993) (File No. 600–23); Securities Exchange Act Release No. 35787 (May 31, 1995), 60 FR 30324 (June 8, 1995) (File No. 600–23); Securities Exchange Act Release No. 36508 (November 27, 1995), 60 FR 61719 (December 1, 1995) (File No. 600–23); Securities Exchange Act Release No. 37983 (November 25, 1996), 61 FR 64183 (December 3, 1996) (File No. 600–23); Securities Exchange Act Release No. 38698 (May 30, 1997), 62 FR 30911 (June 5, 1997) (File No. 600–23); Securities Exchange Act Release No. 39696 (February 24, 1998), 63 FR 10253 (March 2, 1998) (File No. 600–23); Securities Exchange Act Release No. 41104 (February 24, 1999), 64 FR 105 t0 (March 4, 1999) (File No. 600–23); Securities Exchange Act Release No. 41805 (August 27, 1999), 64 FR 48682 (September 7, 1999) (File No. 600–23); Securities Exchange Act Release No. 42335 (January 12, 2000), 65 FR 3509 (January 21, 2000) (File No. 600–23); Securities Exchange Act Release No. 43089 (July 28, 2000), 65 FR 48032 (August 4, 2000) (File No. 600–23); Securities Exchange Act Release No. 43900 (January 29, 2001), 66 FR 8988 (February 5, 2001) (File No. 600–23); Securities Exchange Act Release No. 44553 (July 13, 2001), 66 FR 37714 (July 19, 2001) (File No. 600–23); Securities Exchange Act Release No. 45164 (December 18, 2001), 66 FR 66957 (December 27, 2001) (File No. 600–23); and Securities Exchange Act Release No. 46135 (June 27, 2002), 67 FR 44655 (July 3, 2002) (File No. 600–23).

[12] *See* Letter from Jeffrey F. Ingber, Managing Director, General Counsel and Secretary, FICC (Nov. 15, 2002).

[13] Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (File Nos. SR–GSCC–2002–07 and SR–MBSCC–2002–01).

[14] Pursuant to Rule 17Ab2–1(c)(1), the Commission may grant registration to a clearing agency while exempting it from one or more of the requirements of paragraphs (A) through (I) of section 17A(b)(3) of the Act. *See* 17 C.F.R. 240.17Ab2–1(c)(1).

[15] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218–01 (February 10, 1987) (File No. 600–22); Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839–01 (May 31, 1988) (File No. 600–23).

[16] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839–01 (May 31, 1988) (File No. 600–23).

[17] Securities Exchange Act Release No. 26729 (April 14, 1989), 54 FR 16438–G–01 (April 24, 1989) (SR–MBSS–89–2) (lifting MBSCC's exemption from the Act's fair representation requirements); Securities Exchange Act Release No. 36508 (November 27, 1995), 60 FR 61719–02 (December 1, 1995) (File No. 600–23) (lifting GSCC's exemption from the Act's participation requirements); Securities Exchange Act Release No. 39372 (November 28, 1997), 62 FR 64415 (December 5, 1997) (SR–GSCC–97–01) (lifting GSCC's exemption from the Act's fair representation requirements).

[18] Securities Exchange Act Release No. 48116 (July 1, 2003), 68 FR 41031 (July 9, 2003) (File No. 600–23); Securities Exchange Act Release No. 49940 (June 29, 2004), 69 FR 40695 (July 5, 2004) (File No. 600–23); Securities Exchange Act Release No. 51911 (June 23, 2005), 70 FR 37878 (June 30, 2005) (File No. 600–23); Securities Exchange Act Release No. 54056 (June 28, 2006), 71 FR 38193 (July 5, 2006) (File No. 600–23); Securities Exchange Act Release No. 55920 (June 18, 2007), 72 FR 35270 (June 27, 2007) (File No. 600–23); and Securities Exchange Act Release No. 57949 (June 11, 2008), 73 FR 34808 (June 18, 2008) (File No. 600–23).

[19] Securities Exchange Act Release No. 64707 (June 20, 2011), 76 FR 37165 (June 24, 2011) (File No. 600–23).

[20] Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (File No. 600–23).

[21] Securities Exchange Act Release No. 64707 (June 20, 2011), 76 FR 37165 (June 24, 2011) (File No. 600–23).

Government and agency securities. FICC/GSD provides clearing, netting, settlement, risk management, central counterparty services and a guarantee of trade completion for the following securities: (i) U.S. Treasury bills, notes, bonds, Treasury inflation-protected securities (TIPS), and Separate Trading of Registered Interest and Principal Securities (STRIPS), and (ii) Federal agency notes, bonds and zero-coupon securities that are book-entry, Fedwire eligible and non-mortgage backed. FICC/GSD accepts buy-sell transactions, repurchase and reverse repurchase agreement transactions (repos), and Treasury auction purchases in several types of U.S. Government securities.

FICC/MBSD is the only centralized clearing facility in the non-private label mortgage-backed securities market. FICC/MBSD provides clearing, netting, settlement, risk management, pool notification, central counterparty services and a guarantee of trade completion for pass-through mortgage-backed securities issued by the Government National Mortgage Association ("Ginnie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"). FICC/MBSD also processes options trades for "to-be-announced" transactions.

Additional information concerning FICC and its operations may be found in the schedule and non-confidential exhibits appended to FICC's amended Form CA–1.[22] Schedule A to FICC's amended Form CA–1 includes a description of the risk management procedures utilized by FICC/GSD and FICC/MBSD. Exhibits A and B provide a list of FICC's Board of Directors and its officers and senior managers, respectively. Exhibit C includes both a narrative and graphical depiction of FICC's organizational structure, and Exhibit E includes copies of the current rulebooks for both FICC/GSD and FICC/MBSD, along with copies of FICC's governing documents. Finally, Exhibit J provides a description of FICC's services and functions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning FICC's amended Form CA–1, including whether FICC has satisfied the Act's requirements for registration. 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 600–23 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 600–23. 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 of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the amended Form CA–1, all subsequent amendments, all written statements with respect to FICC's amended Form CA–1 that are filed with the Commission, and all written communications relating to the amended Form CA–1 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.

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 600–23 and should be submitted on or before June 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08924 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

[22] FICC's amended Form CA–1, including the exhibits, attachments and the schedule referenced above, is available online at *www.sec.gov/rules/other.shtml*, as well as at the Commission's Public Reference Room.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69363; File No. SR–NASDAQ–2012–117]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change With Respect to INAV Pegged Orders for ETFs

April 11, 2013.

On October 2, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASDAQ Rule 4751(f)(4) to include a new Intraday Net Asset Value ("INAV") Pegged Order for Exchange-Traded Funds ("ETFs") where the component stocks underlying the ETFs are U.S. Component Stocks as defined by Rule 5705(a)(1)(C) and 5705(b)(1)(D). The proposed rule change was published for comment in the **Federal Register** on October 18, 2012.[3] The Commission received one comment letter on the proposal.[4] On November 21, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission extended the time period for Commission action on the proposed rule change to January 16, 2013.[6] The Commission thereafter received one response letter from the Exchange.[7] On January 16, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8] The Commission thereafter received one comment letter and one response letter from the Exchange.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68042 (Oct. 12, 2012), 77 FR 64167.

[4] *See* Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Nov. 8, 2012.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 68279, 77 FR 70857 (Nov. 27, 2012).

[7] *See* Letter from Stephen Matthews, Senior Associate General Counsel, NASDAQ OMX, dated Jan. 15, 2013.

[8] *See* Securities Exchange Act Release No. 68672, 78 FR 4949 (Jan. 23, 2013).

[9] *See* Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Feb. 13, 2013. *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX, dated Feb. 27, 2013.

Section 19(b)(2) of the Act [10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on October 18, 2012. April 16, 2013 is 180 days from that date, and June 15, 2013 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change, including comment letters submitted in response to the Order Instituting Proceedings, and the Exchange's responses to such comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates June 15, 2013 as the date by which the Commission should either approve or disapprove the proposed rule change (File Number SR–NASDAQ–2012–117).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08974 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69364; File No. SR–CBOE–2013–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Complex Orders

April 11, 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 March 28, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 11, 2013, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposed to amend its rules related to complex orders. The text of the proposed rule change is provided below.[3]

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.53. Certain Types of Orders Defined

One or more of the following order types may be made available on a class-by-class basis. Certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

(a)–(w) No change.

(x) *Leg Order. A leg order is a limit order on the EBook that represents one leg of a complex order resting on the COB if the ratio of that leg is equal to or can be reduced to one (1) (e.g. 1:1, 1:2, 1:3) and the complex order is noncontingent. A leg order is a firm order that may be included in the Exchange's displayed best bid or offer ("Exchange BBO") on the EBook. A leg order functions as set forth in Rule 6.53C(c)(iv).*

* * * * *

Rule 6.53C. Complex Orders on the Hybrid System

(a) Definition: No change.

(b) Types of Complex Orders: No change.

(c) Complex Order Book

(i)–(iii) No change.

(iv) Leg Orders:

(1) *Generation of Leg Orders. Leg orders may be automatically generated on behalf of complex orders so that they are represented in the individual leg markets. Specifically, the System will evaluate the COB when a complex order enters the COB, when the Exchange BBO changes and at a regular time interval to be determined by the Exchange (which interval shall not exceed one (1) second) to determine whether leg orders may be generated or displayed in accordance with the provisions in subparagraphs (A) through (C) below. The Exchange may determine to limit the number of leg orders generated on an objective basis.*

(A) A leg order will be automatically generated for a leg of a complex order resting on the top of the COB: (I) if the price of the complex order is inside the "derived net market," which is based on the derived net price of the best-priced orders or quotes (other than leg orders) in the EBook, and (II) at a price at which net price execution of the complex order can be achieved if the other leg(s) of the complex order executes against the best-priced orders or quotes (other than leg orders). Notwithstanding the foregoing, a leg order will not be generated if it would lock or cross the NBBO.

(B) A leg order will only be displayed in the EBook if the price matches or improves the Exchange BBO. If multiple resting complex orders in different strategies generate leg orders for the same price on the same side of a series, then the leg order with the largest size will be displayed. If such leg orders are also for the same size, then the first leg order generated will be displayed.

(C) The size of a leg order will be the lesser of (I) the size of the complex order and (II) the maximum size available in the EBook for the other leg(s) of the complex order (divided by the leg ratio, if applicable). If multiple resting complex orders in the same strategy generate leg orders for the same price on the same side of a series, then the sizes of the leg orders will be aggregated (those leg orders will be treated as a single order until execution).

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[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it has separately proposed, among other things, to add Interpretation and Policy .01 to Rule 6.53 and to add paragraph (f) to Rule 6.53C, Interpretation and Policy .06. *See* Exchange Act Release No. 34–69082 (March 8, 2013), 78 FR 16351 (March 14, 2013) (SR–CBOE–2013–030) (as amended by Amendment No. 1, filed March 26, 2013) (proposed rule change to modify the Exchange's rules to address certain option order handling procedures and quoting obligations on the Exchange after the implementation of the market wide equity Plan to Address Extraordinary Market Volatility). Those proposed changes are pending approval of the Commission and thus are not included in the rule text in this rule filing. The Exchange does not believe that the changes proposed in SR–CBOE–2013–030 have any effect on the proposed changes in this rule filing.

(2) Execution of Leg Orders.

(A) Leg orders (including any nondisplayed leg orders) will only execute after all other executable orders and quotes (including any nondisplayed size) at the same price are executed in full. Leg orders at the same price will execute pursuant to the priority and execution rules applicable to the complex orders they represent as set forth in Rule 6.53C(c)(ii), except that displayed leg orders will have higher priority than nondisplayed leg orders. A leg order may not execute against another leg order.

(B) When a leg order executes against an incoming order or quote, the other leg(s) of the complex order represented by the leg order will automatically execute against the best-priced resting orders or quotes (other than leg orders) that would cause net price full or partial (in a permissible ratio) execution of the complex order. Any leg orders on the opposite side of the legs of the executing complex order will be cancelled prior to the execution of that complex order. Upon execution of the complex order, any leg orders that represent other legs of the complex order will be cancelled. If such execution was a partial execution, the System may generate leg orders for the remaining size of the complex order in accordance with subparagraph (iv)(1).

(C) An all-or-none order will only execute against a leg order if it is at least the same size as the all-or-none order and there are no non-leg orders at the Exchange BBO. If there are a leg order and a non-leg order(s) at the Exchange BBO, then the all-or-none order will either (I) execute against the non-leg order(s) if it is at least the same size as the all-or-none order or (II) the leg order will be cancelled and the all-or-none order will be handled as otherwise set forth in the Rules (no new leg orders in the applicable series will be generated until the all-or-none order is executed or cancelled).

(3) Removal or Cancellation of Leg Orders.

(A) The System will remove from display in the EBook a leg order if the price of the leg order is no longer at the Exchange BBO or if a complex order in a different strategy generates a larger-sized leg order at the same price. Any leg orders removed from display in the EBook will remain in the EBook as nondisplayed orders and will be eligible for execution as set forth in subparagraph (iv)(2) above.

(B) The System will cancel a leg order if: (I) execution at the price of the leg order would no longer achieve the net price of the complex order when the other leg(s) executes against the best-priced orders or quotes (other than leg orders); (II) the complex order executes in full or in part against another complex order; or (III) the complex order is cancelled or modified (e.g., change in price). Additionally, the System will cancel a leg order as set forth in subparagraph (iv)(2) above.

(d) Process for Complex Order RFR Auction: No change.

. . . **Interpretations and Policies:**

.01–.03 No change.

.04 (a) No change.

(b) For each class where COA is activated, the Exchange may also determine to activate COA for complex orders resting in COB. For such classes, any non-marketable order resting at the top of COB may be automatically subject to COA if the order is within a number of ticks away from the current derived net market. The "derived net market" will be calculated based on the derived net price of the individual series legs. For stock-option orders, the derived net market for a strategy will be calculated using the Exchange's best bid or offer in the individual option series leg(s) and the NBBO in the stock leg. The Exchange may also determine on a class-by-class and strategy basis to limit the frequency of COAs initiated for complex orders resting in COB. *Notwithstanding the foregoing, if a leg order has been generated for a complex order resting in the COB pursuant to paragraph (c)(iv) of this Rule, the complex order will not be eligible for COA.*

.05 No change.

.06 Special Provisions Applicable to Stock-Option Orders: Stock-option orders may be executed against other stock-option orders through the COB and COA. Stock-option orders will not be legged against the individual component legs, except as provided in paragraph (d) below, *and leg orders will not be generated pursuant to paragraph (c)(iv) of this Rule for stock-option orders.*

(a)–(e) No change.

.07 [Reserved.]*Leg Orders and Auctions:*

If there is an auction occurring in a leg series at the time that a leg order in that series would otherwise be generated pursuant to paragraph (c)(iv) of this Rule:

(a) If the leg order would be on the same side of the market as the auctioned order with a price worse than the initial auction price of the auctioned order, then the leg order will be generated and the auction will continue.

(b) If the leg order would be on the same side of the market as the auctioned order with a price equal to or better than the initial auction price of the auctioned order, then no leg order would be generated and the auction will continue. A leg order may later be generated after execution of the auctioned order.

(c) If the leg order would be on the opposite side of the market as the auctioned order with a price that locks or crosses the initial auction price of the auctioned order, then no leg order would be generated and the auction will continue. A leg order may later be generated after execution of the auctioned order.

(d) If the leg order would be on the opposite side of the market as the auctioned order with a price that does not lock or cross the initial auction price of the auctioned order, then the leg order will be generated and the auction will continue.

.08–.09 No change.

.10 Execution of Complex Orders in Hybrid 3.0 Classes: For each class trading on the Hybrid 3.0 Platform, the Exchange may determine to not allow marketable complex orders entered into COB and/or COA to automatically execute against individual quotes residing in the EBook. *The Exchange also may determine for each class trading on the Hybrid 3.0 Platform to not allow leg orders to be generated pursuant to paragraph (c)(iv) for complex orders resting in the COB.* The allocation of such marketable complex orders against orders residing in the EBook and other complex orders shall be based on the best net price(s) and, at the same net price, multiple orders will be allocated as provided in paragraphs (c) and/or (d) in the Rule, as applicable, subject to the following:

(a)–(d) No change.

.11 No change.

.12 *Nondisplayed Leg Orders: Any generated leg order that does not satisfy the requirements to be displayed as set forth under subparagraph (iv)(1)(B) in this Rule will be nondisplayed. Any nondisplayed leg orders (including leg orders removed from display) will remain in the EBook and be eligible for execution as set forth in subparagraph (iv)(2) in this Rule but will not be visible in the EBook depth.*

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 Exchange proposes to amend its rules related to complex orders to provide additional liquidity for complex orders resting on the complex order book ("COB"). The Exchange proposes to adopt a new order type called "leg orders." Under Rule 6.53C, complex orders are eligible to trade with other complex orders or by "legging" with the individual orders and quotes resting in the CBOE electronic book (the "EBook") for the individual component legs, provided the complex order can be executed in full (or in a permissible ratio) by the orders and quotes in the EBook in those individual component legs. Leg orders are designed to increase the opportunities for complex orders resting in the COB to leg into the market and execute.

Specifically, as defined in proposed Rule 6.53(x), a leg order is a limit order on the EBook that represents one leg of a complex order resting on the COB if the ratio of that leg is equal to or can be reduced to one[4] and the complex order is noncontingent. A leg order is a firm order that may be included in the Exchange's displayed best bid or offer ("Exchange BBO") on the EBook. Like all order types defined in Rule 6.53, the Exchange may make leg orders available on a class-by-class basis and may not make leg orders available for all Exchange systems.[5]

The proposed rule change provides that leg orders may be automatically generated on behalf of complex orders so that they are represented in the individual leg markets. Specifically, the System will reevaluate the COB when a complex order enters the COB, when the Exchange BBO changes and at a regular time interval to be determined by the Exchange (which will not exceed one second) to determine whether leg orders may be generated or displayed. A leg order will be automatically generated for a leg of a complex order resting on the top of the COB: (1) if the price of the complex order is inside the "derived net market," which is based on the derived net price of the best-priced orders or quotes (other than leg orders) in the EBook; and (2) at a price at which the net price execution can be achieved if the other leg(s) of the complex order executes against the best-priced orders or quotes (other than leg orders).[6] For example:

Example A A complex order to buy 10 Series 1 (S1) and to sell 10 Series 2 (S2) at a net price of −$0.05 (buy S1/sell S2 10 @ −$0.05) is entered into the COB, and there is no off-setting complex order.[7] The complex order cannot leg into the EBook because the Exchange BBO net price available for the complex order on the EBook is −$0.20 as follows:

	CBOE Bid	CBOE Offer
S1	10 @ $1.00	20 @ $1.20
S2	10 @ $1.00	20 @ $1.20

(buy S1 @ $1.20 + sell S2 @ $1.00 = −$0.20 net)

The derived net market is −$0.20 to $0.20, and the −$0.05 price of the complex order is within that market,[8] so the System generates and displays leg orders to buy 10 S1 @ $1.05 and sell 10 S2 at $1.15, which improves the Exchange's best bid for S1 and best offer for S2:

	CBOE Bid	CBOE Offer
S1	10 @ $1.05 (leg order)	20 @ $1.20
S2	10 @ $1.00	10 @ $1.15 (leg order)

The Exchange believes it is appropriate to only generate leg orders for complex orders resting at the top of the COB, as those are the best-priced in that strategy and thus would have the highest priority. Additionally, the Exchange believes it is appropriate to only generate leg orders for complex orders with prices inside the derived net market because the price of leg orders of a complex order outside of the derived net market would always be generated at prices worse than the BBO. While the Exchange wants to increase execution opportunities for resting complex orders, the Exchange balances that interest with its need to manage the number of leg orders generated to ensure that it continues to have appropriate system capacity to support the leg order functionality (as further discussed below). The Exchange believes that not generating leg orders for complex orders that are not at the top of the COB or that have prices outside of the derived net market helps achieve this balance and is consistent with the Exchange's order management plan. Additionally, because the System will evaluate the COB when the BBO changes, those complex orders not at the top of the COB or with prices outside the derived net market when entered

[4] Thus, a leg order may be generated for the legs of complex orders with a ratio of 1:1, 1:2 or 1:3. For example, if a complex order to buy 10 of series 1 and sell 20 of series 2 is resting on the COB, a leg order will be generated for the leg to buy 10 of series 1 (ratio of 1:2), but not for the leg to sell 20 of series 2 (ratio of 2:1). If a complex order to buy 20 of series 1 and sell 30 of series 2 is resting on the COB, no leg orders will be generated for either leg (ratio is 2:3 for leg 1 and 3:2 for leg 2). The same requirement applies to complex orders with more than two legs. For example, if a complex order to buy 10 of series 1, sell 20 of series 2 and buy 10 of series 3 is resting on the COB, then leg orders will be generated for the leg to buy 10 of series 1 and the leg to buy 10 of series 3 (ratio of 1:2), but not for the leg to sell 20 of series 2 (ratio of 2:1).

[5] See Rule 6.53. Consistent with provision that the Exchange may not make leg orders available in all classes or for all Exchange systems, the proposed rule change amends Rule 6.53C, Interpretation and Policy .10 to provide that, for each class trading on the Hybrid 3.0 Platform, the Exchange may determine to not allow leg orders for complex orders resting in the COB. This is also consistent with the current rule, which provides that, for each class trading on the Hybrid 3.0 Platform, the Exchange may determine to now allow complex orders to leg into the market. Additionally, the proposed rule change amends Rule 6.53C, Interpretation and Policy .06 to provide that leg orders will not be generated for stock-option orders resting on the COB. This is also consistent with the current rule, which prohibits stock-option orders from legging into the regular market. Providing the Exchange with authority to allow leg orders on a class-by-class basis will help the Exchange manage the number of leg orders generated under the proposed rule change to ensure that they do not negatively impact system capacity and performance.

[6] Overlapping legs of complex orders may not execute against each other due to the operational difficulties that would result, which is consistent with the current execution principles for complex orders as otherwise set forth in Rule 6.53C that do not allow overlapping legs of complex orders to execute against each other. Therefore, the proposed rule change provides that the derived net market and the price of leg orders will be based on the best-priced non-leg orders in the other leg series, as those are the orders against which a complex order may execute.

[7] For purposes of the examples in this rule filing, the Exchange presumes that (a) the complex orders for which leg orders are generated are the best-priced orders for that strategy and are thus at the top of the COB, and (b) there are no non-leg orders resting at the same price as the best-priced leg orders, unless the example provides otherwise.

[8] If the price of the complex order was at −$0.20 or $0.20, the complex order would leg into the market pursuant to Rule 6.53C(c)(ii)(1). If the price of the complex order was outside of the derived net market (e.g. −$0.25, $0.25), then the Hybrid Trading System (the "System"), which is the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes, would not generate leg orders for the complex order.

will have an opportunity to take advantage of the leg order functionality when the market changes.

However, a leg order will not be generated if it would lock or cross the national best bid or offer (the "NBBO") in the leg series. The Exchange believes that this is appropriate to assure compliance with the options linkage plan. This provision will also prevent any leg orders from trading through the best displayed prices in the leg markets on other exchanges.

A leg order will only be displayed in the EBook if the price matches or improves the Exchange BBO. For example:

Example B A complex order (Order 1) to buy 10 Series 1 (S1) and to sell 10 Series 2 (S2) at a net price of −$0.40 (buy S1/sell S2 10 @ −$0.40) is entered into the COB, and there is no off-setting complex order. Order 1 cannot leg into the EBook because the Exchange BBO net price available for Order 1 on the EBook is −$0.60 as follows:

	CBOE Bid	CBOE Offer
S1	10 @ $1.00	10 @ $1.30
S2	10 @ $0.70	10 @ $1.10

(buy S1 @ $1.30 + sell S2 @ $0.70 = −$0.60 net)

The derived net market is −$0.60 to $0.10, and the −$0.40 price of Order 1 is within that market, so the System generates and displays leg orders to buy 10 S1 @ $1.10 and sell 10 S2 at $0.90, which improves the Exchange's best bid for S1 and best offer for S2:

	CBOE Bid	CBOE Offer
S1	10 @ $1.10 (leg order)	10 @ $1.30
S2	10 @ $0.70	10 @ $0.90 (leg order)

Another complex order (Order 2) to buy 10 Series 3 (S3) and to sell 10 Series 2 (S2) at a net price of −$0.25 (buy S3/sell S2 10 @ −$0.25) is then entered into the COB, and there is no off-setting complex order. Order 2 cannot leg into the EBook because the Exchange BBO net price available for Order 2 on the EBook is −$0.60 as follows:

	CBOE Bid	CBOE Offer
S2	10 @ $0.70	10 @ $0.90 (leg order)
S3	10 @ $1.00	10 @ $1.30

(buy S3 @ $1.30 + sell S2 @ $0.70 = −$0.60 net)

The derived net market excluding the leg orders representing is −$0.60 to $0.10 (excluding the leg order in S2), and the −$0.25 price of Order 2 is within that market, so the System generates leg orders to buy 10 S3 @ $0.95 and sell 10 S2 at $1.05. Because these leg orders are at worse prices than the BBO, they are not displayed.[9]

The proposed rule change contemplates that some leg orders may be generated but not displayed on the EBook. To clarify how the System handles nondisplayed leg orders, proposed Rule 6.53C, Interpretation and Policy .12 provides that any generated leg order that does not satisfy the requirements to be displayed as set forth in subparagraph (iv)(1)(B) of proposed Rule 6.53C(c) will be nondisplayed. Any nondisplayed leg orders (including leg orders that are removed from display) will remain and the EBook and will be eligible for execution as set forth in subparagraph (iv)(2) of proposed Rule 6.53C(c) but will not be visible in the EBook depth. Displayed leg orders will have higher priority than nondisplayed leg orders (*i.e.*, if there are two leg orders at the same price, but only one is displayed, the displayed leg order would execute ahead of the nondisplayed leg order).[10] The Exchange believes that having nondisplayed leg orders available for execution will further increase the execution opportunities for execution of complex orders. Nondisplayed leg orders function in the same manner as displayed leg orders, except that, for system and technical reasons, they will not be visible in the EBook depth (which displays resting orders and quotes not at the BBO). Additionally, the Exchange believes having nondisplayed leg orders available for execution with orders on the EBook is consistent with the ability for a complex order resting in the COB to leg into the regular market and execute against orders and quotes in the EBook. Complex orders resting in the EBook are not visible in the regular market, but like nondisplayed leg orders are still eligible to execute against orders and quotes in the EBook. Nondisplayed leg orders are merely representations of those same complex orders that are intended to facilitate executions of those complex orders in the regular market.

If multiple resting complex orders in different strategies generate leg orders for the same price on the same side of a series, then the leg order with the largest size will be displayed.[11] For example:

Example C A complex order (Order 1) to buy 10 Series 1 (S1) and to sell 10 Series 2 (S2) at a net price of −$0.05 (buy S1/sell S2 10 @ −$0.05) is entered into the COB, and there is no off-setting complex order. Order 1 cannot leg into the EBook because the Exchange BBO net price available for Order 1 on the EBook is −$0.20 as follows:

	CBOE Bid	CBOE Offer
S1	10 @ $1.00	10 @ $1.20
S2	20 @ $1.00	10 @ $1.20

(buy S1 @ $1.20 + sell S2 @ $1.00 = −$0.20 net)

The derived net market is −$0.20 to $0.20, and the −$0.05 price is within that market, so the System generates and displays leg orders to buy 10 S1 @ $1.05 and sell 10 S2 at $1.15, which improves the Exchange's best bid for S1 and best offer for S2:

	CBOE Bid	CBOE Offer
S1	10 @ $1.05 (Order 1 leg order)	10 @ $1.20
S2	20 @ $1.00	10 @ $1.15 (Order 1 leg order)

Another complex order (Order 2) to buy 20 Series 3 (S3) and to sell 20 Series 2 (S2) at a net price of −$0.05 (buy S3/sell S2 20 @ −$0.05) is then entered into the COB, and there is no off-setting complex order. Order 2 cannot leg into the EBook because the Exchange BBO net price available for Order 2 on the EBook is −$0.20 as follows:

	CBOE Bid	CBOE Offer
S2	20 @ $1.00	10 @ $1.15 (Order 1 leg order)
S3	20 @ $1.00	20 @ $1.20

(buy S3 @ $1.20 + sell S2 @ $1.00 = −$0.20 net)

The derived net market excluding leg orders is −$0.20 to $0.20, and the −$0.05 price is within that market, so the System generates and displays leg orders to buy 20 S3 @ $1.05 and sell 20 S2 at $1.15, and removes from display the smaller leg order to

[9] Alternatively, if Order 2 was entered into the COB given the original BBO market in this example (prior to the entry of Order 1), then the leg order to buy 10 S3 @ $0.95 would still not have been displayed, because that price would not have improved the $1.00 bid resting in the EBook. The leg order to sell 10 S2 @ $1.05 would have been displayed, because that price would have improved the $1.10 offer resting in the EBook.

[10] For example, if there are two leg orders in a series representing complex orders in different strategies, one to buy 10 (Leg Order 1) and one to buy 20 (Leg Order 2), and the price of those leg orders is the Exchange best bid (and there are no non-leg orders resting at that price), Leg Order 2 is displayed because it is larger, and Leg Order 1 is nondisplayed. If a market order to sell 20 enters the EBook, it will execute against Leg Order 2 (Leg Order 1 would be displayed after that execution, assuming it is still at the Exchange best bid). Alternatively, if a market order to sell 25 enters the EBook, 20 would execute against Leg Order 2, and 5 would execute against Leg Order 1 (the System would generate a new leg order to buy for the remaining 5 of Leg Order 1 and display the new leg order, assuming it is still at the Exchange best bid). As a third alternative, if a market order to sell 35 enters the EBook, 20 would execute against Leg Order 2, 10 would execute against Leg Order 1, and 5 would execute against the highest-priced non-leg order in the EBook. See the discussion below for further details on the execution of leg orders.

[11] If these leg orders are also for the same size, then the first leg order generated will be displayed.

sell 10 S2 at $1.15,[12] which improves the Exchange's best bid for S3 and maintains the Exchange's best offer for S2 but increases the available size:

CBOE Bid	CBOE Offer
S2 20 @ $1.00	20 @ $1.15 [13] (Order 2 leg order)
S3 20 @ $1.05 (Order 2 leg order)	20 @ $1.20

As set forth in the proposed definition of leg order, a leg order will only be generated for a leg of a complex order if the ratio of the leg is or can be reduced to one and the complex order is noncontingent. The size of a leg order will be the lesser of (1) the size of the complex order and (2) the maximum size available in the EBook in the other leg series of the complex order (divided by the leg ratio, if applicable).[14] For example:

Example D A complex order to buy 15 Series 1 (S1) and to sell 30 Series 2 (S2) (ratio of 1 buy to 2 sell) at a net price of $0.95 (buy 15 S1/sell 30 S2 @ $0.95) is entered into the COB, and there is no off-setting complex order. The complex order cannot leg into the EBook because the Exchange BBO net price available for the complex order on the EBook is $0.80 as follows:

CBOE Bid	CBOE Offer
S1 10 @ $1.00	10 @ $1.20
S2 30 @ $1.00	30 @ $1.20

(buy one S1 @ $1.20 + sell two S2 @ $1.00 = $0.80 net)

The derived net market is $0.80 to $1.40, and the $0.95 price is within that market, so the System generates and displays a leg order to buy 15 S1 @ $1.05 (maximum size on the EBook in S2 is 30, divided by the 2:1 ratio of the leg to sell S2), which improves the Exchange's best bid for S1:

CBOE Bid	CBOE Offer
S1 15 @ $1.05 (leg order)	10 @ $1.20
S2 30 @ $1.00	30 @ $1.20

The System does not generate a leg order in S2, because any leg order could only be for 10 (maximum size available on S1), and because the ratio of that leg is 2:1 and cannot be reduced to 1.

The Exchange may determine to limit the number of leg orders on an objective basis, such as limiting the number of orders generated in a particular class, in order to curtail the number of leg orders generated so that the Exchange may effectively manage leg orders and ensure that it continues to have appropriate system capacity to support the leg order functionality.[15]

Leg orders (including any nondisplayed leg orders) will execute only after all other executable orders and quotes (including any nondisplayed size) at the same price are executed in full. Accordingly, the generation of a leg order will not affect the existing priority, or execution opportunities, currently provided to market participants in the regular market in any way. Additionally, leg orders at the same price will execute pursuant to the priority and execution rules as set forth in Rule 6.53C(c)(ii), except that displayed leg orders will have higher priority than nondisplayed leg orders.[16]

When a leg order executes against an incoming order or quote, the other leg(s) of the complex order represented by the leg order will automatically execute against the best-priced resting orders or quotes (other than leg orders) that would cause net price full or partial (in a permissible ratio) execution of the complex order.[17] Upon execution of the complex order, any leg orders that represent other legs of the complex order will be cancelled. For example:

Example E A complex order to buy 10 Series 1 (S1) and to buy 10 Series 2 (S2) at a net price of $2.25 (buy S1/S2 10 @ $2.25) is entered into the COB, and there is no off-setting complex order to sell. The complex order cannot leg into the EBook because the Exchange BBO net price available for the complex order on the EBook is $2.40 as follows:

CBOE Bid	CBOE Offer
S1 10 @ $1.00	20 @ $1.20
S2 10 @ $1.00	20 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

The derived net market is $2.00 to $2.40, and the $2.25 price is within that market, so the System generates and displays leg orders to buy 10 S1 @ $1.05 and 10 S2 at $1.05, which improves the Exchange's best bid for both S1 and S2:

CBOE Bid	CBOE Offer
S1 10 @ $1.05 (leg order)	20 @ $1.20
S2 10 @ $1.05 (leg order)	20 @ $1.20

If a market order to sell 10 S1 is received, that order will execute against the leg order to buy 10 S1 at $1.05, and the leg of the complex order to buy 10 S2 will execute against the resting offer to sell 10 S2 at $1.20. The leg order to buy 10 S2 will then be cancelled upon execution of the complex order. As a result, the net price of $2.25 is achieved for the complex order (buy 10 S1 @ $1.05 + buy 10 S2 @ $1.20 = $2.25 net).[18]

Following the execution of the complex order, the Exchange BBO is:

[12] This smaller order will remain in the EBook as a nondisplayed leg order that will be eligible for execution.

[13] If a market order to buy 20 S2 is received, that order will execute against the leg order to sell 20 S2 at $1.15 (the larger-sized leg order), and the leg of Order 2 to buy 20 S3 will execute against the resting offer to sell 20 S3 at $1.20. The leg order to buy 20 S3 at $1.05 will then be cancelled upon execution of Order 2. As a result, the net price of −$0.05 is achieved for Order 2 (buy S3 @ $1.20 + sell S2 @ $1.15 = −$0.05 net). After this execution, the System may redisplay the leg order for Order 1 to sell 10 S2 at $1.15, which was previously removed from display. See the discussion below regarding the execution of leg orders.

[14] If multiple resting complex orders in the same strategy generate leg orders for the same price on the same side of a series, then the sizes of the leg orders will be aggregated. The System will treat these aggregated orders as a single leg order (until execution, at which time they would execute in accordance with applicable Exchange priority and execution rules set forth in Rule 6.53C(c)(ii)). Thus, if a leg order is generated and is smaller than the aggregated size of multiple leg orders but is larger than the individual sizes of those leg orders, the aggregated leg orders would be displayed.

[15] The Exchange will not limit the generation of leg orders on the basis of the entering participant or the participant category of the order (*i.e.*, professional, professional customer, or public customer).

[16] Pursuant to Rule 6.53C(c)(ii)(2), allocation of a complex order within the COB will be pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs.

[17] As discussed above, operational difficulties would result if overlapping legs of complex orders executed against each other. To prevent this, prior to execution of a leg order and the represented complex order, any leg orders on the opposite side of the legs of the executing complex order will be cancelled. As discussed above, the price of a leg order is based on the best-priced non-leg order in the other series, which ensures that the executing complex order will achieve net price execution in the event there is another leg order on the opposite side in that series prior to execution. The other legs of the complex order will still execute at the best available price of individual orders or quotes. The Exchange notes that this provision will also allow resting individual orders or quotes to execute against complex order legs, rather than allowing those legs to execute against leg orders. After the complex order executes, new leg orders may be generated to "replace" the cancelled leg orders for the still-resting complex orders, assuming the conditions for generation in the rule have been met. In the event a leg order is generated to "replace" a previously cancelled leg order, it will have the same priority as the "original" leg order with respect to any other leg orders at the same price representing complex orders in the same strategy, as the priority of those leg orders (which would be aggregated) is based on the priority of the complex orders they represent (which remains unchanged regardless of cancellations of leg orders).

[18] If a market order to sell 10 S2 is received, that order will execute against the leg order to buy 10 S2 at $1.05, and the leg of the complex order to buy 10 S1 will execute against the resting offer to sell 10 S1 at $1.20. The leg order to buy 10 S1 will then be cancelled. As a result, the net price of $2.25 is achieved for the complex order (buy S1 @ $1.20 + buy S2 @ $1.05 = $2.25 net).

	CBOE Bid	CBOE Offer
S1	10 @ $1.00	20 @ $1.20
S2	10 @ $1.00	10 @ $1.20

In addition to enabling the execution of the complex order at a net price of $2.25, the leg order enhanced execution for orders in the EBook, as (1) the incoming market order to sell S1 received a better price ($1.05 instead of $1.00) and (2) the complex order provided liquidity to execute resting interest to sell 10 S2 at $1.20.

If execution of the complex order is partial, the System may generate and display new leg orders for the remaining size of the complex order, assuming all other conditions for generation and display of leg orders have been met. For example:

Example F A complex order to buy 50 S1 and to buy 50 S2 at a net price of $2.25 (buy S1/S2 50 @ $2.25) is entered into the COB, and there is no off-setting complex order to sell. The complex order cannot leg into the EBook because the Exchange BBO net price available for the complex order on the EBook is $2.40 as follows:

	CBOE Bid	CBOE Offer
S1	40 @ $1.05	60 @ $1.20
S2	20 @ $1.05	80 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

The derived net market is $2.10 to $2.40, and the $2.25 price is within that market, so the System generates and displays leg orders to buy 50 S1 @ $1.05 and 50 S2 at $1.05, which increases the size of the Exchange's best bid for both S1 and S2:

	CBOE Bid	CBOE Offer
S1	90 @ $1.05 (50 leg order)	60 @ $1.20
S2	70 @ $1.05 (50 leg order)	80 @ $1.20

If a market order to sell 30 S1 is received, it will execute against the orders or quotes resting at $1.05, other than the leg order at $1.05, pursuant to the Exchange's priority and execution rules,[19] and the size of the bid for S1 will be reduced:

	CBOE Bid	CBOE Offer
S1	60 @ $1.05 (50 leg order)	60 @ $1.20
S2	70 @ $1.05 (50 leg order)	80 @ $1.20

If a market order to sell 50 S1 were then received, it will first execute the remaining 10 S1 from the orders or quotes resting at $1.05, other than the leg order, and then execute 40 S1 against the leg order to buy 40 S1 at $1.05. The leg of the complex order to buy S2 will execute against the resting offer to sell 40 S2 at $1.20. As a result, the net price of $2.25 is achieved for a partial execution of the complex order (buy 40 S1 @ $1.05 + buy 40 S2 @ $1.20 = $2.25 net), and the leg order to buy 50 S2 will be cancelled upon execution of the complex order. New leg orders for the remaining 10 S1 and 10 S2 of the complex order will be generated and displayed at $1.05 (assuming all other criteria are met).

Following the execution of the complex order and generation and display of the new leg orders for the remaining size of the complex order, the Exchange BBO is:

	CBOE Bid	CBOE Offer
S1	10 @ $1.05 (leg order)	60 @ $1.20
S2	30 @ $1.05 (10 leg order)	40 @ $1.20

These provisions, again, will not affect the existing priority, or execution opportunities, currently provided to market participants in the regular market in any way, and incoming orders will still execute at the best available prices.

An all-or-none order will only execute against a leg order if it is at least the same size as the all-or-none order and there are no non-leg orders at the Exchange BBO. If there are a leg order and a non-leg order(s) at the BBO, then the all-or-none order will either (a) execute against the non-leg order(s) if it is at least the same size as the all-or-none order or (b) the leg order will be cancelled and the all-or-none order will be handled as otherwise set forth in the Rules (no new leg orders will be generated until the all-or-none order is executed or cancelled). This provision will ensure that an all-or-none order will execute in full per its terms. Additionally, this provision will ensure that a leg order will not trade before a non-leg order (which may otherwise occur if a non-leg order at the BBO was smaller than the all-or-none order, but the leg order at the BBO was of sufficient size).[20]

The System will remove from display in the EBook a leg order if the price of the leg order is no longer at the Exchange BBO or if a complex order in a different strategy generates a larger-sized leg order at the same price (as discussed above, if complex orders in different strategies generate leg orders for the same price, the largest size will be displayed).[21] The System will cancel a leg order if: (1) Execution at the price of the leg order would no longer achieve net price of the complex order when the other leg(s) executes against the best-priced orders or quotes (other than leg orders); (2) the complex order executes in full or in part against another complex order; or (3) the complex order is cancelled or modified (for example, the price changes).[22] For example:

Example G A complex order to buy 20 S1 and to buy 20 S2 at a net price of $2.25 (buy S1/S2 20 @ $2.25) is entered into the COB, and there is no off-setting complex order to sell. The complex order cannot leg into the EBook because the Exchange BBO net price available for the complex order on the EBook is $2.40 as follows:

	CBOE Bid	CBOE Offer
S1	10 @ $1.05	20 @ $1.20
S2	10 @ $1.05	50 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

The derived net market is $2.10 to $2.40, and the $2.25 price is within that market, so the System generates and displays leg orders to buy 20 S1 @ $1.05 and 20 S2 at $1.05, which increases the size of the Exchange's best bid for both S1 and S2:

	CBOE Bid	CBOE Offer
S1	30 @ $1.05 (20 leg order)	20 @ $1.20
S2	30 @ $1.05 (20 leg order)	50 @ $1.20

If a limit order to buy 10 S1 @ $1.10 is received, the System will remove from display the leg order to buy 20 S1 at $1.05 because it is no longer at the Exchange best bid:[23]

	CBOE Bid	CBOE Offer
S1	10 @ $1.10	20 @ $1.20
S2	30 @ $1.05 (20 leg order)	50 @ $1.20

If a market order to buy 20 S1 is received, the Exchange best offer will move above $1.20, and the System will cancel the leg order to buy S2 at $1.05 because the net price of $2.25 can no longer be achieved:

[19] *See* Rules 6.45A and 6.45B.

[20] This is consistent with other Exchange rules regarding all-or-none orders. *See, e.g.*, Rule 6.44, Interpretation and Policy .02, which states, among other things, that any number of transactions of any size may appear on the tape at the same price as the all-or-none order without the all-or-none order participating.

[21] Any leg order that is removed from display in the EBook will be nondisplayed (but still eligible for execution), and the System may later redisplay the leg order if the conditions for display set forth in the rule are met.

[22] The System may also cancel a leg order at the times set forth in proposed subparagraph (iv)(2) of Rule 6.53C(c). After cancellation of a leg order, the System may later generate a new leg order for a complex order that is still resting in the COB if the conditions for generation set forth in the rule are met.

[23] This removed leg order will remain in the EBook as a nondisplayed leg order that will be eligible for execution.

	CBOE Bid	CBOE Offer
S1	10 @ $1.10	10 @ $1.25
S2	30 @ $1.05	50 @ $1.20

(buy S1 @ $1.25 + buy S2 @ $1.05 = $2.30 net)

The following example further demonstrates how leg orders function when there are leg orders representing complex orders in different strategies:

Example H Three complex orders enter the COB in the following order: Order 1 to buy 10 S1 and to buy 10 S2 at a net price of $2.10 (buy S1/S2 10 @ $2.10), Order 2 to buy 10 S2 and to buy 10 S3 at a net price of $2.10 (buy S2/S3 10 @ $2.10), and Order 3 to buy 10 S1 and to buy 10 S3 at a net price of $2.10 (buy S1/S3 10 @ $2.10. There are no off-setting complex orders to sell with respect to any of the three orders. The complex orders cannot leg into the EBook because the Exchange BBO net prices available on the EBook for Order 1 is $2.20, for Order 2 is $2.20, and for Order 3 is $2.40 as follows:

	CBOE Bid	CBOE Offer
S1	10 @ $1.00	10 @ $1.20
S2	10 @ $0.80	10 @ $1.00
S3	10 @ $1.00	10 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.00 = $2.20 net)
(buy S2 @ $1.00 + buy S3 @ $1.20 = $2.20 net)
(buy S1 @ $1.20 + buy S3 @ $1.20 = $2.40 net)

The derived net market is $1.80 to $2.20 for Order 1, $1.80 to $2.20 for Order 2, and $2.00 to $2.40 for Order 3, and the net price of each complex order is within the applicable derived net market, so the System generates leg orders to buy 10 S1 @ $1.10 and 10 S2 at $0.90 for Order 1, leg orders to buy 10 S2 @ $0.90 and 10 S3 @ $1.10 for Order 2, and to buy 10 S1 @ $0.90 and 10 S3 @ $0.90 for Order 3. The System will display the leg order to buy 10 S1 @ $1.10 for Order 1, which improves the Exchange's best bid for S1, the leg order to buy 10 S2 @ $0.90 for Order 1, which improves the Exchange's best bid for S2, and the leg order to buy 10 S3 @ $1.10, which improves the Exchange's best bid for S3:

	CBOE Bid	CBOE Offer
S1	10 @ $1.10 (Order 1 leg order)	10 @ $1.20
S2	10 @ $0.90 (Order 1 leg order)	10 @ $1.00
S3	10 @ $1.10 (Order 2 leg order)	10 @ $1.20

The leg order to buy 10 S1 @ $0.90 for Order 3 is nondisplayed because it is worse than the Exchange's best bid; the leg order to buy 10 S2 @ $0.90 for Order 2 is nondisplayed because it is at the same price and size as the Order 1 leg order, which was generated first; and the leg order to buy 10 S3 @ $0.90 for Order 3 is nondisplayed because it is worse than the Exchange's best bid.[24]

If a market order to sell 5 S2 is received, it will execute against 5 of the Order 1 leg order to buy @ $0.90, and the leg of Order 1 to buy S1 will execute against the resting offer to sell 5 S1 @ $1.20. As a result, the net price of $2.10 is achieved for a partial execution of Order 1 (buy 5 S1 @ $1.20 + buy 5 S2 @ $0.90 = $2.10 net), and the Order 1 leg order to buy 10 S1 @ $1.10 is cancelled upon partial execution of Order 1. Following the partial execution, Order 1 is still at the top of the COB, so the System generates new leg orders to buy 5 S1 @ $1.10, which is displayed because it is at the Exchange best bid for S1, and to buy 5 S2 at $0.90, which is nondisplayed because the S2 leg order for Order 2 is larger (the leg orders for Order 3 remain nondisplayed because they are still at worse prices than the Exchange's best bids in S1 and S3):

	CBOE Bid	CBOE Offer
S1	5 @ $1.10 (Order 1 leg order)	5 @ $1.20
S2	10 @ $0.90 (Order 2 leg order)	10 @ $1.00
S3	10 @ $1.10 (Order 2 leg order)	10 @ $1.20

As discussed above, to prevent leg orders from executing against each other and complex orders with overlapping legs from executing against each other, prior to execution of a leg order and the related complex order, any leg orders on the opposite side of the legs of the executing complex order will be cancelled prior to execution of that complex order. Thus, a leg order is firm with respect to the complex order that it represents in the individual leg series, as overlapping complex orders are viewed separately under the Rules.[25]

The proposed rule change provides for how the adoption of leg orders will interact with the various auction functions available on the Exchange. First, the proposed rule change amends Rule 6.53C, Interpretation and Policy .04 to provide that if a leg order has been generated for a complex order resting in the COB, the complex order will not be eligible for the automated complex order request for responses ("RFR") auction process ("COA")[26] pursuant to Interpretation and Policy .04. The Exchange believes that the representation of complex orders in the leg markets through the existence of leg orders eliminates the need to have those complex orders re-enter a COA, and the Exchange further believes that leg orders will more effectively create opportunities for execution of complex orders resting in the COB than having those complex orders re-COA.

The proposed rule change further describes whether the System will generate a leg order if a simple order auction (such as a Hybrid Agency Liaison (HAL) auction per Rule 6.14A or Automated Improvement Mechanism (AIM) auction per Rule 6.74A) is occurring at the time the leg order would otherwise be generated. If there is a simple order auction occurring in a leg series at the time that a leg order in that series would otherwise be generated pursuant to Rule 6.53C(c)(iv):

- If the leg order would be on the same-side of the market as the auctioned order with a price worse than the initial auction price of the auctioned order, then the leg order will be generated and the auction will continue.
- If the leg order would be on the same side of the market as the auctioned order with a price equal to or better than the initial auction price of the auctioned order, then no leg order would be generated and the auction will continue. A leg order may later be generated after execution of the auctioned order.
- If the leg order would be on the opposite side of the market as the auctioned order with a price that locks or crosses the initial auction price of the auctioned order, then no leg order would be generated and the auction will continue. A leg order may later be generated after execution of the auctioned order.
- If the leg order would be on the opposite side of the market as the auctioned order with a price that does not lock or cross the initial auction price of the auctioned order, then the leg order will be generated and the auction will continue.

The Exchange proposes these provisions to ensure that leg orders will not interact with simple order auctions in order to avoid the system complexities that would otherwise result from combining the execution of complex orders with the already complex auction processes. The auction rules describe certain instances in which the entry of an unrelated limit order while an auction is ongoing may terminate the auction.[27] For example, if

[24] These nondisplayed leg orders will remain in the EBook and will be eligible for execution.

[25] Leg orders are thus not firm with respect to other complex orders and will not trade against legs of other complex orders, which is consistent with the existing complex order execution provisions in Rule 6.53C that do not allow execution of overlapping legs of complex orders.

[26] Rule 6.53C(d) provides that prior to routing to the COB or once on PAR, eligible complex orders may initiate a COA, which is an automated auction process to provide complex orders with opportunities for price improvement.

[27] *See* Rules 6.13A(d) (Simple Auction Liaison ("SAL")), 6.14A(d) (HAL), 6.74A(b)(2) and (3) (AIM), and 6.74B(b)(2) (Solicitation Auction Mechanism ("SAM")).

the Exchange receives an unrelated order on the opposite side of the auctioned order that could trade against the auctioned order at the prevailing NBBO price or better during a HAL auction (such a marketable unrelated order would thus lock or cross the price of the auctioned order, which is the NBBO), the orders would trade and the auction would generally terminate.[28] Additionally, during a HAL auction, if the Exchange receives an unrelated order on the same side of the market as the auctioned order that is priced equal to or better than the auctioned order, then the auction would terminate.[29] Similarly, during an AIM or SAM auction, if the Exchange receives an unrelated limit order on the opposite side of the auctioned order that improves any auction response (because auction responses would at least lock or cross the price of the auctioned order, such limit order would also thus lock or cross the price of the auctioned order), then the auction will terminate.[30] Additionally, during an AIM or SAM auction, if the Exchange receives an unrelated order that is marketable against the Exchange's disseminated quote (if that quote is the NBBO) or the auction responses, and thus on the same side of the market as the auctioned order (because auction responses would match or improve the auctioned price, the price of such unrelated order would thus be equal to or better than the auctioned price), then the auction would terminate.[31]

The Exchange does not want the generation of leg orders to terminate auctions like other unrelated orders do [sic] due to the system complexities that would otherwise result. Thus, market participants will continue to have the same opportunities for execution and potential price improvement through simple auctions as they would if there were no leg orders present. Proposed Interpretation and Policy .07(b) and (c) cover the circumstances described in the auction rules under which the generation of leg orders may terminate an auction under the rules and provide that leg orders will not be generated under these circumstances. So that the proposed rule is complete, proposed Interpretation and Policy .07(a) and (d) cover the circumstances under which the generation of leg orders would not terminate an auction and provide that leg orders will be generated under these circumstances.

The Exchange would also like to note that if a leg order is displayed in a series at the time an auction order enters the System, and the leg order is at the same price as the starting point of the auction and on the opposite side of the auctioned order, then the leg order would not participate in the auction. Instead, the auctioned order would trade with other resting interest at that price and/or the contra order that stopped the auctioned order, as previously discussed, leg orders only trade after all other executable orders and quotes. The leg order, however, would continue to be displayed.

The Exchange notes that it maintains a rigorous capacity planning program that monitors system performance and projected capacity demands and that, as a general matter, the Exchange considers the potential system capacity impact of all new initiatives. The Exchange has analyzed the potential impact on system capacity that may result from the proposed rule change and has concluded that the Exchange has sufficient system capacity to handle the generation of leg orders without degrading the performance of its systems or reducing the number of complex order instruments it currently supports.

The Exchange also notes that the proposed rule change limits the generation of leg orders. As discussed above, the Exchange may allow leg orders to be generated on a class-by-class basis, and leg orders may not be generated for all complex orders resting on the COB. Ultimately, the Exchange believes that while generating leg orders requires additional System processes, it has the necessary systems capacity to implement leg orders as described in this proposed rule change. The Exchange will closely monitor the generation of leg orders and its effect on CBOE's systems, and will carefully manage and curtail the number of leg orders being generated, to ensure that they do not negatively impact system capacity and performance.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[32] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[33] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[34] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change furthers the objectives of the Act by increasing the interaction between complex orders on the COB and individual orders and quotes on the EBook, providing greater liquidity by providing increased opportunities for order execution, and improving execution prices compared to those otherwise available in the regular market. The Exchange believes that automatically generating leg orders, which will only be executed after all other executable interest at the same price (including nondisplayed interest) is executed in full, will provide additional execution opportunities for complex orders, without negatively impacting any investors in the regular market. In fact, the generation of leg orders may enhance execution quality for investors in the regular market by improving the price and/or size of the Exchange BBO and by providing additional execution opportunity for individual orders and quotes in the EBook. As the proposed rule change describes, a leg order will not be generated while a simple auction in the leg series is ongoing if the generation of the leg order due to its price would terminate the auction, and potentially trade with the auctioned order or auction responses. The Exchange believes it is appropriate to prevent the generation of leg orders from terminating simple auctions due to the system complexities that would otherwise result. Thus, market participants will continue to have the same opportunities for execution and potential price improvement as they

[28] Rule 6.14A(d)(i). The Exchange notes that it is not discussing the SAL auctions in this filing, because SAL is currently only active for Hybrid 3.0 classes, and the leg order functionality will not be enabled for Hybrid 3.0 classes. However, the principles described in this discussion regarding auctions apply in a similar manner to the SAL rule.

[29] Rule 6.14A(d)(ii).

[30] Rules 6.74A(b)(2)(C) and 6.74B(b)(2). Pursuant to such rules, the unrelated order would also execute against the auctioned order following the termination of the auction. *See* Rules 6.74A(b)(3)(D) and (E) and 6.74B(b)(2).

[31] Rules 6.74A(b)(2)(D) and 6.74B(b)(2).

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] *Id.*

would if there were no leg orders present.

The Exchange believes leg orders will increase opportunities for execution of complex orders, potentially increase executions of interest on the EBook, and lead to tighter spreads and finder pricing on CBOE, which will benefit investors. Leg orders will provide investors with opportunities to trade at better prices than would otherwise be available—inside the otherwise existing BBO in a leg series. The Exchange believes that the opportunity for investors to receive executions inside the otherwise existing BBO could result in better executions for investors, thus making leg orders consistent with the Act.

The Exchange believes leg orders will provide market participants with another tool for adding trading interest on CBOE. Leg orders may serve to increase liquidity to the extent market participants find leg orders result in better executions. This may result in more aggressive trading interest in the overall CBOE market.

The Exchange also believes that the generation of leg orders is fully compliant with all regulatory requirements. In particular, leg orders are firm (with respect to the complex orders they represent) [35] and may be included in the Exchange BBO if they match or improve the otherwise existing BBO. When a leg order executes, the other legs of the complex order will execute against the best-priced orders or quotes (other than leg orders). A leg order will be removed from display in the EBook if it is no longer at the Exchange BBO or if a complex order in a different strategy generates a larger-sized leg order at the same price (consistent with the proposed rule regarding display of leg orders), and will be cancelled if the net price of the complex order can no longer be achieved, if the complex order executes, or if the complex order is cancelled or modified, as well as at times prior to execution of another leg order to prevent execution of leg orders against each other and overlapping legs of separate complex orders against each other. Additionally, to assure compliance with the options linkage plan, a leg order will not be generated if it would lock or cross another market.

The Exchange believes having nondisplayed leg orders available for execution will increase the execution opportunities for more complex orders and will result in better-priced executions for individual orders and quotes, which will benefit investors. The presence of nondisplayed leg orders is similar to current complex order functionality, in that complex orders are already eligible to leg into the regular market and trade with simple orders, even though this complex order interest is not visible in the regular market.

The generation of leg orders is also limited in scope, as they may be generated only for legs of noncontingent complex orders with a ratio that is or can be reduced to one for complex orders that are priced within the derived net market. Additionally, the Exchange may enable leg orders on a class-by-class basis. The Exchange believes it has the necessary systems capacity to implement leg orders as described in this proposed rule change. The proposed rule change prevents the execution of leg orders against each other, and the execution of overlapping legs of complex order against each other, in order to prevent operational difficulties related to these executions. This is consistent with current Exchange rules regarding the execution of complex orders, and the Exchange believes that eliminating unnecessary operational difficulties will protect investors. The Exchange does not believe that the number of leg orders generated will become unmanageable. Finally, pursuant to the proposed rule change, the Exchange will closely manage and curtail the generation of leg orders to assure that they do not negatively impact system capacity and performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The adoption of leg orders does not impose any obligations on any market participants—the System will automatically generate and handle leg orders. Leg orders will be available to all market participants and for all complex orders in classes designated by the Exchange that satisfy the requirements set forth in the rules (even if a complex order does not generate leg orders because, for example, it is priced outside of the derived net market, leg orders may later be generated for that complex order if the market changes). Accordingly, all complex orders in classes in which the Exchange has enabled leg order functionality will be treated in the same manner. Further, all market participants have the option to send their complex orders to CBOE in order to take advantage of this order type.

Additionally, CBOE believes that the proposed rule change will relieve any burden on, and otherwise promote, competition among options exchanges. The Exchange believes the proposed rule change is procompetitive because it adds an order type that is substantially similar to functionality available at another options exchange.[36] The Exchange believes the proposed rule change could result in improved liquidity, finer pricing, better executions and increased competition within its complex order market to the benefit of the Exchange, its Trading Permit Holders, and market participants and thus allow the Exchange to better compete with other options exchanges for complex order flow. The Exchange also believes leg orders may facilitate additional executions and enhance execution quality for investors in the regular market by improving the price and/or size of the Exchange BBO and by providing additional execution opportunities for resting orders on the regular order book.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

[35] See *supra* notes 17 and 22 and related discussion regarding the circumstances under which leg orders may be cancelled to prevent execution of leg orders against each other and overlapping legs of separate complex orders against each other, and thus the extent to which leg orders are not firm, which will eliminate the operational difficulties that may otherwise result from those executions and the potential for those executions to interfere with the System and other trading.

[36] See International Securities Exchange, LLC ("ISE") Rules 715(k) and 722(b)(3); see *also* Securities Exchange Act Release No. 34–66234 (January 25, 2012), 77 FR 4852 (January 31, 2012) (SR–ISE–2011–082) (order approving rule to adopt legging orders).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–CBOE–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–CBOE–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 20549–1090 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–CBOE–2013–026, and should be submitted on or before May 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08972 Filed 4–16–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections and a new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 17, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

Promoting Readiness of Minors in Supplemental Security Income (SSI) (PROMISE) Evaluation—Preliminary Activities—0960–NEW

Background

The Promoting Readiness of Minors in SSI (PROMISE) program pursues positive outcomes for children with disabilities who receive Supplemental Security Income (SSI) and their families by reducing dependency on SSI. The Department of Education is awarding grants to States to improve the provision and coordination of services and support for children with disabilities who receive SSI and their families to achieve improved outcomes.

PROMISE Evaluation

With support from the Department of Labor and the Department of Health and Human Services, SSA will evaluate the PROMISE program. SSA will contract with an evaluator to conduct the evaluation. The assessment will require a process evaluation of the PROMISE projects, an impact analysis of important outcomes, and a cost-benefit analysis. This will be a multi-site project conducted in four States. The evaluation contractor and the local PROMISE projects will collect data on project participants.

Current Information Collection Request

SSA will pursue OMB approval for the actual project surveys and focus group interviews at a later date. In this information collection request, SSA is only seeking OMB clearance for two pre-project activities: (1) An initial intake interview (documented on a demonstration enrollment form), and (2) a consent form. Contractors will conduct both preliminary activities at local project assessment sites. The respondents are minors receiving SSI and their parents/guardians who will eventually participate in the PROMISE project.

Type of Request: This is a new information collection.

[37] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Demonstration Enrollment Form	8,000	Subjects will only fill this form out 1 time.	8,000	5	666
Consent Form	8,000	Subjects will only fill this form out 1 time.	8,000	2	266
Totals	8,000		16,000		932

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 17, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348. At the request of the claimants or their representative, SSA schedules evidentiary hearings at the reconsideration level for claimants of title II benefits or title XVI payments when we deny their claims for disability. When claimants or their representatives find they are unable to attend the scheduled hearing, they complete Form SSA–769 to request a change in time or place of the hearing. SSA uses the information as a basis for granting or denying requests for changes and for rescheduling disability hearings. Respondents are claimants or their representatives who wish to request a change in the time or place of their hearing.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–769	7,483	1	8	998

2. Beneficiary Interview and Auditor's Observations Form—0960–0630. SSA's Office of the Inspector General collects information through Form SSA–322, the Beneficiary Interview and Auditor's Observation form, to interview beneficiaries or their representative payees to determine if the payees are complying with their duties and responsibilities. SSA randomly selects SSI recipients and Social Security beneficiaries who have representative payees as respondents for this collection.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–322	1,000	1	15	250

Dated: April 12, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–08982 Filed 4–16–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8277]

60-Day Notice of Proposed Information Collection: Application for a U.S. Passport

ACTION: Notice of request for public comment.

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 June 17, 2013.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering "Public Notice 8277" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PPTFormsOfficer@state.gov*
- *Mail:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037
- *Fax:* (202) 663–2410
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents,

to PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for a U.S. Passport.
- *OMB Control Number:* 1405–0004.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/PMO/PC).
- *Form Number:* DS–11.
- *Respondents:* Individuals or households.
- *Estimated Number of Respondents:* 10,351,043 respondents per year.
- *Estimated Number of Responses:* 10,351,043 responses per year.
- *Average Time Per Response:* 1.41 hours, or 85 minutes per response.
- *Total Estimated Burden Time:* 14,594,971 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

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: The DS–11 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) in the exercise of authorities granted to the Secretary of State in 22 United States Code (U.S.C.) Section 211a et seq. and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. sections 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport are at 22 CFR 51.20 through 51.28.

Methodology: The information collected on the DS–11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport. Passport applicants can either download the DS–11 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed and executed at an acceptance facility or passport agency, and submitted with evidence of citizenship and identity.

Additional Information: In addition to general format changes, the following content changes have been made to the form:

- Page 1 Instructions—The following heading and section were moved from page 3 to page 1 and have been revised to now read:

LOST OR STOLEN—You are required to submit a Form DS–64, Statement Regarding a Lost or Stolen Passport, when your valid or potentially valid U.S. Passport book or U.S. Passport card cannot be submitted with this application.

IN MY POSSESSION—If your most recent passport book and/or passport card was issued less than 15 years ago and you were over the age of 16 at the time of issuance, you may be eligible to use Form DS–82 to renew your passport by mail. If your most recent passport is valid and needs additional pages, you can submit your passport, form DS–4085 and the current fee.

- Page 1 Instructions—In the "Special Requirements For Children" section, "If Only One Parent Appears * * *", the words "government-issued photo" were added between the words "parent's" and "identification".
- Page 2 Instructions—Under the heading "1. Proof of Citizenship", first section, the word "Country" in the last sentence has been replaced with the word "county".
- Page 3 Instructions—Under the heading "Protect Yourself Against Identity Theft! * * *", the statement, "For more information or to report * * *" has been revised to now read "For more information regarding reporting a lost or stolen U.S. passport book or passport card and the Form DS–64, your eligibility to submit a Form DS–82 or how to request additional visa pages, call NPIC at 1–877–487–2778 or visit *travel.state.gov*".
- Page 3 Instructions—At the bottom of the page, added a new heading and section: "Special Notice to U.S. Passport *Card* Applicants Only", regarding the 24 character name limit.
- Page 1 Form—In the photo box, the words "Attach a recent color photograph" have been replaced with "Attach a color photograph taken within the last six months".
- Page 2 Form—Line Item 14 "Travel Plans" has been renumbered as Line Item 18. Also, the words "Date of Trip" have been replaced with "Departure Date", and the words "Duration of Trip" have been replaced with "Return Date".
- Page 2 Form—Line Item 18 "Permanent Address" has been renumbered as Line Item 19.
- Page 2 Form, under the heading, "PLEASE DO NOT WRITE BELOW THIS LINE—FOR ISSUING OFFICE ONLY", the following changes have occurred:

The "checkbox" and words "Sole Parent" have been deleted.

Beside "Report of Birth", the numbers "240", "545", and "1350" have been deleted.

The "DS–60" checkbox has been replaced with "IRL".

The Department estimates that these changes will not result in an increase in the current burden time of 85 minutes.

Dated: March 19, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–09039 Filed 4–16–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8276]

60-Day Notice of Proposed Information Collection: Application for Additional Visa Pages or Miscellaneous Passport Services

ACTION: Notice of request for public comment.

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 *June 17, 2013.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Public Notice 8276" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PPTFormsOfficer@state.gov.*
- *Mail:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.
- *Fax:* (202) 663–2410.
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037 who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for Additional Visa Pages or Miscellaneous Passport Services.
- *OMB Control Number:* 1405–0159.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/PMO/PC).
- *Form Number:* DS–4085.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 68,559 respondents per year.
- *Estimated Number of Responses:* 68,559 responses per year.
- *Average Time Per Response:* 20 minutes, or 0.3333 hour.
- *Total Estimated Burden Time:* 22,851 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

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

Under 22 United States Code (U.S.C.) Section 211a et seq. and Executive Order 11295 (August 5, 1966), the Secretary of State has authority to issue U.S. passports to U.S. citizens and non-citizen nationals. When the bearer of a valid U.S. passport applies for the addition of visa pages to that passport, the Department must confirm the applicant's identity and eligibility to receive passport services before the Department can return the passport to the applicant with additional visa pages. Form DS–4085 requests information that is necessary to determine whether the applicant is eligible to receive passport services in accordance with the requirements of Title III of the Immigration and Nationality Act (INA) (U.S.C. sections 1402–1504), the regulations at 22 CFR parts 50 and 51, and other applicable authorities.

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for Additional Visa Pages or Miscellaneous Passport Services. Passport applicants can either download the DS–4085 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's valid U.S. passport.

Additional Information

In addition to general format changes, the following content changes have been made to the form.

- Page 1 Form—Under Line Item 15, Travel Plans: The words "Date of Trip" have been replaced with "Departure Date" and the words "Duration of Trip" have been replaced with "Return Date".
- Page 1 Form—In the first signature block, "Applicant's Signature—age 16 and older", the word "Legal" has been added before "Signature".
- Page 1 Form—The second signature block "Parent's/Legal Guardian's Signature (if identifying minor)" has been revised to now read "Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)".

The Department estimates that these changes will not result in an increase in the current burden time of 20 minutes.

Dated: March 19, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc: 2013–09038 Filed 4–16–13; 8:45 am]

BILLING CODE 4710–06–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at March 21, 2013, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on March 21, 2013, in Harrisburg, Pennsylvania, the Commission took the following actions: (1) Approved, denied, or tabled the applications of certain water resources projects; (2) rescinded approvals for three projects and tabled a rescission for one project; (3) authorized the Executive Director to modify or extend timelines established by docket conditions, where warranted and with prudent administrative discretion; and (4) took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: March 21, 2013.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. 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. See also Commission Web site at *www.srbc.net*.

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Presented the Commission's Maurice K. Goddard Award for Excellence by a Water Management Professional to Mr. Jim Brozena, recently retired Executive Director of the Luzerne County Flood Protection Authority in Wilkes-Barre, Pa.; (2) heard a presentation from SRBC staff member Ben Pratt on the development of flood inundation mapping for the City of Harrisburg and surrounding communities; (3) revised the FY–2014 budget for the period July 1, 2013, to June 20, 2014; (4) approved an investment policy statement for the Commission's Retiree Benefit Trust Account; (5) ratified a joint funding agreement relating to stream gaging, and an amendment to the Commission's EPA Section 106 Clean Water Act grant; (6) authorized final execution of a Feasibility Cost Sharing Agreement (FCSA) for Phase II of the Susquehanna River Basin Ecological Flow Management Study; and (7) authorized the Executive Director to execute a Stipulation of Settlement and Withdrawal of Appeal regarding the withdrawal of an administrative appeal by Anadarko E&P Company LP.

Rescission of Project Approvals

The Commission rescinded approvals for the following projects:

1. Project Sponsor and Facility: Clark Trucking, LLC Northeast Division (Lycoming Creek), Lewis Township, Lycoming County, Pa. (Docket No. 20111207).

2. Project Sponsor and Facility: Southwestern Energy Production Company (Tuscarora Creek), Tuscarora Township, Bradford County, Pa. (Docket No. 20110313).

3. Project Sponsor and Facility: EQT Production Company (Frano Freshwater Impoundment), Washington Township, Jefferson County, Pa. (Docket No. 20110913).

Rescission of Project Approval Tabled

The Commission tabled a rescission for the following project:

1. Project Sponsor: AES Westover, LLC. Project Facility: AES Westover Generating Station, Town of Union and Village of Johnson City, Broome County, N.Y. (Docket No. 20070902).

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River), Nippenose Township, Lycoming County, Pa. Renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20090307).

2. Project Sponsor and Facility: Black Bear Waters, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Modification to increase surface water withdrawal by an additional 0.500 mgd (peak day), for a total of 0.900 mgd (peak day) (Docket No. 20120303).

3. Project Sponsor and Facility: Caernarvon Township Authority, Caernarvon Township, Berks County, Pa. Renewal of groundwater withdrawal of up to 0.080 mgd (30-day average) from Well 6 (Docket No. 19820912).

4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20080923).

5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Wysox Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20080914).

6. Project Sponsor and Facility: Citrus Energy (Susquehanna River), Washington Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20081205).

7. Project Sponsor and Facility: Hydro Recovery-Antrim LP, Duncan Township, Tioga County, Pa. Consumptive water use of up to 1.872 mgd (peak day).

8. Project Sponsor and Facility: Mark Manglaviti & Scott Kresge (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd (peak day).

9. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Modification to increase surface water withdrawal by an additional 0.499 mgd (peak day), for a total of 1.498 mgd (peak day) (Docket No. 20100309).

10. Project Sponsor: Perdue Grain and Oilseed, LLC. Project Facility: Perdue Soybean Crush Plant, Conoy Township, Lancaster County, Pa. Consumptive water use of up to 0.300 mgd (peak day) and groundwater withdrawal of up to 0.028 mgd (30-day average) from Well AP–2.

11. Project Sponsor: R.R. Donnelley & Sons Company. Project Facility: West Plant, City of Lancaster, Lancaster County, Pa. Modification to increase consumptive water use by an additional 0.019 mgd (peak day), for a total of 0.099 mgd (peak day) (Docket No. 19910702).

12. Project Sponsor and Facility: Talisman Energy USA Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20090327).

13. Project Sponsor and Facility: Talisman Energy USA Inc. (Towanda Creek—Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20081210).

14. Project Sponsor and Facility: Titanium Metals Corporation (TIMET), Caernarvon Township, Berks County, Pa. Modification to increase consumptive water use by an additional 0.044 mgd (peak day), for a total of 0.177 mgd (peak day) (Docket No. 20080616).

15. Project Sponsor and Facility: Ultra Resources, Inc. (Cowanesque River), Deerfield Township, Tioga County, Pa. Renewal of surface water withdrawal of up to 0.217 mgd (peak day) (Docket No. 20081229).

16. Project Sponsor and Facility: Ultra Resources, Inc. (Pine Creek), Pike Township, Potter County, Pa. Renewal of surface water withdrawal of up to 0.936 mgd (peak day) (Docket No. 20090332).

Project Applications Denied

The Commission denied the following application:

1. Project Sponsor and Facility: Galeton Borough Water Authority, Galeton Borough, Potter County, Pa. Application for groundwater withdrawal of up to 0.288 mgd (30-day average) from the Germania Street Well.

Project Applications Tabled

The Commission tabled the following project applications:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.440 mgd (peak day) (Docket No. 20080906).

2. Project Sponsor and Facility: Equipment Transport, LLC (Pine Creek), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.467 mgd (peak day).

3. Project Sponsor and Facility: Houtzdale Municipal Authority (Beccaria Springs), Gulich Township, Clearfield County, Pa. Application for surface water withdrawal of up to 5.000 mgd (peak day).

4. Project Sponsor and Facility: WPX Energy Appalachia, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20090303).

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: April 9, 2013.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2013–08991 Filed 4–16–13; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Lease Airport Property for Non-Aeronautical Purpose at the Bradford Regional Airport, Lewis Run, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of request to lease airport property for non-aeronautical purpose.

SUMMARY: The FAA proposes to rule and invite public comment on the lease of land for non-aeronautical purpose at the Bradford Regional Airport, Lewis Run, Pennsylvania under the provision 49 U.P.C. 47125(a).

DATES: Comments must be received on or before May 17, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the following address:

Thomas Frungillo, Airport Director, Bradford Regional Airport, 212 Airport Drive, Suite E, Lewis Run, Pennsylvania 16738.

and at the FAA Harrisburg Airports District Office:

Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011.

FOR FURTHER INFORMATION CONTACT: Charles Trice, Civil Engineer, Harrisburg Airports District Office, location listed above.

The request to lease property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to lease airport property for non-aeronautical purpose at the Bradford Regional Airport under the provisions of Section 47125(a) of Title 49 U.S.C. On April 9, 2013, the FAA determined that the request to lease airport property for non-aeronautical purpose at the Bradford Regional Airport (BFD), Pennsylvania, submitted by the Bradford Regional Airport Authority (Authority), met the procedural requirements.

The following is a brief overview of the request:

The Authority requests the lease of approximately 0.50 acres of non-aeronautical airport property to the Lafayette Township Sewer Authority (Sewer Authority), Lewis Run, Pennsylvania. The land was acquired without Federal participation. The undeveloped property is located in Lafayette Township, east of Roberts Road and immediately adjacent to and north of Pennsylvania State Route 59. The Sewer Authority is proposing to use the property to construct an extension to the existing Lafayette Township underground sewer system, and connect the extension to an existing sewer line on airport property. As shown on the Airport Layout Plan, the property does not serve an aeronautical purpose and is not needed for airport development. The sewer line will also not interfere with normal airport operations. There will be no proceeds from the lease of the property, however, the airport will receive equal if not greater intangible benefits including: the allocation of two (2) tap-in connections to the sewer line; and the allowance of two (2) Equivalent Dwelling Units, each of which apportion 400 gallons of sewage flow per day into the new system.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed lease. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, April 9, 2013.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2013–08953 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2013 0045]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before June 17, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Shashi Kumar, U.S. Merchant Marine Academy, Kings Point, NY 11024. Telephone: 516–726–5833; FAX: 516–773–5539, or Email: *kumars@usmma.edu.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: United States Merchant Marine Academy Alumni Survey.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0542.

Form Numbers: KP2–66–DK1, KP2–67–DK2, KP2–68–DK3, KP2–69–ENG1, KP2–70–ENG2, KP2–71–ENG3.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The United States Merchant Marine Academy is an accredited federal service academy that confers BS and MS degrees. The Academy is expected to assess its educational outcomes and report those findings to its Regional Accreditation authority in order to maintain the institution's degree granting status. Periodic survey of alumni cohorts and analysis of the data gathered is a routine higher education assessment practice in the United States.

Need and Use of the Information: The information gathered will be analyzed and used for program management and improvement.

Description of Respondents: Respondents are graduates of the U.S. Merchant Marine Academy.

Annual Responses: 500 responses.

Annual Burden: 125 hours.

Comments: Comments should refer to the docket number that appears at the

top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST)*, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov*.

Authority: 49 CFR 1.93.

Dated: April 11, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–09020 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28927; Notice 2]

Sidump'r Trailer Company, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition.

SUMMARY: Sidump'r Trailer Company, Inc. (Sidump'r) has determined that the rear impact guards on certain trailers that it manufactured between January 10, 2006 and April 13, 2007 do not comply with paragraph S5.1 of 49 CFR 571.224, Federal Motor Vehicle Safety Standard (FMVSS) No. 224, *Rear Impact Protection*. Sidump'r has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated April 20, 2007.

Pursuant to 49 U.S.C. 30118 (d) and 30120 (h) and the rule implementing those provisions at 49 CFR Part 556, Sidump'r has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of a petition was published, with a 30-day public comment period, on August 16, 2007, in the **Federal Register** (72 FR 46127). The National Highway Traffic Safety Administration (NHTSA) received no comments. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2007–28927."

For further information on this decision, contact Mr. Luis Figueroa, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5298, facsimile (202) 366–1002.

Trailers Involved: Affected are, approximately 416 model 223, 325 and 425 side dump bulk material hauling trailers manufactured by Sidump'r between January 10, 2006 and April 13, 2007.

Summary of Sidump'r's Analysis and Arguments: Sidump'r first became aware of the noncompliance of these trailers when Sidump'r received a customer inquiry on or about February 27, 2007 regarding the rear impact guards installed on the subject trailers. As a result of this inquiry, Sidump'r stated that it commenced a thorough engineering evaluation of the rear end of the subject trailers to determine whether they meet the requirements of FMVSS No. 224. Following this engineering evaluation and after consultation with its counsel, Sidump'r determined that the trailers do not comply with FMVSS No. 224.

Specifically, Sidump'r has determined that the location of those guards does not meet the requirements of paragraph S5.1.3 of FMVSS No. 224 because there is a "push block" located at the rear of the trailer chassis extending 23.62 inches (600 mm) to the rear of the rear impact guard. Sidump'r stated that it considered the "push blocks" to be the "rear extremities" of the subject trailers. Therefore, it concluded that the rearmost surface of the horizontal members of the rear impact guards are located 11.62 inches (295 mm) too far forward of the "rear extremity" of the trailers to conform with the requirements of paragraph S5.1.3.

Sidump'r also examined the possibility of the "push block" itself serving as the rear impact guard. It determined that the "push block" itself does not constitute a compliant rear impact guard as originally installed because it exceeds the maximum ground clearance of 22 inches (560 mm) allowed by paragraph S5.1.2 of FMVSS No. 224 by 1.5 inches (38 mm).

Sidump'r stated that it has corrected the problem that caused the noncompliance in the trailers they produced after April 20, 2007 by modifying the design of the trailers to incorporate an additional horizontal member mounted to the underside of the "push block" assembly.

Sidump'r also stated that it believes this noncompliance is inconsequential to motor vehicle safety and that no further corrective action is warranted due to the geometric characteristics of the trailers and the nature of their field usage. Specifically, Sidump'r makes the arguments that the overall level of safety of the subject trailers is equivalent to a compliant trailer because their "push block" is equipped with a guard-like structure that is comparable to a compliant rear impact guard based on dimensional considerations, and on a simulation of the guard performance [1] when subjected to the loads required under FMVSS No. 223. Sidump'r additionally supported its position that the overall level of safety of the noncompliant trailers is equivalent to comparable trailers by comparing them to road construction controlled horizontal discharge trailers and by citing several previous decisions where NHTSA granted temporary exemptions from compliance with FMVSS No. 224 as the result of petitions filed under 49 CFR Part 555 *Temporary Exemption From Motor Vehicle Safety and Bumper Standards* for noncompliances that it considers similar in consequence to those covered in this petition.

Discussion

Requirement Background

Paragraph S5.1.3 *Guard Rear Surface* of FMVSS No. 224 requires:

> At any height 560 mm or more above the ground, the rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that

[1] Fred P. Smith, P.E., CSP, *Under Ride Report* (Alpine Engineering and Design, Inc., 2007). Supplemental petition data as submitted on May 14, 2008 to docket number NHTSA–2007–28927.

plane. Notwithstanding this requirement, the horizontal member may extend rearward of the plane, and guards with rounded corners may curve forward within 255 mm of the longitudinel vertical planes that are tangent to side extremities of the vehicle.

Paragraph S5.1.2 *Guard Height* of FMVSS No. 224 requires:

The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm at any point across the full width of the member. Notwithstanding this requirement, guards with rounded corners may curve upward within 255 mm of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

Sidump'r states that NHTSA has granted temporary exemptions based on: Infrequent highway use (69 FR 30989, 68 FR 7406 and 64 FR 49049), as well as small production quantities of vehicles (66 FR 22069, 63 FR 16857, 66 FR 20028 and 68 FR 7406). Those temporary exemptions were granted based on petitions submitted by vehicle manufacturers under 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards.* The statutory provision (49 U.S.C. 30113) that permits manufacturers to file petitions for a determination of exemption allows NHTSA to temporarily exempt manufacturers from specific FMVSS or bumper standard requirements. This provision applies to vehicles that have not yet been passed from the manufacturer to an owner, purchaser, or dealer, which is not the case for the subject trailers. Exemptions are available under this provision to permit vehicles to be built without complying with the standards based on certain specific criteria, including the petitioner's economic hardship. Under each of the criteria, the number of vehicles produced is a specific consideration. See, e.g., 49 CFR 555.6(a)(2)(v). The primary basis for NHTSA granting the temporary exemptions cited above was because the petitioners had met the burden of persuasion that compliance would have caused substantial economic hardship. Economic hardship is not a consideration in the evaluation process for inconsequentiality petitions. See 49 CFR Part 556. Accordingly, NHTSA does not find those decisions under Part 555 relevant here.

NHTSA agrees with Sidump'r's assessment that the rear impact guards on the subject trailers do not conform to the requirements of S5.1.3 of 49 CFR 571.224 because they are mounted too far forward of the rear extremities of the trailers.

Also, NHTSA agrees with Sidump'r's assessment that if a guard-like structure under the push block complies with the dimensional and performance requirements of FMVSS No. 223 and FMVSS No. 224 that the guard-like structure can serve as a rear impact guard.[2] Sidump'r used a finite element model analysis[3] to make a determination that the guard like structure would meet the performance requirements. Finite element modeling is a mature science and appropriately accurate for modeling the rudimentary force deflection characteristics of the guard-like structure under the push block. Based on that analysis, which Sidump'r submitted to the docket, the guard-like structure appears to meet the loads and energy absorption requirement under FMVSS No. 223.

In addition, based on the drawings provided by Sidump'r, NHTSA agrees that the guard-like structure meets all of FMVSS No. 224 configuration requirements except for guard height. While the maximum height requirement was exceeded by an inch and a half, NHTSA does not consider the difference significant in this particular instance. Using NCAP (2003–2009) test data OVSC selected compact and subcompact vehicles to determine the part of the frame structure that would most likely engage the bumper of a trailer and the height of that structure in the car. We determined that the area most likely to be engaged by the rear impact guard would be the area of the unibody where the front shock absorbers (struts) are attached. We also looked at the height of the engine block in those cars. The shock absorber height and the top of the engine block height are data points measured as part of the NCAP frontal impact evaluation of vehicles. The average shock absorber height was 838 mm (33 in) with a minimum of 566 mm (22 in) and a maximum of 972 mm (38 in). The average engine block height was 836 mm (33 in) with a minimum of 748 mm (29 in) and a maximum of 935 mm (37 in). In addition, we asked laboratory personnel to measure the depth of the engine block cover of several vehicles to be crash tested. The average depth was between 2 and 4 in. This depth was used to assess shearing of the engine block cover during a crash and possible impact. Based on this NCAP data we believe the car's frontal structure will effectively engage the rear impact guard during a crash incident and that Sidump'r's guard placement of 1 in (38 mm) over the required FMVSS No. 224 guard height is inconsequential to vehicle safety based on the particular facts in this case.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Sidump'r has met its burden of persuasion that the dimensional noncompliance described in Sidump'r's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Sidump'r's petition is granted, and the Sidump'r is exempted from the obligation of providing notification of, and a remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 3120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the trailers that Sidump'r no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Issued On: April 11, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–08958 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–59–P

[2] NHTSA's Chief Counsel interpretation letter to Jason Backs (CPS Trailers, May 28, 1998).

[3] Finite element analysis can be used as a basis for establishing certification to performance requirements of a standard.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0092; Notice 2]

Pilkington North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Inconsequential Noncompliance.

SUMMARY: Pilkington North America, Inc. (Pilkington) has determined that certain replacement rear windows manufactured for model year 2006 through 2009 Honda Civic two-door coupe passenger cars manufactured on April 16, 2008, do not fully comply with paragraphs S6.2 and S6.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205 *Glazing Materials.* Pilkington

has filed an appropriate report pursuant to 49 CFR Part 573, Defect and Noncompliance Responsibility and Reports, dated February 4, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Pilkington has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Pilkington's petition was published, with a 30-day public comment period, on May 20, 2009, in the **Federal Register** (74 FR 23775). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2009–0092."

For further information on this decision, contact Mr. Luis Figueroa, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5298, facsimile (202) 366–7002.

Equipment Involved: Affected are approximately 206 replacement rear windows (National Auto Glass Specifications (NAGS) part number FB22692GTY) for model year 2006 through 2009 Honda Civic two-door coupe passenger cars that were manufactured at Pilkington's Versailles, Kentucky plant on April 16, 2008.

Summary of Pilkington's Analysis and Arguments: Pilkington explains that the noncompliance for the 205 replacement rear windows exists due to Pilkington's failure to label the replacement rear windows with the marks required by section 7 of ANSI/SAE Z26.1–1996, the symbol "DOT," and its NHTSA assigned manufacturer code mark. As of the time of the petition,

Paragraphs S6.2 and S6.3 of FMVSS No. 205 require in pertinent part:

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1 1996, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that NHTSA assigns to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, * * *

S6.3 A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must (a) Mark that material in accordance with section 7 of ANSI/SAE Z26.1 1996; and (b) Certify that its product complies with this standard in accordance with 49 U.S.C. 30115.

Pilkington states that it believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The noncompliances relate solely to product monograms or markings and the noncompliant rear windows. Pilkington has tested a number of the parts in its possession and confirmed that they meet or exceed all other applicable performance requirements in FMVSS No. 205.

(2) NHTSA has previously granted other exemptions for noncompliant product labeling. In the past, the agency has recognized that the failure to meet labeling requirements often is inconsequential to motor vehicle safety.

(3) The information contained in the noncompliant product markings is not required in order for consumers to operate their vehicles safely.

Pilkington also stated its belief that the noncompliance will not interfere with any future tracing of the windows because Pilkington is only one of three manufacturers of rear windows for this particular Honda Civic, the other two being PGW (Pittsburgh Glass Works, formerly known as PPG) and Auto Temp, Inc. Given that the windows produced by the two other manufacturers will be properly marked, Pilkington's unlabeled rear windows should easily be identified and traced, if necessary, should any future defects or noncompliances be discovered.

Discussion: NHTSA has reviewed and accepts Pilkington's analyses that this noncompliance is inconsequential to motor vehicle safety. Pilkington has provided documentation that the windows do comply with all other safety performance requirements of the standard, except the labeling. This documentation is a surrogate for the certification labeling. NHTSA believes that the lack of labeling would not result in inadvertent replacement of the windows with the wrong glazing. Broken tempered glass can readily be identified as tempered glass, rather than plastic or laminated glass. Anyone who intended to replace the window with an identical tempered glass window would have to contact Pilkington for the proper part, since tempered glass windows cannot be easily manufactured by small field facilities. At that point, Pilkington, or their representative, would be able to provide the correct replacement window by use of their parts system.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Pilkington has met its burden of persuasion that the FMVSS No. 205 noncompliance in the noncompliant windows described in Pilkington's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Pilkington's petition is hereby granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 206 noncompliant windows that Pilkington no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

Issued On: April 11, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–08955 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0177; Notice 2]

OSRAM SYLVANIA Products, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY: OSRAM SYLVANIA Products, Inc., (OSRAM SYLVANIA), has determined that certain Type "H11 C" light sources that it manufactured fail to meet the requirements of paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* OSRAM SYLVANIA has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports,* dated August 24, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), OSRAM SYLVANIA has petitioned for an exemption from the

notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on January 25, 2011 in the **Federal Register** (76 FR 4420). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2010–0177."

For further information on this decision contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2334, facsimile (202) 366–7002.

Lamps Involved: OSRAM SYLVANIA estimates that approximately 28,412 "H11 C" light sources (bulbs) that it manufactured on June 23 and 24, 2010 are affected. All of the affected light sources were manufactured by OSRAM GmbH, Industriestrasse, Herbrechtingen, Germany.

Summary of Osram Sylvania's Analysis and Arguments: OSRAM SYLVANIA described the noncompliance as the mismarking of type "H11 C" lighting sources as type "H11."

In its petition OSRAM SYLVANIA argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The noncompliance in this case pertains solely to the failure of the subject light sources to meet the applicable marking requirements.

(2) "H11 C" light sources are designed to be completely interchangeable with the original "H11" light sources. When Philips Lighting B.V., submitted its modification to the "H11" light source specification that became the "H11 C" specification it certified that use of the "H11 C" light source will not create a noncompliance with any requirement of FMVSS No. 108 when used to replace an "H11" light source in a headlamp certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards. Subject "H11 C" light sources are designed to conform to Part 564 Docket NHTSA 98–3397–81 including the additional requirements under paragraph IX. In other words, inadvertent installation of a subject "H11 C" light source in place of an "H11" light source—or vice versa—will not create a noncompliance with any of the performance or interchangeability requirements of FMVSS No. 108 (including beam pattern photometrics) or otherwise present an increased risk to motor vehicle safety.

(3) "H11 C" light sources have the same filament position, dimension and tolerances, capsule and capsule support dimensions, bulb base interchangeability dimensions, seal specifications, and electrical specifications as the "H11." The only difference between the "H11" light source and the "H11 C" light source is that the "H11 C" provides for the light transmitting portion of the glass wall to incorporate a color controlling optical filter in order to improve visibility.[1]

(4) The agency has concluded in previous similar petitions that a noncompliance is inconsequential when mismarked light sources are otherwise fully compliant with the performance requirements of the standard.

Supported by the above stated reasons, OSRAM SYLVANIA believes that the described FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

Discussion: NHTSA has reviewed and accepts OSRAM SYLVANIA's analyses that this noncompliance is inconsequential to motor vehicle safety. The "H11 C" light source is a design that is completely interchangeable with the original "H11" light source. The "H11 C" light sources have the same filament position, dimension and tolerances, capsule and capsule support dimensions, bulb base interchangeability dimensions, seal specifications, and electrical specifications as the "H11." As such, NHTSA agrees that inadvertent installation of a mismarked "H11 C" light source in place of an "H11" light source—or vice versa—would not create a noncompliance with any of the headlamp performance requirements of FMVSS 108 or otherwise present an increased risk to motor vehicle safety.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that OSRAM SYLVANIA has met its burden of persuasion that the FMVSS No. 108 noncompliance in the lamps identified in OSRAM SYLVANIA's Noncompliance Information Report and is inconsequential to motor vehicle safety. Accordingly, OSRAM SYLVANIA's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the lamps that OSRAM SYLVANIA no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Issued On: April 11, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–08956 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–59–P

[1] Petition for "H11 C" Replaceable Light Sources Listing, Docket NHTSA 98–3397–81, November 1, 2007.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0031, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Volkswagen Transporter Multi-Purpose Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 1991 Volkswagen Transporter Multi-Purpose Passenger Vehicles that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (1991 Volkswagen Vanagon Multi-Purpose Passenger Vehicles) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 17, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How To Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Autostadt West of West Sacramento, California (Registered Importer 06–346) has petitioned NHTSA to decide whether nonconforming European Market 1991 Volkswagen Transporter Multi-Purpose Passenger Vehicles are eligible for importation into the United States. The vehicles which Autostadt West believes are substantially similar are 1991 Volkswagen Vanagon Multi-Purpose Passenger Vehicles that were manufactured for import into, and sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 1991 Volkswagen Transporter Multi-Purpose Passenger Vehicles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Autostadt West submitted information with its petition intended to demonstrate that non-U.S. certified 1991 Volkswagen Transporter Multi-Purpose Passenger Vehicles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 1991 Volkswagen Transporter Multi-Purpose Passenger Vehicles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 116 *Motor Vehicle Brake Fluids*, 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheels Disks, and Hub Caps*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the brake failure lamp lens, installation of a seat belt warning lamp, and recalibration of the speedometer/odometer to show speed in miles per hour and distance in miles.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the headlamps, side marker reflectors, turn signals, and stop lamps with U.S.-model components.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* installation of a U.S.-model micro switch in the steering lock assembly and a warning buzzer.

Standard No. 120 *Tire Selection for Vehicles Other Than Passenger Vehicles:* installation of an information placard containing manufacturer specifications for seating capacity and loading, and tire specifications.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model push button seat belt buckle with a warning contact switch; (b) installation of a seat belt warning light in the instrument cluster and associated wiring.

Standard No. 209 *Seat Belt Assemblies:* installation of a U.S.-model push button seat belt buckle with a warning contact switch.

The petitioner states that the VIN plate must also be installed on the left front corner of the dashboard to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: April 11, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–08957 Filed 4–16–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review: Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, "Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal." The OCC is also giving notice that the collection has been sent to OMB for review.

DATES: You should submit written comments by May 17, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0184, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0184, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division (1557–0184), Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.

OMB Control No.: 1557–0184.

Form Numbers: MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

Abstract: This information collection is required to satisfy the requirements of section 15B [1] and section 15C [2] of the Securities Exchange Act of 1934 which require, in part, any national bank or Federal savings association that acts as a government securities broker/dealer or a municipal securities dealer to file the appropriate form with the OCC to inform the agency of its broker/dealer activities. The OCC uses this information to determine which national banks and Federal savings associations are acting as government and municipal securities broker/dealers and to monitor entry into and exit from government and municipal securities broker/dealer activities by institutions and registered persons. The OCC also uses the information in planning national bank and Federal savings association examinations.

Type of Review: Renewal of a currently approved collection. The collection has not changed. The OCC asks only that OMB approve its revised estimates and extend its approval of the forms, revised only to add a clarification to the instructions.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 24.

Estimated Total Annual Responses: 920.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 867.25 burden hours.

Comments: The OCC issued a 60-day Federal Register notice on February 8, 2013. 78 FR 9452. No comments were received. Comments continue to be solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the information collection burden; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 11, 2013.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 2013–08951 Filed 4–16–13; 8:45 am]

BILLING CODE 4810–33–P

[1] 15 U.S.C. 78o–4.

[2] 15 U.S.C. 78o–5.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 22, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, May 22, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS topics.

Dated: April 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–08965 Filed 4–16–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 21, 2013.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–834–2201.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, May 21, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–834–2201, or write TAP Office, 100 Myrtle Avenue, 2 Metro Tech Center 7th Floor, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: April 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–08961 Filed 4–16–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 14, 2013.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, May 14, 2013, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Donna Powers at 1–888–912–1227 or (954) 423–7977, or write TAP Office, 1000 S Pine Island Road, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: April 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–08967 Filed 4–16–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 16, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, May 16, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin

Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–08960 Filed 4–16–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 8, 2013.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, May 8, 2013, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on installment agreement letters, and other issues related to written communications from the IRS.

Dated: April 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–08962 Filed 4–16–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 8, 2013.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, May 8, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–834–2203, or write TAP Office, 2 MetroTech Center, 100 Myrtle Avenue 7th Floor, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues. The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: April 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–08966 Filed 4–16–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,
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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 622 and 640

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 622 and 640

[Docket No. 120403251–3290–01]

RIN 0648–BB70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS hereby reorganizes the regulations implementing the fishery management plans (FMPs) for the following domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic: Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Caribbean queen conch, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf coral, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic spiny lobster, South Atlantic coral, South Atlantic snapper-grouper, South Atlantic shrimp, Atlantic dolphin and wahoo, South Atlantic golden crab, and South Atlantic pelagic sargassum. This interim final rule does not create any new rights or obligations; it reorganizes the existing regulatory requirements in the Code of Federal Regulations in a more logical format, *i.e.*, by fishery, so constituents and other interested parties can locate regulatory requirements applicable to them more easily. As a part of this reorganization, the implementing regulations for the Gulf and South Atlantic spiny lobster FMP have been consolidated into the same CFR part as all other regulations implementing FMPs in the Caribbean, Gulf of Mexico, and South Atlantic. This interim final rule also amends references to Paperwork Reduction Act (PRA) collection-of-information requirements to reflect the reorganization. Additionally, this interim final rule also amends references to incorporation by reference (IBR) to reflect updated regulatory references for the Florida Administrative Code. The intended effect of this interim final rule is to improve the organization of these regulations and make them easier for constituents and others to use.

DATES: This interim final rule is effective April 17, 2013, except:

1. The addition of §§ 622.39(a)(1)(vii) and 622.41(q), and the suspension of §§ 622.39(a)(1)(vi) and 622.41(b), are effective April 17, 2013 through May 15, 2013.

2. The addition of § 622.193(n)(3) and the suspension of § 622.193(n)(1) are effective April 17, 2013 through May 6, 2013.

3. The addition of § 622.39(c)(3) and the suspension of § 622.39(c)(1) are effective April 17, 2013 through September 23, 2013.

4. In § 622.2, the addition of definitions for "Off Alabama", "Off Louisiana", and "Off Mississippi" is effective April 17, 2013 through September 23, 2013.

Comments may be submitted through May 17, 2013. The IBR of certain publications listed in the rule is approved by the Director of the Federal Register as of April 17, 2013.

ADDRESSES: You may submit comments on this document, identified by "NOAA–NMFS–2012–0250", by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2012–0250*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Scott Sandorf, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments are specificaly sought on the structure and format of the reorganization, not the regulations currently in effect, which are outside the scope of this rulemaking. 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 publicly 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.

Electronic copies of documents supporting this interim final rule may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Scott Sandorf, telephone: 727–824–5305 or email: *Scott.Sandorf@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMPs approved under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for the domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic were last reorganized by NMFS in 1996 (61 FR 47821, September 11, 1996). Since then; Federal regulations for most fisheries have become more complex, and new fisheries have come under Federal management. This has significantly increased the length of the overall regulations and has made it more difficult for constituents and other users to locate applicable provisions of the regulations and to use the regulations most effectively. Currently, these regulations are organized by the categories of management measures applicable to all or most fisheries. For example, bag and possession limits for all of these fisheries are located under a single regulatory section heading, and the same is true for other categories of management measures, *e.g.*, minimum size limits, seasonal harvest limitations etc. In some cases, even after finding the appropriate regulatory section heading, a user must sort through numerous pages of regulatory text to find the regulatory provision specific to his or her fishery. This can be time consuming and confusing. In addition, some of the current regulatory headings are not sufficiently descriptive, *e.g.*, "Species specific limitations", or are rather broad, *e.g.*, "Limitations on traps or pots," NMFS has determined that the current regulations need to be reorganized to make them more user-friendly.

This interim final rule reorganizes the regulations for the 15 fisheries currently in part 622 and reorganizes and incorporates the part 640 regulations (Gulf and South Atlantic spiny lobster) into part 622. With this incorporation, all Magnuson-Stevens Act fisheries regulations applicable to the Caribbean, Gulf of Mexico, and South Atlantic are now located in a single location, part 622.

This interim final rule reorganizes the part 622 regulations by fishery rather than by category of management measures. Regulations specific to each fishery are contained in a separate subpart within part 622. This allows a constituent interested in the regulations for a specific fishery to go directly to a subpart of the regulations that contains all regulations specific to that fishery

without sorting through regulations applicable to the other 15 fisheries. NMFS has determined that this organization will be much more efficient for the majority of constituents as well as other users. It should be noted that, as is the case with the current regulations, some regulations that apply broadly to numerous fisheries, *e.g.,* purpose and scope, vessel identification, etc., are located in "General Provisions" within subpart A and, and where applicable, are in addition to the regulations contained in the specific fishery subparts. This was necessary to avoid unnecessary duplication.

To further improve the regulations, this interim final rule uses more section headings to guide the users, makes some section headings more descriptive, and eliminates some outdated regulatory text. In some cases, minor revisions to regulatory text have been made for consistency or to improve clarity. This interim final rule does not add any regulatory requirements.

Periodically NMFS reviews the regulations and removes outdated regulatory text that is no longer relevant. In this interim final rule, the following outdated text, referenced here as to its section locations within the prior version of part 622, has been removed: In § 622.4, text related to South Atlantic rock shrimp provisions that expired in 2010 and text related to Eastern Gulf reef fish bottom longline endorsement initial eligibility, issuance, and appeals that is no longer relevant; in § 622.19, text regarding South Atlantic rock shrimp limited access endorsements and special permit application provisions that expired in 2010; in § 622.20 outdated text related to initial Gulf grouper and tilefishes IFQ account set up information for initial shareholders and dealers; in § 622.37, a black sea bass size limit that expired after 2007; and in § 622.49, text related to annual catch limits and accountability measures that expired in 2010 or 2011.

This interim final rule also slightly revises some terminology to provide consistency and clarity and to reduce redundancy. As a consequence of incorporating part 640 regulations into part 622, it was necessary to slightly revise the definitions of "Carapace length" and "Off Florida" to resolve minor differences between these definitions in the two parts, and account for the two definitions of "Import". This interim final rule uses the definition of "Carapace length" previously found in part 640 because that definition was recently updated to conform with Florida law and is less technical and easier for most users to understand. Although the defining coordinates for the two definitions of "Off Florida" are identical, this interim rule retains the part 622 definition for clarity. In this interim final rule the two definitions of "Import" are combined into one definition that maintains the geographical distinctions of the two separate definitions, with one applicable to subpart R, Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, and the other applicable to Subpart T, Spiny Lobster Fishery of Puerto Rico and U.S. Virgin Islands.

Additionally, this rule revises a number of IBRs within the Federal regulations. The Florida Administrative Code has been reorganized and this rule updates the existing references in 50 CFR part 622 to reflect the renumbering. This interim final rule revises the location of the existing IBR.

This interim final rule also resolves two minor errors that occurred in prior rulemakings. First, prior to this reorganization of part 622, § 622.48, "Adjustment of management measures", contained two paragraphs listing items for Caribbean corals that could be adjusted via framework procedures, §§ 622.48(a) and 622.48(o), that were mostly redundant. As part of a prior rulemaking (76 FR 82414, December 30, 2011), § 622.48(a) was supposed to have been removed but was inadvertently retained. This interim final rule resolves that error by removing that old paragraph, § 622.48(a) and has incorporated the old § 622.48(o) as § 622.474(a) in this newly reorganized part 622. Second, in the 1996 reorganization of part 622 (61 FR 34930, July 3, 1996), § 622.46(a), relating to prevention of gear conflict, was applied to all fisheries governed by part 622. Prior to the 1996 reorganization, the paragraph applied only to the Gulf shrimp fishery. This interim final rule corrects the error made in the 1996 reorganization by restricting application of that paragraph to the Gulf shrimp fishery in newly reorganized § 622.59(a). This interim rule's resolution of these two errors results in a slightly less restrictive regulatory effect.

NMFS previously published in the **Federal Register** a temporary rule implementing management measures for Gulf of Mexico gray triggerfish (77 FR 67303, November 9, 2012), an emergency rule implementing management measures for South Atlantic yellowtail snapper (77 FR 66744, November 7, 2012), and an emergency rule implementing management measures for Gulf of Mexico red snapper (78 FR 17882, March 25, 2013). Those rules added and suspended certain paragraphs within part 622 (see **DATES** section). Both added and suspended paragraphs are included in the regulatory text in this temporary final rule within instruction number 3, which revises part 622. Then the paragraphs that are suspended through these emergency and temporary rules are suspended in the regulatory text in this temporary final rule within instruction number 4.

Classification

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

This interim final rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have already been approved by the Office of Management and Budget (OMB) and are not changed by this rule. This interim final rule does not implement any new regulatory requirements; it reorganizes existing regulatory requirements, including collection-of-information requirements, within part 622. Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this rule reorganizes 50 CFR part 622 and, therefore, changes the location of NOAA regulations for which OMB numbers have been issued, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the reorganization.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

This interim final rule does not add or create any new rights or obligations; it only reorganizes existing regulatory requirements into a format that makes the regulations easier for constituents and others, including agency personnel, to use. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Providing prior notice and the opportunity for public comment would be contrary to the public interest as delaying its implementation would delay implementation of a reorganization of existing regulations into a format that enhances the public's ability to locate and understand the

regulatory requirements applicable to them. Providing prior notice and the opportunity for public comment would also be impracticable, because rulemaking would continue under the old organization of the regulations during the comment period and could cause confusion for constituents and for fishery managers. For the same reasons, the AA, under 5 U.S.C. 553(d)(3), for good cause waives the requirement to delay for 30 days the effectiveness of this rule.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

If any significant, inadvertent regulatory effects are identified during public comment, appropriate changes will be made in the final rule.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Incorporation by reference, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 3, 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.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX—[Amended]

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b) table, in the entries for 50 CFR, the entries "640.4" and "640.6" column are removed; the entries "622.4", "622.5", "622.6", and "622.20" are revised; and new entries "622.21", "622.22", "622.26", "622.27", "622.28", "622.50, "622.51", "622.51(a)(2)", "622.51(a)(3)", "622.51(b)", "622.52", "622.53", "622.70", "622.71", "622.75", "622.90(a)", "622.170", "622.170(c)", "622.171", "622.172", "622.176", "622.176"(a)(2)", "622.176(b)(2)", "622.176(c)", "622.176(d)", "622.177", "622.178", "622.192(h)", "622.200", "622.200(c)", "622.201", "622.203", "622.203(a)", "622.203(b)", "622.204", "622.205", "622.207", "622.220", "622.221", "622.225", "622.240", "622.240(b)", "622.241", "622.242", "622.242(b)", "622.243", "622.244", "622.270", "622.270(d)", "622.271", "622.271(c)", "622.300", "622.370", "622.371", "622.372", "622.373", "622.374", "622.374(c)", "622.376", "622.400", "622.402", "622.430", "622.450", "622.470", "622.473" are added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * *	*
50 CFR	
* * *	*
622.4	–0013 and –0205
622.5	–0016
622.6	–0358
622.20	–0205
622.21	–0551
622.22	–0551
622.26	–0013 and –0016
622.27	–0593
622.28	–0544
622.50	–0205
622.51	–0016
622.51(a)(2)	–0543
622.51(a)(3)	–0542
622.51(b)	–0013
622.52	–0593
622.53	–0345
622.70	–0205
622.71	–0016
622.75	–0205
622.90(a)	–0013
622.170	–0205
622.170(c)	–0013
622.171	–0205
622.172	–0013 and –0551
622.176	–0016
622.176(a)(2)	–0593
622.176(b)(2)	–0593
622.176(c)	–0013
622.176(d)	–0593
622.177	–0359
622.178	–0603
622.192(h)	–0365
622.200	–0205
622.200(c)	–0013
622.201	–0205
622.203	–0016
622.203(a)	–0591
622.203(b)	–0013
622.204	–0593
622.205	–0544
622.207	–0345
622.220	–0205
622.221	–0016
622.225	–0205
622.240	–0205
622.240(b)	–0013
622.241	–0205
622.242	–0016
622.242(b)	–0013
622.243	–0359
622.244	–0593
622.270	–0205
622.270(d)	–0013
622.271	–0016
622.271(c)	–0013
622.300	–0593
622.370	–0205
622.371	–0205
622.372	–0205
622.373	–0205
622.374	–0016
622.374(c)	–0013
622.376	–0359
622.400	–0205
622.402	–0358 and –0359
622.430	–0359
622.450	–0359
622.470	–0205
622.473	–0013
* * *	*

50 CFR Chapter VI—[Amended]

■ 3. Part 622 is revised to read as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

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

Subpart A—General Provisions

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson-Stevens Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, unless otherwise specified, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring.

(c) This part also governs importation of Caribbean spiny lobster into Puerto Rico or the U.S. Virgin Islands.

(d) This part also governs importation of spiny lobster into any place subject to the jurisdiction of the United States.

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf [1], Mid-Atlantic [1] South Atlantic.[1]
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region	SAFMC	South Atlantic.[5]
FMP for Coral and Coral reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Dolphin and Wahoo Fishery off the Atlantic States	SAFMC	Atlantic.
FMP for the Golden Crab Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for Pelagic Sargassum Habitat of the South Atlantic Region	SAFMC	South Atlantic.
FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands	CFMC	Caribbean.
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[1 3 4]
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region	SAFMC	South Atlantic.[1 2]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands	CFMC	Caribbean.
FMP for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic	GMFMC/SAFMC	Gulf [1], South Atlantic.[1]

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

[2] Black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.9′ N. lat., the latitude of Cape Hatteras Light, NC.

[3] Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

[4] Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

[5] Octocorals are managed by the FMP or regulated by this part only in the EEZ off North Carolina, South Carolina, and Georgia.

§ 622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, and the acronyms in § 600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Accountability measure means a management control implemented such that overfishing is prevented, where possible, and mitigated if it occurs.

Actual ex-vessel price means the total monetary sale amount a fisherman receives per pound of fish for IFQ landings from a registered IFQ dealer before any deductions are made for transferred (leased) allocation and goods and services (*e.g.* bait, ice, fuel, repairs, machinery replacement, etc.).

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (*e.g.,* quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina,* plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral. (**Note:** An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina,* with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.)

Annual catch limit (ACL) means the level of catch that serves as the basis for invoking accountability measures.

Annual catch target (ACT) means an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.70(a)(2).

Atlantic means the North Atlantic, Mid-Atlantic, and South Atlantic.

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

Bandit gear means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Bottom longline means a longline that is deployed, or in combination with gear aboard the vessel, *e.g.,* weights or anchors, is capable of being deployed to maintain contact with the ocean bottom.

BRD means bycatch reduction device.

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Buoy gear means fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). The drop line can be rope (hemp, manila, cotton or other natural fibers; nylon, polypropylene, spectra or other synthetic material) or monofilament, but must not be cable or wire. The gear is free-floating and not connected to other gear or the vessel. The drop line must be no greater than 2 times the depth of the water being fished. All hooks must be attached to the drop line no more than 30 ft (9.1 m) from the weighted terminal end. These hooks may be attached directly to the drop line; attached as snoods (defined as an offshoot line that is directly spliced. tied or otherwise connected to the drop line), where each snood has a single terminal hook; or as gangions (defined as an offshoot line connected to the drop line with some type of detachable clip), where each gangion has a single terminal hook.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea and Atlantic Ocean seaward of Puerto Rico, the U.S. Virgin Islands, and possessions of the United States in the Caribbean Sea.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean queen conch or *queen conch* means the species, *Strombus gigas,* or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster or *spiny lobster* means the species *Panulirus argus,* or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under this part, is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish. A charter vessel that has a charter vessel permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there

are more than four persons aboard, including operator and crew. A charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

Coastal migratory pelagic fish means a whole fish, or a part thereof, of one or more of the following species:

(1) Cobia, *Rachycentron canadum*.

(2) King mackerel, *Scomberomorus cavalla*.

(3) Spanish mackerel, *Scomberomorus maculatus*.

Commercial fishing means, for the purpose of subpart R of this part only, any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Dealer, in addition to the definition specified in § 600.10 of this chapter, means the person who first receives rock shrimp harvested from the EEZ or dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore.

Deep-water grouper (DWG) means, in the Gulf, yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.22, scamp are also included as DWG as specified in § 622.22(a)(7).

Deep-water snapper-grouper (DWSG) means, in the South Atlantic, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, blueline tilefish, queen snapper, and silk snapper.

Dehooking device means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

Dolphin means a whole fish, or a part there of, of the species *Coryphaena equiselis* or *C. hippurus*.

Drift gillnet, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot, a golden crab trap, or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in Appendix C of this part.)

Golden crab means the species *Chaceon fenneri*, or a part thereof.

Golden crab trap means any trap used or possessed in association with a directed fishery for golden crab in the South Atlantic EEZ, including any trap that contains a golden crab in or from the South Atlantic EEZ or any trap on board a vessel that possesses golden crab in or from the South Atlantic EEZ.

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in § 600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in Appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina*.

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

Handline means a line with attached hook(s) that is tended directly by hand.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection (COI) issued by the USCG to carry more than six passengers for hire.

(1) A headboat with a commercial vessel permit, as required under this part, is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(i) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's COI; or

(ii) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish, when there are more than three persons aboard, including operator and crew.

(2) However a vessel that has a headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a headboat provided—

(i) It is not carrying a passenger who pays a fee; and

(ii) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

Hook-and-line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

IFQ means individual fishing quota.

Import means—

(1) For the purpose of § 622.1(c) and subpart T of this part only—To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States;

(2) For the purpose of § 622.1(d) and subpart R of this part only—To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States;

(3) But does not include any activity described in paragraph (1) or (2) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

Long gillnet means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

Longline means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, *i.e.*, designed for use on the bottom, or a pelagic longline, *i.e.*, designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

(3) *Cobia.* The boundary separating the Gulf and Atlantic migratory groups of cobia is the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

MPA means marine protected area.

North Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the United States and Canada to the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter.

Off Florida means the waters in the Gulf and South Atlantic from 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off Monroe County, Florida means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′ N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0′ N. latitude).

Off North Carolina means the waters in the South Atlantic from 36°34′55″ N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78° 32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1′ N. lat., 93°47.7′ W. long. to 26°11.4′ N. lat., 92°53′ W. long., which line is an extension of the boundary between Louisiana and Texas.

Off the Gulf states, other than Florida means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31′06″ W. long.).

Off the southern Atlantic states, other than Florida means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34′55″ N. lat.) to the Georgia/Florida boundary (30°42′45.6″ N. lat.).

Official sunrise or *official sunset* means the time of sunrise or sunset as determined for the date and location in *The Nautical Almanac*, prepared by the U.S. Naval Observatory.

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans*, or a part thereof.

Penaeid shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus.*

(2) Pink shrimp, *Farfantepenaeus duorarum.*

(3) White shrimp, *Litopenaeus setiferus.*

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of penaeid shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

Recreational fishing means, for the purpose of subpart R of this part only, fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Red drum, also called redfish, means *Sciaenops ocellatus*, or a part thereof.

Red snapper means *Lutjanus campechanus*, or a part thereof, one of the Gulf reef fish species.

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Run-around gillnet means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

Sale or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shallow-water grouper (SWG) means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Other shallow-water grouper (Other SWG) means, in the Gulf, SWG excluding gag and red grouper (*i.e.*, black grouper, scamp, yellowfin grouper, and yellowmouth grouper). In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.22, speckled hind and warsaw grouper are also included as Other SWG as specified in § 622.22(a)(6).

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus*.

(2) White shrimp, *Litopenaeus setiferus*.

(3) Pink shrimp, *Farfantepenaeus duorarum*.

(4) Royal red shrimp, *Hymenopenaeus robustus*.

(5) Rock shrimp, *Sicyonia brevirostris*.

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Smalltooth sawfish means the species *Pristis pectinata*, or a part thereof.

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

South Atlantic shallow-water grouper (SASWG) means, in the South Atlantic, gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

Stab net means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in Appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

Trammel net means two or more panels of netting, suspended vertically in the water by a common float line and a common weight line, with one panel having a larger mesh size than the other(s), to entrap fish in a pocket of netting.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (*e.g.*, presence or absence of bottom debris, jellyfish, bycatch, sea grasses).

Venting device means a device intended to deflate the abdominal cavity of a fish to release the fish with minimum damage.

Wahoo means the species *Acanthocybium solandri*, or a part thereof, in the Atlantic.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus*, or a part thereof, one of the South Atlantic snapper-grouper species.

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) through (e) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such sanctuaries or parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Florida Keys National Marine Sanctuary (15 CFR part 922, subpart P).

(2) Gray's Reef National Marine Sanctuary (15 CFR part 922, subpart I).

(3) Monitor National Marine Sanctuary (15 CFR part 922, subpart F).

(4) Everglades National Park (36 CFR 7.45).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Fort Jefferson National Monument (36 CFR 7.27).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation

that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

§ 622.4 Permits and fees—general.

This section contains general information about procedures related to permits. See also §§ 622.70, 622.220, and 622.470 regarding certain permit procedures unique to coral permits in the Gulf of Mexico, South Atlantic Region, and Puerto Rico and the U.S. Virgin Islands, respectively. Permit requirements for specific fisheries, as applicable, are contained in subparts B through V of this part.

(a) *Applications for permits.* Application forms for all permits are available from the RA. Completed application forms and all required supporting documents must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective. All vessel permits are mailed to owners, whether the applicant is an owner or an operator.

(1) *Vessel permits.* (i) The application for a commercial vessel permit, other than for wreckfish, or for a charter vessel/headboat permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. A commercial vessel permit that is issued based on the earned income qualification of an operator is valid only when that person is the operator of the vessel. The applicant for a commercial vessel permit for wreckfish must be a wreckfish shareholder.

(ii) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of this part have been met.

(G) If a sea bass pot will be used, the number, dimensions, and estimated cubic volume of the pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(2) *Operator permits.* An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1-yr old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(3) *Dealer permits.* (i) The application for a dealer permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner).

(ii) An applicant must provide the following:

(A) A copy of each state wholesaler's license held by the dealer.

(B) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(C) The address of each physical facility at a fixed location where the business receives fish.

(D) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(b) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (a) of this section or in §§ 622.70(b), 622.220(b), 622.400(b), or 622.470(b). The permit is void if any change in the information is not reported within 30 days.

(c) *Fees.* Unless specified otherwise, a fee is charged for each application for a permit, license, or endorsement submitted under this part, for each request for transfer or replacement of such permit, license, or endorsement, and for each sea bass pot identification tag required under § 622.177(a)(1). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application, request for transfer or replacement, or request for sea bass pot identification tags.

(d) *Initial issuance.* (1) The RA will issue an initial permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(e) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(f) *Transfer*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this part 622 is not transferable or assignable, except as provided in the permits sections of subparts B through V of this part, where applicable. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

(2) *Operator permits.* An operator permit is not transferable.

(g) *Renewal*—(1) *Vessel permits, licenses, and endorsements and dealer*

permits. Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this part must renew such permit, license, or endorsement on an annual basis. The RA will mail a vessel owner or dealer whose permit, license, or endorsement is expiring an application for renewal approximately 2 months prior to the expiration date. A vessel owner or dealer who does not receive a renewal application from the RA by 45 days prior to the expiration date of the permit, license, or endorsement must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement and at least 30 days prior to the date on which the applicant desires to have the permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(2) *Operator permits.* An operator permit required by this part 622 is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (a)(2) of this section.

(h) *Display.* A vessel permit, license, or endorsement issued under this part 622 must be carried on board the vessel. A dealer permit issued under this part 622, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. A Gulf IFQ dealer endorsement must accompany each vehicle that is used to pick up Gulf IFQ red snapper and/or Gulf IFQ groupers and tilefishes. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in a fishery in which an operator permit is required must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this part 622 may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. The vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

(j) *Alteration.* A permit, license, or endorsement that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (a)(2)(ii) of this section.

§ 622.5 Recordkeeping and reporting—general.

This section contains recordkeeping and reporting requirements that are broadly applicable, as specified, to most or all fisheries governed by this part. Additional recordkeeping and reporting requirements specific to each fishery are contained in the respective subparts B through V of this part.

(a) *Collection of additional data and fish inspection.* In addition to data required to be reported as specified in subparts B through V of this part, additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer on request.

(b) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under the recordkeeping and reporting requirements in subparts B through V of this part must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

§ 622.6 Vessel identification.

This section does not apply to subpart R of this part, which has its own specific vessel identification requirements in § 622.402.

(a) *Applicability*—(1) *Official number.* A vessel for which a permit has been issued under subparts B through V of this part except for subpart R, and a vessel that fishes for or possesses pelagic sargassum in the South Atlantic EEZ, must display its official number—

(i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(2) *Official number and color code.* The following vessels must display their official number as specified in paragraph (a)(1) of this section and, in addition, must display their assigned color code: A vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.170(a)(1); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RA. The color code must be displayed—

(i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In the form of a circle permanently affixed to or painted on the vessel.

(iii) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(b) *Duties of operator.* The operator of a vessel specified in paragraph (a) of this section must keep the official number and the color code, if applicable, clearly legible and in good repair and must ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code, if applicable, from an enforcement vessel or aircraft.

§ 622.7 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*—October 1 through September 30.

(b) *King and Spanish mackerel.* The fishing year for the king and Spanish mackerel bag limits specified in § 622.382 is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.384:

(1) *Gulf migratory group king mackerel*—July 1 through June 30.

(2) *Gulf migratory group Spanish mackerel*—April through March.

(3) *South Atlantic migratory group king and Spanish mackerel*—March through February.

(c) *Wreckfish*—April 16 through April 15.

(d) *South Atlantic greater amberjack*—May 1 through April 30.

(e) *South Atlantic black sea bass*—June 1 through May 31.

§ 622.8 Quotas—general.

(a) Quotas apply for the fishing year for each species or species group, unless accountability measures are implemented during the fishing year pursuant to the applicable annual catch limits and accountability measures sections of subparts B through V of this part due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**. Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species from the previous fishing year for following fishing years, unless the best scientific information available determines maintaining the quota from the previous year is unnecessary. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ.

(b) *Quota closures.* When a quota specified in this part is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the applicable closure restrictions for such a quota, as specified in this part apply. (See the applicable annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) sections of subparts B through V of this part for closure provisions when an applicable ACL or ACT is reached or projected to be reached).

(c) *Reopening.* When a sector has been closed based on a projection of the quota specified in this part, or the ACL specified in the applicable annual catch limits and accountability measures sections of subparts B through V of this part being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the quota or ACL to be harvested.

§ 622.9 Prohibited gear and methods—general.

This section contains prohibitions on use of gear and methods that are of general applicability, as specified. Additional prohibitions on use of gear and methods applicable to specific species or species groups are contained in subparts B through V of this part.

(a) *Explosives.* An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under this part, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps.* A fish trap may not be used or possessed in the Gulf or South Atlantic EEZ. A fish trap deployed in the Gulf or South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Weak link.* A bottom trawl that does not have a weak link in the tickler chain may not be used to fish in the Gulf EEZ. For the purposes of this paragraph, a weak link is defined as a length or section of the tickler chain that has a breaking strength less than the chain itself and is easily seen as such when visually inspected.

(e) *Use of Gulf reef fish as bait prohibited.* Gulf reef fish may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap fisheries for blue crab, stone crab, deepwater crab, and spiny lobster.

§ 622.10 Landing fish intact—general.

This section contains requirements for landing fish intact that are broadly applicable to finfish in the Gulf EEZ and Caribbean EEZ, as specified. See subparts B through V, as applicable, for additional species specific requirements for landing fish intact.

(a) Finfish in or from the Gulf EEZ or Caribbean EEZ, except as specified in paragraphs (b) and (c) of this section, must be maintained with head and fins intact.

(b) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (a) of this section.

(c) In the Gulf EEZ or Caribbean EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (c)(1), "*bait*" means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in^3 (7.6 cm^3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (c)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ or Caribbean EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

(d) The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

§ 622.11 Bag and possession limits—general applicability.

This section describes the general applicability provisions for bag and possession limits specified in subparts B through V of this part.

(a) *Applicability.* (1) The bag and possession limits apply for species/species groups in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under this part for the appropriate species/species group. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in subparts B through V of this part with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in subparts B through V of this part taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in subparts B through V of this part are not exceeded.

(2) [Reserved]

(b) [Reserved]

§ 622.12 Annual catch limits (ACLs) and accountability measures (AMs) for Caribbean island management areas/Caribbean EEZ.

(a) If landings from a Caribbean island management area, as specified in Appendix E to this part, except for landings of queen conch (see § 622.491(b)), or landings from the Caribbean EEZ for tilefish and aquarium trade species, are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (a)(1) of this section for Puerto Rico management area species or species groups, paragraph (a)(2) of this section for St. Croix management area species or species groups, paragraph (a)(3) of this section for St. Thomas/St. John management area species or species groups, or paragraph (a)(4) of this section for the Caribbean EEZ, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exceptions of Caribbean queen conch in Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section are given in round weight.

(1) *Puerto Rico*—(i) *Commercial ACLs.* The following ACLs apply to commercial landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—52,737 lb (23,915 kg).

(C) *Snapper Unit 1*—284,685 lb (129,131 kg).

(D) *Snapper Unit 2*—145,916 lb (66,186 kg).

(E) *Snapper Unit 3*—345,775 lb (156,841 kg).

(F) *Snapper Unit 4*—373,295 lb (169,324 kg).

(G) *Groupers*—177,513 lb (80,519 kg).

(H) *Angelfish*—8,984 lb (4,075 kg).

(I) *Boxfish*—86,115 lb (39,061 kg).

(J) *Goatfishes*—17,565 lb (7,967 kg).

(K) *Grunts*—182,396 lb (82,733 kg).

(L) *Wrasses*—54,147 lb (24,561 kg).

(M) *Jacks*—86,059 lb (39,036 kg).

(N) *Scups and porgies, combined*—24,739 lb (11,221 kg).

(O) *Squirrelfish*—16,663 lb (7,558 kg).

(P) *Surgeonfish*—7,179 lb (3,256 kg).

(Q) *Triggerfish and filefish, combined*—58,475 lb (26,524 kg).

(R) *Spiny lobster*—327,920 lb (148,742 kg).

(ii) *Recreational ACLs.* The following ACLs apply to recreational landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—15,263 lb (6,921 kg).

(C) *Snapper Unit 1*—95,526 lb (43,330 kg).

(D) *Snapper Unit 2*—34,810 lb (15,790 kg).

(E) *Snapper Unit 3*—83,158 lb (37,720 kg).

(F) *Snapper Unit 4*—28,509 lb (12,931 kg).

(G) *Groupers*—77,213 lb (35,023 kg).

(H) *Angelfish*—4,492 lb (2,038 kg).

(I) *Boxfish*—4,616 lb (2,094 kg).

(J) *Goatfishes*—362 lb (164 kg).

(K) *Grunts*—5,028 lb (2,281 kg).

(L) *Wrasses*—5,050 lb (2,291 kg).

(M) *Jacks*—51,001 lb (23,134 kg).

(N) *Scups and porgies, combined*—2,577 lb (1,169 kg).

(O) *Squirrelfish*—3,891 lb (1,765 kg).

(P) *Surgeonfish*—3,590 lb (1,628 kg).

(Q) *Triggerfish and filefish, combined*—21,929 lb (9,947 kg).

(2) *St. Croix*—(i) *ACLs.* The following ACLs apply to landings of St. Croix management area species or species groups.

(A) *Queen conch*—50,000 lb (22,680 kg).

(B) *Parrotfishes*—240,000 lb (108,863 kg).

(C) *Snappers*—102,946 lb (46,696 kg).

(D) *Groupers*—30,435 lb (13,805 kg).

(E) *Angelfish*—305 lb (138 kg).

(F) *Boxfish*—8,433 lb (3,825 kg).

(G) *Goatfishes*—3,766 lb (1,708 kg).

(H) *Grunts*—36,881 lb (16,729 kg).

(I) *Wrasses*—7 lb (3 kg).

(J) *Jacks*—15,489 lb (7,076 kg).

(K) *Scups and porgies, combined*—4,638 lb (2,104 kg).

(L) *Squirrelfish*—121 lb (55 kg).

(M) *Surgeonfish*—33,603 lb (15,242 kg).

(N) *Triggerfish and filefish, combined*—24,980 lb (11,331 kg).

(O) *Spiny lobster*—107,307 lb (48,674 kg).

(ii) [Reserved]

(3) *St. Thomas/St. John* — (i) *ACLs.* The following ACLs apply to landings of St. Thomas/St. John management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—42,500 lb (19,278 kg).

(C) *Snappers*—133,775 lb (60,679 kg).

(D) *Groupers*—51,849 lb (23,518 kg).

(E) *Angelfish*—7,897 lb (3,582 kg).

(F) *Boxfish*—27,880 lb (12,646 kg).

(G) *Goatfishes*—320 lb (145 kg).

(H) *Grunts*—37,617 lb (17,063 kg).

(I) *Wrasses*—585 lb (265 kg).

(J) *Jacks*—52,907 lb (23,998 kg).

(K) *Scups and porgies, combined*—21,819 lb (9,897 kg).

(L) *Squirrelfish*—4,241 lb (1,924 kg).

(M) *Surgeonfish*—29,249 lb (13,267 kg).

(N) *Triggerfish and filefish, combined*—74,447 lb (33,769 kg).

(O) *Spiny lobster*—104,199 lb (47,264 kg).

(ii) [Reserved]

(4) *Caribbean EEZ*— (i) *ACLs.* The following ACLs apply to landings of species or species groups throughout the Caribbean EEZ.

(A) *Tilefish*—14,642 lb (6,641 kg).

(B) *Aquarium trade species*—8,155 lb (3,699 kg).

(ii) [Reserved]

§ 622.13 Prohibitions—general.

In addition to the general prohibitions in § 600.725 of this chapter and the fishery specific prohibitions in subparts B through V of this part, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel identification, as specified in § 622.6.

(b) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in § 622.9.

(c) Fail to maintain a fish intact through offloading ashore, as specified in § 622.10.

(d) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(e) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(f) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

§ 622.14 Area closures related to the Deepwater Horizon oil spill.

(a) *Caribbean EEZ area closure related to Deepwater Horizon oil spill.* Effective May 11, 2010, all fishing is prohibited in the portion of the Caribbean EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

(b) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective May 11, 2010, all fishing is prohibited in the portion of the Gulf EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

(c) *Atlantic EEZ area closure related to Deepwater Horizon oil spill.* Effective May 11, 2010, all fishing is prohibited in the portion of the South Atlantic EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

§ 622.15 Notice regarding area closures to protect corals.

See §§ 622.74 and 622.224, respectively, regarding coral protective restrictions in the Gulf EEZ and South Atlantic EEZ that apply broadly to multiple fisheries and gear types.

§ 622.16 Notice regarding South Atlantic special management zones (SMZs).

See §§ 622.182(a) and 622.382(a)(1)(v), respectively, regarding fishing and gear restrictions in South Atlantic SMZs that apply to snapper-grouper and coastal migratory pelagic fisheries and broadly to gear types of multiple fisheries.

§ 622.17 Notice regarding seasonal/area closures to protect Gulf reef fish.

See § 622.34, paragraphs (a)(1) and (a)(3) through (6), regarding Gulf reef fish protective restrictions in the Gulf EEZ that apply broadly to multiple Gulf fisheries and gear types.

Subpart B—Reef Fish Resources of the Gulf of Mexico

§ 622.20 Permits and endorsements.

(a) *Commercial vessels*—(1) *Commercial vessel permits.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.39, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A or B of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(1)(i) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish. See §§ 622.21(b)(1) and 622.22(b)(1), respectively, regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf.

(i) *Limited access system for commercial vessel permits for Gulf reef fish.* (A) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restriction on transfer in paragraph (a)(1)(i)(B) of this section, and are subject to the requirement for timely renewal in paragraph (a)(1)(i)(C) of this section. An application for renewal or transfer of a commercial vessel permit for Gulf reef fish will not be considered complete until proof of purchase, installation, activation, and operational status of an approved VMS for the vessel receiving the permit has been verified by NMFS VMS personnel.

(B) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity. A permit holder may also transfer the commercial vessel permit for Gulf reef fish to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.

(C) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(ii) *Option to consolidate commercial vessel permits for Gulf reef fish.* A person who has been issued multiple commercial vessel permits for Gulf reef fish and wants to consolidate some or all of those permits, and the landings histories associated with those permits, into one permit must submit a completed permit consolidation application to the RA. The permits consolidated must be valid, non-expired permits and must be issued to the same entity. The application form and instructions are available online at *sero.nmfs.noaa.gov.* After consolidation, such a person would have a single permit, and the permits that were consolidated into that permit will be permanently terminated.

(2) *Commercial vessel endorsements*—(i) *Eastern Gulf reef fish bottom longline endorsement.* For a person aboard a vessel, for which a valid commercial vessel permit for Gulf reef fish has been issued, to use a bottom longline for Gulf reef fish in the Gulf EEZ east of 85°30′ W. long., a valid eastern Gulf reef fish bottom longline endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for Gulf reef fish or if the endorsement and

associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(A) *Transferability.* An owner of a vessel with a valid eastern Gulf reef fish bottom longline endorsement may transfer that endorsement to an owner of a vessel that has a valid commercial vessel permit for Gulf reef fish.

(B) *Fees.* A fee is charged for each renewal, transfer, or replacement of an eastern Gulf reef fish bottom longline endorsement. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application for renewal, transfer, or replacement.

(ii) [Reserved]

(b) *Charter vessel/headboat permits.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Gulf reef fish, in or from the EEZ, a valid charter vessel/headboat permit for Gulf reef fish must have been issued to the vessel and must be on board.

(1) *Limited access system for charter vessel/headboat permits for Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b)(1)(i) of this section, and are subject to the renewal requirements in paragraph (b)(1)(ii) of this section.

(i) *Transfer of permits*—(A) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(B) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(C) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf reef fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See § 622.4(f) for additional transfer-related requirements applicable to all permits issued under this part.

(ii) *Renewal.* (A) Renewal of a charter vessel/headboat permit for Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the approved fishing data surveys. Surveys include, but are not limited to—

(*1*) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(*2*) NMFS' Southeast Headboat Survey (as required by § 622.26(b)(1));

(*3*) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(*4*) A data collection system that replaces one or more of the surveys in paragraph (b)(1)(ii)(A),(*1*),(*2*), or (*3*) of this section.

(B) A charter vessel/headboat permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(iii) *Requirement to display a vessel decal.* Upon renewal or transfer of a charter vessel/headboat permit for Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for Gulf reef fish. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

(2) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of "Charter vessel" and "Headboat" in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

(3) If Federal regulations for Gulf reef fish in subparts A or B of this part are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(c) *Dealer permits and conditions*—(1) *Permits.* For a dealer to receive Gulf reef fish harvested from the EEZ, a dealer permit for Gulf reef fish must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(d) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.

(a) *General.* This section establishes an IFQ program for the commercial red snapper component of the Gulf reef fish fishery. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. As of January 1, 2012, IFQ shares and allocation can only be transferred to U.S. citizens and permanent resident aliens. See paragraph (b)(11) of this section regarding eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012. Shares and annual IFQ allocation are transferable. See paragraph (b)(1) of this section regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel account. See paragraph (b)(2) of this section regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section regarding the harvest and possession of Gulf IFQ red snapper apply to Gulf red snapper in or from the

Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel account as required by paragraph (b)(1) of this section or for a person with a Gulf IFQ dealer endorsement as required by paragraph (b)(2) of this section, these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.*, registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.*, Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA mailed initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to set up the required IFQ online account. As of January 1, 2012, all U.S. citizens and permanent resident aliens are eligible to establish an IFQ online account. As of January 1, 2012, all current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.*, mailing address, corporate shareholdings, etc.) is up to date. See § 622.21(b)(11) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased.

(5) *Initial shareholder IFQ account setup information.* As soon as possible after an IFQ Online Account is established, the RA will provide IFQ account holders information pertinent to the IFQ program. This information will include:

(i) General instructions regarding procedures related to the IFQ online system; and

(ii) A user identification number—the personal identification number (PIN) is provided in a subsequent letter.

(6) *Dealer notification and IFQ account setup information.* As soon as possible after November 22, 2006, the RA mailed each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ vessel accounts for Gulf red snapper.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a Gulf IFQ vessel account for Gulf red snapper must have been established. As a condition of the IFQ vessel account, a person aboard such vessel must comply with the requirements of this section, § 622.21, when fishing for red snapper regardless of where the fish are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for Gulf red snapper as specified in paragraph (a)(3)(i) of this section, online via the NMFS IFQ Web site *ifq.sero.nmfs.noaa.gov*, may establish a vessel account through that IFQ account for that permitted vessel. If such owner does not have an online IFQ account, the owner must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ Web site and establish an online IFQ account. There is no fee to set-up an IFQ account or a vessel account. Only one vessel account may be established per vessel under each IFQ program. An owner with multiple vessels may establish multiple vessel accounts under each IFQ account. The purpose of the vessel account is to hold IFQ allocation that is required to land the applicable IFQ species. A vessel account must hold sufficient IFQ allocation, at least equal to the pounds in gutted weight of the red snapper on board, from the time of advance notice of landing through landing (except for any overage allowed as specified in paragraph (b)(3)(ii) of this section. The vessel account remains valid as long as the vessel permit remains valid; the vessel has not been sold or transferred; and the vessel owner is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all applicable IFQ fees, and is not subject to sanctions under 15 CFR part 904. The vessel account is not transferable to another vessel. The provisions of this paragraph do not apply to fishing for or possession of Gulf red snapper under the bag limit specified in § 622.38(b)3).

(2) *Gulf IFQ dealer endorsements.* In addition to the requirement for a dealer permit for Gulf reef fish as specified in § 622.20(c), for a dealer to receive red snapper subject to the Gulf red snapper IFQ program, as specified in paragraph (a)(1) of this section, or for a person aboard a vessel with a Gulf IFQ vessel account to sell such red snapper directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer with a Gulf reef fish permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ Web site at *ifq.sero.nmfs.noaa.gov*. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ Web site and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable.

(3) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (b)(3)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.*, a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ Web site at *ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with the reporting form(s) and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN when the transaction report is submitted. After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *ifq.sero.nmfs.noaa.gov*. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(4) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf red snapper landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(5) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent

allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ Web site at *ifq.sero.nmfs.noaa.gov*. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(3)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper.* At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *ifq.sero.nmfs.noaa.gov*, or by calling IFQ Customer Service at 1–866–425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

(6) *Transfer of IFQ shares and allocation.* Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.*, they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.*, has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *ifq.sero.nmfs.noaa.gov*. Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (b)(8) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request cannot be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account

through which the vessel account was established.

(iv) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *ifq.sero.nmfs.noaa.gov*, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(7) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–866–425–7627.

(8) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation's total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account.

(9) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(10) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *ifq.sero.nmfs.noaa.gov*, of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable shares. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (b)(3)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(11) *Eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012.* The provisions of paragraph (b)(11) of this section apply to all eligible participants for the Gulf red snapper IFQ program beginning January 1, 2012. In addition to eligible participants who already participate in the Gulf red snapper IFQ program, as of January 1, 2012, all U.S. citizens and permanent resident aliens who are in compliance with the provisions of this section are eligible and may participate in the Gulf red snapper IFQ program as shareholders and allocation holders. The requirements to meet the definition of a U.S. citizen are described in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens are those individuals who have been lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws. In order to harvest and possess Gulf IFQ red snapper, the requirements for a Gulf red snapper IFQ vessel account, as specified in paragraph (b)(1) of this section, or a Gulf IFQ dealer endorsement, as specified in paragraph (b)(2) of this section apply.

(i) *Gulf red snapper IFQ program participation for current red snapper IFQ account holders.* A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *sero.nmfs.noaa.gov*, to certify status as a U.S. citizen or permanent resident alien. The IFQ account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account. A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account, with an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–866–425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the participant's IFQ online account until a completed application is submitted. After January 1, 2012, participants who certify that they are either not U.S. citizens or permanent resident aliens will be ineligible to receive shares or allocation through transfer.

(ii) *Gulf red snapper IFQ program participation for entities that do not currently possess an IFQ online account.* The following procedures apply to U.S citizens or permanent resident aliens who are not otherwise described in either paragraphs (a) or (b)(11)(i) of this section.

(A) To establish an IFQ online account, a person must first complete the application for an IFQ Online Account that is available on the Web site *sero.nmfs.noaa.gov*. An applicant for an IFQ online account under this paragraph must provide the following;

(*1*) Name; address; telephone number; date of birth; tax identification number; certification of status as either a U.S. citizen or permanent resident alien; and if a corporation, a list of all officers, directors, shareholders, and registered agents of the business; and other identifying information as specified on the application.

(*2*) Any other information that may be necessary for the establishment or administration of the IFQ online account.

(B) Completed applications and all required supporting documentation must be submitted to the RA. There is no fee to access the Web site or establish an IFQ online account. An applicant that submits an incomplete application will be contacted by the RA to correct any deficiencies. If an applicant fails to correct the deficiency within 30 days of being notified of the deficient application, the application will be considered abandoned.

(C) After an applicant submits a completed application for an IFQ online account, the RA will mail the applicant general instructions regarding procedures related to the IFQ online system, including how to set up an online account and a user identification number—the personal identification number (PIN) will be provided in a subsequent letter.

(D) A participant who has established an IFQ online account must notify the RA within 30 days after there is any change in the information submitted through the application for an IFQ Online Account. The IFQ online account is void if any change in the application information is not reported within 30 days.

(E) A person who has established an IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will mail each participant who has established an online account an application approximately 2 months prior to the Account Validity Date. A participant who does not receive an application at least 45 days prior to the Account Validity Date must contact IFQ Customer Service at 1–866–425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the IFQ online account until a completed application is submitted.

(F) For information regarding transfer of IFQ shares and allocation, the IFQ share cap, and the annual recalculation and notification of IFQ shares and allocation, see paragraphs (b)(6), (b)(8), and (b)(10) of this section, respectively.

(G) Participation in the Gulf red snapper IFQ program beyond transferring IFQ shares and allocation is explained in paragraphs (a) through (b)(10) of this section.

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial sectors of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and Other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of this section. For the purposes of this IFQ program, Other SWG includes black grouper, scamp, yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, Other SWG, and tilefishes, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See paragraph (b)(1) of this section regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See paragraph (b)(2) of this section regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf groupers and tilefishes in or from the Gulf EEZ and, for a person aboard a vessel with an IFQ vessel account for Gulf groupers and tilefishes as required by paragraph (b)(1) of this section or for a person with a Gulf IFQ dealer endorsement as required by paragraph (b)(2) of this section, these provisions apply to Gulf groupers and tilefishes regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.*, registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.* Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf IFQ dealer endorsement must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to set up the required IFQ online account. All current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.*, mailing address, corporate shareholdings, etc.) is up to date. See paragraph (b)(11) of this section regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register,** NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected

participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, Other SWG and tilefishes. If a quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota is increased.

(5) *Red grouper and gag multi-use allocation*—(i) *Red grouper multi-use allocation.* (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = 100 * [Gag ACL − Gag commercial quota]/Red grouper commercial quota

(B) Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred. However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(ii) *Gag multi-use allocation.* (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = 100 * [Red grouper ACL − Red grouper commercial quota]/Gag commercial quota

(B) Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(6)(iv) of this section. However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(6) *Warsaw grouper and speckled hind classification.* Warsaw grouper and speckled hind are considered DWG species and under certain circumstances SWG species. For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then Other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) *Scamp classification.* Scamp is considered a SWG species and under certain circumstances a DWG. For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's Other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

(b) *IFQ operations and requirements*—(1) *IFQ vessel accounts for Gulf groupers and tilefishes.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf groupers (including DWG and SWG, as specified in paragraph (a) of this section or tilefishes (including goldface tilefish, blueline tilefish, and tilefish), regardless of where harvested or possessed, a Gulf IFQ vessel account for the applicable species or species groups must have been established. As a condition of the IFQ vessel account, a person aboard such vessel must comply with the requirements of this section, § 622.22, when fishing for groupers or tilefishes regardless of where the fish are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for the applicable species, as specified in paragraph (a)(3)(i) of this section, online via the NMFS IFQ Web site *ifq.sero.nmfs.noaa.gov*, may establish a vessel account through that IFQ account for that permitted vessel. If such owner does not have an online IFQ account, the owner must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ Web site and establish an online IFQ account. There is no fee to set-up an IFQ account or a vessel account. Only one vessel account may be established per vessel under each IFQ program. An owner with multiple vessels may establish multiple vessel accounts under each IFQ account. The purpose of the vessel account is to hold IFQ allocation that is required to land the applicable IFQ species. A vessel account must hold sufficient IFQ allocation in the appropriate share category, at least equal to the pounds in gutted weight of the groupers and tilefishes on board, from the time of advance notice of landing through landing (except for any overage allowed as specified in paragraph (b)(3)(ii) for groupers and tilefishes). The vessel account remains valid as long as the vessel permit remains valid; the vessel has not been sold or transferred; and the vessel owner is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all applicable IFQ fees, and is not subject to sanctions under 15 CFR part 904. The vessel account is not transferable to another vessel. The provisions of this paragraph do not apply to fishing for or possession of Gulf groupers and tilefishes under the bag limit specified in § 622.38(b)(2) and (5) respectively.

(2) *Gulf IFQ dealer endorsements.* In addition to the requirement for a dealer permit for Gulf reef fish as specified in § 622.20(c), for a dealer to receive groupers and tilefishes subject to the IFQ program for Gulf groupers and tilefishes, as specified in paragraph (a)(1) of this section, or for a person aboard a vessel with a Gulf IFQ vessel account to sell such groupers and tilefishes directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer

with a Gulf reef fish permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ Web site at *ifq.sero.nmfs.noaa.gov*. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ Web site and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable.

(3) *IFQ Landing and transaction requirements.* (i) Gulf groupers and tilefishes subject to this IFQ program can only be possessed or landed by a vessel with a IFQ vessel account for Gulf groupers and tilefishes. Such groupers and tilefishes can only be received by a dealer with a Gulf IFQ dealer endorsement. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, from the time of advance notice of landing through landing, except as provided in paragraph (b)(3)(ii) of this section.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation from among any of the grouper or tilefish share categories, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.* a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf groupers and tilefishes via the IFQ Web site at *ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of groupers and tilefishes landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *ifq.sero.nmfs.noaa.gov*. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(4) *IFQ cost recovery fees.* As required by the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the IFQ program for Gulf groupers and tilefishes. The fee cannot exceed 3 percent of the ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf groupers and tilefishes landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ account holder specified in the documented IFQ landing transaction report for Gulf groupers and tilefishes is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf groupers or tilefishes subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ account holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, in individual IFQ dealer accounts, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(5) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any overage up to the 10

percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ Web site at *ifq.sero.nmfs.noaa.gov*. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(3)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. IFQ groupers or tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ groupers and tilefishes.* At-sea or dockside transfer of IFQ groupers or tilefishes from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ groupers or tilefishes are offloaded to a vehicle for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers or tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *ifq.sero.nmfs.noaa.gov*, or by calling IFQ Customer Service at 1–866–425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have your landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable water;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard; animal; a posted sign restricting access to the site; or any other physical deterrent.

(6) *Transfer of IFQ shares and allocation.* Until January 1, 2015, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, an IFQ vessel account for Gulf groupers and tilefishes, and IFQ allocation for Gulf groupers or tilefishes are required to possess (at and after the time of the advance notice of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.*, they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.*, has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *ifq.sero.nmfs.noaa.gov*. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share or allocation caps as specified in paragraph (b)(8) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel

account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures and restrictions*—(A) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *ifq.sero.nmfs.noaa.gov*, entering the required information, including but not limited to, the name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the Web site will provide a transfer approval code to the transferor and transferee confirming the transaction.

(B) *Multi-use allocation transfer restrictions*—(*1*) *Red grouper multi-use allocation.* Red grouper multi-use allocation may only be transferred after all an IFQ account holder's red grouper allocation has been landed and sold, or transferred.

(*2*) *Gag multi-use allocation.* Gag multi-use allocation may only be transferred after all an IFQ account holder's gag allocation has been landed and sold, or transferred.

(7) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–866–425–7627.

(8) *IFQ share and allocation caps.* A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds in a corporation.

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, Other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. A corporation must provide to the RA the identity of the shareholders of the corporation and their percent of shares in the corporation for initial issuance of IFQ shares and allocation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account.

(ii) *Total allocation cap.* No person, including a corporation or other entity, may individually or collectively hold, cumulatively during any fishing year, IFQ allocation in excess of the total allocation cap. The total allocation cap is the sum of the maximum allocations associated with the share caps for each individual share category and is calculated annually based on the applicable quotas or catch allowance associated with each share category.

(9) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(10) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *ifq.sero.nmfs.noaa.gov*, of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of IFQ shares. Allocation, for each share category, is calculated by multiplying IFQ share for that category times the annual commercial quota or commercial catch allowance for that share category. Updated allocation values will reflect any change in IFQ share for each share category, any change in the annual commercial quota or commercial catch allowance for the applicable categories; and any debits required as a result of prior fishing year overages as specified in paragraph (b)(3)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(11) *Gulf grouper and tilefish IFQ program participation for current grouper and tilefish IFQ account holders.* (i) A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *sero.nmfs.noaa.gov*, to certify status as a U.S. citizen or permanent resident alien. The account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account.

(ii) A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–866–425–7627 and request an application. Failure to submit a completed application prior to the participant's account validity date will

lead to the suspension of the participant's access to his IFQ online account until a completed application is submitted. Participants who certify that they are either not a U.S. citizen or permanent resident alien will be ineligible to receive shares or allocation through transfer.

§§ 622.23–622.24 [Reserved]

§ 622.25 Exemptions for the Gulf groundfish trawl fishery.

Gulf groundfish trawl fishery means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel in the Gulf groundfish trawl fishery is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a dealer permit for Gulf reef fish to receive Gulf reef fish harvested from the Gulf EEZ by a vessel in the Gulf groundfish trawl fishery.

§ 622.26 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.20(a)(1), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD. These completed fishing records must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Reporting requirement.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers.* A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(1) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(2) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received, the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(3) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

§ 622.27 At-sea observer coverage.

(a) *Required coverage.* A vessel for which a Federal commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a).

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 622.28 Vessel monitoring systems (VMSs).

The VMS requirements of this section apply throughout the Gulf of Mexico and adjacent states.

(a) *General VMS requirement.* An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times whether or not the vessel is underway,

unless exempted by NMFS under the power-down exemptions specified in paragraph (d) of this section and in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This NOAA Enforcement Vessel Monitoring System Requirements document is available from NMFS Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free: 888–219–9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(b) *Hourly reporting requirement.* An owner or operator of a vessel subject to the requirements of paragraph (a) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (c) or (d) of this section.

(c) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved VMS unit configured with the 4-hour reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (b) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (b) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(d) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in paragraph (a) of this section can be exempted from that requirement and may power down the required VMS unit if—

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (c) of this section, for more than 72 consecutive hours;

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (d)(3) and (4) of this section.

(3) Prior to each power-down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's email, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(4) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives a confirmation, through the VMS terminal, that the form was successfully delivered.

(e) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. This information may be reported to NMFS using the toll-free number, 888–219–9228, or via an attached VMS terminal.

(f) *Installation and activation of a VMS.* Only a VMS that has been approved by NMFS for the Gulf reef fish fishery may be used, and the VMS must be installed by a qualified marine electrician. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833; and

(2) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a vendor-completed installation certification checklist, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833.

(g) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(h) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, phone: 800–758–4833, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(i) *Access to position data.* As a condition of authorized fishing for or possession of fish in a fishery subject to VMS requirements in this section, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

§ 622.29 Conservation measures for protected resources.

(a) *Gulf reef fish commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures.* (i) The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under

§§ 622.20(a)(1) and 622.20(b), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, "Careful Release Protocols for Sea Turtle Release With Minimal Injury," and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in §§ 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, tire, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in §§ 635.21(c)(5)(i)(E) through (L) of this chapter with the following modifications: the dipnet handle can be of variable length, only one NMFS-approved short-handled dehooker is required (*i.e.*, § 635.21(c)(5)(i)(G) or (H) of this chapter); and life rings, seat cushions, life jackets, and life vests or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, tire, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted "V", long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C)) of this chapter and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, and life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

(2) *Smalltooth sawfish conservation measures.* The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.20(a)(1) and 622.20(b), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except for with a long-handled dehooker.

(b) [Reserved]

§ 622.30 Required fishing gear.

For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (a) through (c) of this section.

(a) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits.

(b) *Dehooking device.* At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

(c) *Venting tool.* At least one venting tool is required and must be used to deflate the abdominal cavities of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

§ 622.31 Buoy gear identification.

(a) *Buoy gear.* In the Gulf EEZ, if buoy gear is used or possessed, each buoy must display the official number of the vessel. See § 622.2 for the definition of buoy gear.

(b) [Reserved]

§ 622.32 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Poisons.* A poison may not be used to take Gulf reef fish in the Gulf EEZ.

(b) [Reserved]

§ 622.33 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Goliath grouper.* Goliath grouper may not be harvested or possessed in or from the Gulf EEZ.

(c) *Nassau grouper.* Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

(d) *Gulf reef fish exhibiting trap rash.* Possession of Gulf reef fish in or from the Gulf EEZ that exhibit trap rash is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

(a) *Closure provisions applicable to the Madison and Swanson sites and Steamboat Lumps, and the Edges—(1) Descriptions of Areas.* (i) The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

(ii) Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

(iii) The Edges is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°51′	85°16′
B	28°51′	85°04′
C	28°14′	84°42′
D	28°14′	84°54′
A	28°51′	85°16′

(2) Within the Madison and Swanson sites and Steamboat Lumps, possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (a)(4) of this section.

(3) Within the Madison and Swanson sites and Steamboat Lumps during November through April, and within the Edges during January through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (a)(4) of this section. The provisions of this paragraph, (a)(3), do not apply to highly migratory species.

(4) For the purpose of paragraph (a) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means—

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(5) Within the Madison and Swanson sites and Steamboat Lumps, during May through October, surface trolling is the only allowable fishing activity. For the purpose of this paragraph (a)(5), surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(6) For the purpose of this paragraph (a), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*).

(b) *Seasonal closure of the recreational sector for red snapper.* The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(c) *Seasonal closure of the recreational sector for greater amberjack.* The recreational sector for greater amberjack in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

(d) *Seasonal closure of the recreational fishery for shallow-water grouper (SWG).* The recreational fishery for SWG, in or from the Gulf EEZ, is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ is zero.

(e) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and November 1 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

§ 622.35 Gear restricted areas.

(a) *Reef fish stressed area.* The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2 in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area. The provisions of this paragraph do not apply to hogfish.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(b) *Seasonal prohibitions applicable to bottom longline fishing for Gulf reef fish.* (1) From June through August each year, bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30' W. long. that is shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°58.70′	85°30.00′
B	28°59.25′	85°26.70′
C	28°57.00′	85°13.80′
D	28°47.40′	85°3.90′
E	28°19.50′	84°43.00′
F	28°0.80′	84°20.00′
G	26°48.80′	83°40.00′
H	25°17.00′	83°19.00′
I	24°54.00′	83°21.00′
J	24°29.50′	83°12.30′
K	24°26.50′	83°00.00′

(2) Within the prohibited area and time period specified in paragraph (b)(1) of this section, a vessel with bottom longline gear on board may not possess Gulf reef fish unless the bottom longline gear is appropriately stowed, and a vessel that is using bottom longline gear to fish for species other than Gulf reef fish may not possess Gulf reef fish. For the purposes of paragraph (b) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

(3) Within the Gulf EEZ east of 85°30′ W. long., a vessel for which a valid eastern Gulf reef fish bottom longline endorsement has been issued that is fishing bottom longline gear or has bottom longline gear on board cannot possess more than a total of 1000 hooks including hooks on board the vessel and hooks being fished and cannot possess more than 750 hooks rigged for fishing at any given time. For the purpose of this paragraph, "hooks rigged for fishing" means hooks attached to a line or other device capable of attaching to the mainline of the longline.

(c) *Reef fish longline and buoy gear restricted area.* A person aboard a vessel that uses, on any trip, longline or buoy gear in the longline and buoy gear restricted area is limited on that trip to the bag limits for Gulf reef fish specified in § 622.38(b) and, for Gulf reef fish for which no bag limit is specified in § 622.38(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The longline and buoy gear restricted area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 1 in Appendix B of this part.

(d) *Alabama SMZ.* The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ, fishing by a vessel that is operating as a charter vessel or headboat, a vessel

that does not have a commercial permit for Gulf reef fish, as required under § 622.20(a)(1), or a vessel with such a permit fishing for Gulf reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in § 622.38(b) and, for Gulf reef fish for which no bag limit is specified in § 622.38(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	30°02.5′	88°07.7′
B	30°02.6′	87°59.3′
C	29°55.0′	87°55.5′
D	29°54.5′	88°07.5′
A	30°02.5′	88°07.7′

§ 622.36 Seasonal harvest limitations.

(a) *Greater amberjack.* During March, April, and May, each year, the possession of greater amberjack in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.20(a)(1), without regard to where such greater amberjack were harvested, is limited to the bag and possession limits, as specified in § 622.38(b)(1) and (c), respectively, and such greater amberjack are subject to the prohibition on sale or purchase of greater amberjack possessed under the bag limit, as specified in § 622.40(a). Also note that if commercial quantities of Gulf reef fish, *i.e.*, Gulf reef fish in excess of applicable bag/possession limits, are on board the vessel, no bag limit of Gulf reef fish may be possessed, as specified in § 622.38(a)(2).

(b) [Reserved]

§ 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit, as specified in this section, in or from the Gulf EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section. See § 622.10 regarding requirements for landing fish intact.

(a) *Snapper*—(1) *Red snapper*—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.38 (b)(3) and 13 inches (33.0 cm), TL, for a fish taken by a person not subject to the bag limit.

(2) *Lane snapper*—8 inches (20.3 cm), TL.

(3) *Vermilion snapper*—10 inches (25.4 cm), TL.

(4) *Cubera, gray, and yellowtail snappers*—12 inches (30.5 cm), TL.

(5) *Mutton snapper*—16 inches (40.6 cm), TL.

(b) *Grouper*—(1) *Gag*—22 inches (55.9 cm), TL.

(2) *Red grouper*—(i) For a person not subject to the bag limit specified in § 622.38 (b)(2)—18 inches (45.7 cm), TL.

(ii) For a person subject to the bag limit specified in

§ 622.38(b)(2)—20 inches (50.8 cm), TL.

(3) *Scamp*—16 inches (40.6 cm), TL.

(4) *Yellowfin grouper*—20 inches (50.8 cm), TL.

(5) *Black grouper*—(i) For a person not subject to the bag limit specified in § 622.38(b)(2)—24 inches (61.0 cm), TL.

(ii) For a person subject to the bag limit specified in § 622.33(b)(2)—22 inches (55.9 cm), TL.

(c) *Other Gulf reef fish species*—(1) *Gray triggerfish*—14 inches (35.6 cm), fork length.

(2) *Hogfish*—12 inches (30.5 cm), fork length.

(3) *Banded rudderfish and lesser amberjack*—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(4) *Greater amberjack*—30 inches (76 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.38)(b)(1) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(d) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, *i.e.*, Gulf reef fish in excess of applicable bag/possession limits, may not possess any Gulf reef fish that do not comply with the applicable commercial minimum size limit.

§ 622.38 Bag and possession limits.

(a) *Additional applicability provisions for Gulf reef fish.* (1) Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a) notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

(i) When trawl gear or entangling net gear is on board. A vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(ii) When a longline or buoy gear is on board and the vessel is fishing or has fished on a trip in the reef fish longline and buoy gear restricted area specified in § 622.35(c). A vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

(iii) For a species/species group when its quota has been reached and closure has been effected, provided that no commercial quantities of Gulf reef fish, *i.e.*, Gulf reef fish in excess of applicable bag/possession limits, are on board as specified in paragraph (a)(2) of this section.

(iv) When the vessel has on board or is tending any trap other than a stone crab trap or a spiny lobster trap.

(2) A person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish, *i.e.*, Gulf reef fish in excess of applicable bag/possession limits, may not possess Gulf reef fish caught under a bag limit.

(b) *Bag limits*—(1) *Greater amberjack*—1. However, no greater amberjack may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(2) *Groupers, combined, excluding goliath grouper and Nassau grouper*—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(3) *Red snapper*—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(4) *Snappers, combined, excluding red, lane, and vermilion snapper*—10.

(5) *Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) through (b)(4) and paragraphs (b)(6) through (b)(7) of this section*—20.

(6) *Banded rudderfish and lesser amberjack, combined*—5.

(7) *Hogfish*—5.

(c) *Possession limits.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits,

provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

§ 622.39 Quotas.

See § 622.8 for general provisions regarding quota applicability and closure and reopening procedures. This section, provides quotas and specific quota closure restrictions for Gulf reef fish.

(a) *Gulf reef fish*—(1) *Commercial quotas.* The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.20(a)(1).

(i) *Red snapper.* (A) For fishing year 2012—4.121 million lb (1.869 million kg), round weight.

(B) For fishing year 2013—4.432 million lb (2.010 million kg), round weight.

(ii) Deep-water groupers (DWG) have a combined quota, as specified in paragraphs (a)(1)(ii)(A) through (E) of this section. These quotas are specified in gutted weight, that is eviscerated, but otherwise whole.

(A) For fishing year 2012—1.127 million lb (0.511 million kg).

(B) For fishing year 2013—1.118 million lb (0.507 million kg).

(C) For fishing year 2014—1.110 million lb (0.503 million kg).

(D) For fishing year 2015—1.101 million lb (0.499 million kg).

(E) For fishing year 2016 and subsequent fishing years—1.024 million lb (0.464 million kg).

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (Other SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) *Other SWG combined.* (*1*) For fishing year 2012—509,000 lb (230,879 kg).

(*2*) For fishing year 2013—518,000 lb (234,961 kg).

(*3*) For fishing year 2014—523,000 lb (237,229 kg).

(*4*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

(B) *Gag.* (*1*) For fishing year 2012—0.567 million lb (0.257 million kg).

(*2*) For fishing year 2013—0.708 million lb (0.321 million kg).

(*3*) For fishing year 2014—0.835 million lb (0.378 million kg).

(*4*) For fishing year 2015 and subsequent fishing years—0.939 million lb (0.426 million kg).

(C) *Red grouper.* (*1*) For fishing year 2012—5.37 million lb (2.37 million kg).

(*2*) For fishing year 2013—5.53 million lb (2.44 million kg).

(*3*) For fishing year 2014—5.63 million lb (2.51 million kg).

(*4*) For fishing year 2015 and subsequent fishing years—5.72 million lb (2.59 million kg).

(iv) Tilefishes (including goldface tilefish, blueline tilefish, and tilefish)—582,000 lb (263,991 kg), gutted weight, that is, eviscerated but otherwise whole.

(v) Greater amberjack—409,000 lb (185,519 kg), round weight.

(vi) Gray triggerfish—106,000 lb (48,081 kg), round weight.

(2) *Recreational quotas.* The following quotas apply to persons who fish for Gulf reef fish other than under commercial vessel permits for Gulf reef fish and the applicable commercial quotas specified in paragraph (a)(1) of this section.

(i) *Recreational quota for red snapper.* (A) For fishing year 2012, the recreational quota for red snapper is 3.959 million lb (1.796 million kg), round weight.

(B) For fishing year 2013, the recreational quota for red snapper is 4.258 million lb (1.931 million kg), round weight.

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,130,000 lb (512,559 kg), round weight.

(b) *Restrictions applicable after a commercial quota closure.* (1) If the recreational fishery for the indicated species is open, the bag and possession limits specified in § 622.38(b) and (c) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper, when applicable, apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.20(a)(1), without regard to where such red snapper were harvested. The application of bag limits described in this paragraph (b)(1) notwithstanding, bag limits of Gulf reef fish may not be possessed on board a vessel with commercial quantities of Gulf reef fish, *i.e.*, Gulf reef fish in excess of applicable bag/possession limits, on board, as specified in § 622.38(a)(2). The prohibition on sale/purchase during a closure for Gulf reef fish does not apply to Gulf reef fish that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) If the recreational fishery for the indicated species is closed, all harvest or possession in or from the Gulf EEZ of the indicated species is prohibited.

(c) *Restrictions applicable after a recreational quota closure*—(1) *After closure of the recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

(2) *After closure of the recreational quota for greater amberjack.* The bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

§ 622.40 Restrictions on sale/purchase.

The restrictions in this section are in addition to the restrictions on sale/purchase related to quota closures as specified in § 622.39(b) and (c).

(a) A Gulf reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit for Gulf reef fish, as required under § 622.20(a)(1), or a Gulf reef fish possessed under the bag limits specified in § 622.38(b), may not be sold or purchased.

(b) A Gulf reef fish harvested on board a vessel that has a valid commercial permit for Gulf reef fish may be sold only to a dealer who has a valid permit for Gulf reef fish, as required under § 622.20(c).

(c) A Gulf reef fish harvested in the EEZ may be purchased by a dealer who has a valid permit for Gulf reef fish, as required under § 622.20(c), only from a vessel that has a valid commercial permit for Gulf reef fish.

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Greater amberjack*—(1) *Commercial sector.* (i) If commercial landings, as estimated by the SRD, reach or are projected to reach the annual catch target (ACT) specified in § 622.39(a)(1)(v)(commercial quota), the Assistant Administrator for Fisheries, NOAA, (AA) will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (a)(1)(i) of this section, if commercial landings, as estimated by the SRD, exceed the commercial ACL, as specified in (a)(1)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACT (commercial quota) and the commercial

ACL for that following year by the amount of any commercial ACL overage in the prior fishing year.

(iii) The commercial ACL for greater amberjack is 481,000 lb (218,178 kg), round weight.

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the ACT specified in § 622.39(a)(2)(ii) (recreational quota), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (a)(2)(i) of this section, if recreational landings, as estimated by the SRD, exceed the recreational ACL, as specified in paragraph (a)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT (recreational quota) and the recreational ACL for that following year by the amount of any recreational overage in the prior fishing year.

(iii) The recreational ACL for greater amberjack is 1,299,000 lb (589,216 kg), round weight.

(b) *Gray triggerfish*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.39(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the applicable annual catch limit (ACL), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the quota for that following year by the amount the prior-year ACL was exceeded. The commercial ACL for 2010 and subsequent fishing years is 138,000 lb (62,596 kg).

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target catch for that following fishing year. The recreational ACL for 2010 and subsequent fishing years is 457,000 lb (207,291 kg). The recreational ACT for 2010 and subsequent fishing years is 405,000 lb (183,705 kg). Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(c) *Other shallow-water grouper (Other SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)*—(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACL for Other SWG is equal to the applicable quota specified in § 622.39(a)(1)(iii)(A).

(2) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (c)(3) of this section, then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in paragraph (c)(3) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(3) The stock complex ACLs for Other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

(d) *Gag*—(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The applicable commercial ACLs for gag, in gutted weight, are 0.788 million lb (0.357 million kg) for 2012, 0.956 million lb (0.434 million kg) for 2013, 1.100 million lb (0.499 million kg) for 2014, and 1.217 million lb (0.552 million kg) for 2015 and subsequent fishing years.

(2) *Recreational sector.* (i) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (d)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gag in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (d)(2)(i) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (d)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (d)(2)(iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the length of the recreational gag fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, and gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (d)(2)(iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (d)(2)(i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (d)(2)(ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational ACTs for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years.

(e) *Red grouper*—(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The applicable commercial ACL for red grouper, in gutted weight, for 2012 and subsequent fishing years is 6.03 million lb (2.735 million kg).

(2) *Recreational sector.* (i) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are

projected to reach the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (e)(2)(i) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (e)(2)(iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the bag limit by one fish and reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(iii) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (e)(2)(i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (e)(2)(ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012 and subsequent fishing years. The recreational ACT for red grouper, in gutted weight, is 1.730 million lb (0.785 million kg) for 2012 and subsequent fishing years.

(f) *Deep-water grouper (DWG) combined (including yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind)*— (1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial DWG. The commercial ACL for DWG is equal to the applicable quota specified in § 622.39(a)(1)(ii).

(2) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (f)(3) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in paragraph (f)(3) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(3) The stock complex ACLs for DWG, in gutted weight, are 1.216 million lb (0.552 million kg) for 2012, 1.207 million lb (0.547 million kg) for 2013, 1.198 million lb (0.543 million kg) for 2014, 1.189 million lb (0.539 million kg) for 2015, and 1.105 million lb (0.501 million kg) for 2016 and subsequent years.

(g) *Tilefishes combined (including goldface tilefish, blueline tilefish, and tilefish)*—(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial tilefishes. The commercial ACL for tilefishes is equal to the applicable quota specified in § 622.39(a)(1)(iv).

(2) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (g)(3) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in paragraph (g)(3) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(3) The stock complex ACL for tilefishes is 608,000 lb (275,784 kg), gutted weight.

(h) *Lesser amberjack, almaco jack, and banded rudderfish, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for lesser amberjack, almaco jack, and banded rudderfish, is 312,000 lb (141,521 kg), round weight.

(i) *Silk snapper, queen snapper, blackfin snapper, and wenchman, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for silk snapper, queen snapper, blackfin snapper, and wenchman, is 166,000 lb (75,296 kg), round weight.

(j) *Vermilion snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. The stock ACL for vermilion snapper is 3.42 million lb (1.55 million kg), round weight.

(k) *Lane snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for lane snapper is 301,000 lb (136,531 kg), round weight.

(l) *Gray snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper is 2.42 million lb (1.10 million kg), round weight.

(m) *Cubera snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the

stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for cubera snapper is 5,065 lb (2,297 kg), round weight.

(n) *Yellowtail snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for yellowtail snapper is 725,000 lb (328,855 kg), round weight.

(o) *Mutton snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for mutton snapper is 203,000 lb (92,079 kg), round weight.

(p) *Hogfish.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for hogfish is 208,000 lb (94,347 kg), round weight.

§ 622.42 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Reef Fish Resources of the Gulf of Mexico, the RA may establish or modify the items specified in paragraph (a) of this section for Gulf reef fish.

(a) For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

§ 622.43 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. Commercial trip limits apply as follows:

(a) *Greater amberjack.* Until the quota specified in § 622.39(a)(1)(v) is reached, 2,000 lb (907 kg), round weight. See § 622.39(b) for the limitations regarding greater amberjack after the quota is reached.

(b) [Reserved]

§ 622.44 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13 of this part, it is unlawful for any person to violate any provisions of §§ 622.20 through 622.44.

Subpart C—Shrimp Fishery of the Gulf of Mexico

§ 622.50 Permits, permit moratorium, and endorsements.

(a) *Gulf shrimp permit.* For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board. See paragraph (b) of this section regarding a moratorium on commercial vessel permits for Gulf shrimp and the associated provisions. See paragraph (c) of this section, regarding an additional endorsement requirement related to royal red shrimp.

(b) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (b) are applicable through October 26, 2016.

(1) *Moratorium permits are required.* The only valid commercial vessel permits for Gulf shrimp are commercial vessel moratorium permits for Gulf shrimp. In accordance with the procedures specified in the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf Shrimp FMP), all commercial vessel moratorium permits for Gulf shrimp have been issued. No additional permits will be issued.

(2) *Permit transferability.* Commercial vessel moratorium permits for Gulf shrimp are fully transferable, with or without the sale of the vessel. To request that the RA transfer a commercial vessel moratorium permit for Gulf shrimp, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse of the permit and return the permit and a completed application for transfer to the RA. Transfer documents must be notarized as specified in § 622.4(f)(1).

(3) *Renewal.* (i) Renewal of a commercial vessel moratorium permit for Gulf shrimp is contingent upon compliance with the recordkeeping and reporting requirements for Gulf shrimp specified in § 622.51(a).

(ii) A commercial vessel moratorium permit for Gulf shrimp that is not renewed will be terminated and will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(c) *Gulf royal red shrimp endorsement.* For a person aboard a vessel to fish for royal red shrimp in the Gulf EEZ or possess royal red shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp with a Gulf royal red shrimp endorsement must be issued to the vessel and must be on board.

(d) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to, application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.51 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators*—(1) *General reporting requirement.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(2) *Electronic logbook reporting.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued and who is selected by the SRD must participate in the NMFS-sponsored electronic logbook reporting program as directed by the SRD. In addition, such owner or operator must provide information regarding the size and number of shrimp trawls deployed and the type of bycatch reduction device (BRD) and turtle excluder device used, as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(2) is required for permit renewal.

(3) *Vessel and Gear Characterization Form.* All owners or operators of vessels applying for or renewing a commercial vessel moratorium permit for Gulf shrimp must complete an annual Gulf Shrimp Vessel and Gear Characterization Form. The form will be provided by NMFS at the time of permit application and renewal. Compliance with this reporting requirement is required for permit issuance and renewal.

(4) *Landings report.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must annually report the permitted vessel's total annual landings of shrimp and value, by species, on a form provided by the SRD. Compliance with this reporting requirement is required for permit renewal.

(b) *Gulf shrimp dealers.* A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(1) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(2) Amount of shrimp received by species and size category for each receipt.

(3) Ex-vessel value, by species and size category, for each receipt.

§ 622.52 At-sea observer coverage.

(a) *Required coverage.* A vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a).

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 622.53 Bycatch reduction device (BRD) requirements.

(a) *BRD requirement for Gulf shrimp.* On a shrimp trawler in the Gulf EEZ, each net that is rigged for fishing must have a BRD installed that is listed in paragraph (a)(3) of this section and is certified or provisionally certified for the area in which the shrimp trawler is located, unless exempted as specified in paragraphs (a)(1)(i) through (iv) of this section. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(1) *Exemptions from BRD requirement*—(i) *Royal red shrimp exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp.

(ii) *Try net exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either placed immediately in front of another net or is not connected to another net.

(iii) *Roller trawl exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(iv) *BRD certification testing exemption.* A shrimp trawler that is authorized by the RA to participate in the pre-certification testing phase or to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the "Bycatch Reduction Device Testing Manual" is granted a limited exemption from the BRD requirement specified in this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified or provisionally certified BRDs.

(2) *Procedures for certification and decertification of BRDs.* The process for the certification of BRDs consists of two phases—an optional pre-certification phase and a required certification phase. The RA may also provisionally certify a BRD.

(i) *Pre-certification.* The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the "Bycatch Reduction Device Testing Manual."

(A) A person who wants to conduct pre-certification phase testing must submit an application to the RA, as specified in the "Bycatch Reduction Device Testing Manual." The "Bycatch Reduction Device Testing Manual," which is available from the RA, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. If the RA authorizes pre-certification, the RA's LOA must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use

in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the "Bycatch Reduction Device Testing Manual." The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The operation plan submitted with the application meets the requirements of the "Bycatch Reduction Device Testing Manual"; the observer identified in the application is qualified; and the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. To be certified for use in the fishery, the BRD candidate must successfully demonstrate a 30-percent reduction in total weight of finfish bycatch. In addition, the BRD candidate must satisfy the following conditions: There is at least a 50-percent probability the true reduction rate of the BRD candidate meets the bycatch reduction criterion and there is no more than a 10-percent probability the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion. If a BRD meets both conditions, consistent with the "Bycatch Reduction Device Testing Manual," NMFS, through appropriate rulemaking procedures, will add the BRD to the list of certified BRDs in paragraph (a)(3) of this section; and provide the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) *Provisional certification.* Based on data provided consistent with the "Bycatch Reduction Device Testing Manual;" the RA may provisionally certify a BRD if there is at least a 50-percent probability the true reduction rate of the BRD is no more than 5 percentage points less than the bycatch reduction criterion, *i.e.*, 25 percent reduction in total weight of finfish bycatch. Through appropriate rulemaking procedures, NMFS will add the BRD to the list of provisionally certified BRDs in paragraph (a)(3) of this section; and provide the specifications for the BRD, including any special conditions deemed appropriate based on the certification testing results. A provisional certification is effective for 2 years from the date of publication of the notification in the **Federal Register** announcing the provisional certification.

(iv) *Decertification.* The RA will decertify a BRD if NMFS determines the BRD does not meet the requirements for certification or provisional certification. Before determining whether to decertify a BRD, the RA will notify the Gulf of Mexico Fishery Management Council in writing, and the public will be provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to decertify the BRD, the RA will proceed with decertification via appropriate rulemaking.

(3) *Certified and provisionally certified BRDs*—(i) *Certified BRDS.* The following BRDs are certified for use in the Gulf EEZ. Specifications of these certified BRDs are contained in Appendix D to this part.

(A) Fisheye—see Appendix D to part 622 for separate specifications in the Gulf and South Atlantic EEZ.

(B) Jones-Davis.

(C) Modified Jones-Davis.

(D) Cone Fish Deflector Composite Panel.

(E) Square Mesh Panel (SMP) Composite Panel.

(ii) [Reserved]

(b) [Reserved]

§ 622.54 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Traps for royal red shrimp in the Gulf EEZ and transfer at sea.* A trap may not be used to fish for royal red shrimp in the Gulf EEZ. Possession of a trap and royal red shrimp on board a vessel is prohibited. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In addition, royal red shrimp cannot be transferred in the Gulf EEZ, and royal red shrimp taken in the Gulf EEZ cannot be transferred at sea regardless of where the transfer takes place.

(b) [Reserved]

§ 622.55 Closed areas.

(a) *Texas closure.* (1) From 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, trawling, except trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour, is prohibited in the Gulf EEZ off Texas.

(2) In accordance with the procedures and restrictions of the Gulf Shrimp FMP, the RA may adjust the closing and/or opening date of the Texas closure to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the **Federal Register**.

(b) *Southwest Florida seasonal trawl closure.* From January 1 to 1 hour after official sunset on May 20, each year, trawling, including trawling for live bait, is prohibited in that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
B[1]	26°16.0′	81°58.5′
C	26°00.0′	82°04.0′
D	25°09.0′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

(c) *Tortugas shrimp sanctuary.* (1) The Tortugas shrimp sanctuary is closed to trawling. The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
N[1]	25°52.9′	81°37.9′
F	24°50.7′	81°51.3′
G[2]	24°40.1′	82°26.7′
H[3]	24°34.7′	82°35.2′
P[4]	24°35.0′	82°08.0′

[1] Coon Key Light.
[2] New Ground Rocks Light.
[3] Rebecca Shoal Light.
[4] Marquessas Keys.

(2) The provisions of paragraph (c)(1) of this section notwithstanding—

(i) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long.

(ii) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (c)(2)(i) of this section, to

point G, as specified in paragraph (c)(1) of this section.

(iii) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (d)(1) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (c)(2)(i) of this section.

(d) *Closures of the Gulf shrimp fishery to reduce red snapper bycatch.* During a closure implemented in accordance with this paragraph (d), trawling is prohibited within the specified closed area(s).

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established in the Gulf Shrimp FMP, the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (d)(2) through (d)(4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP (which corresponds in terms of annual shrimp effort to 27,328 days fished). The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the Gulf Shrimp FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (l) will begin on the same date and time as the Texas closure unless circumstances dictate otherwise.

(2) *Eastern zone.* The eastern zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°14′	88°57′
B	29°24′	88°34′
C	29°34′	87°38′
D	30°04′	87°00′
E	30°04′	88°41′
F	29°36′	88°37′
G	29°21′	88°59′
A	29°14′	88°57′

(3) *Louisiana zone.* The Louisiana zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	29°09.25′	92°36′
C	28°35′	90°44′
D	29°09′	89°48′
E	28°57′	89°34′
F	28°40′	90°09′
G	28°18′	90°33′
H	28°25′	91°37′
I	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(4) *Texas zone.* The Texas zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	28°44′	95°15′
C	28°11′	96°17′
D	27°44′	96°53′
E	27°02′	97°11′
F	26°00.5′	96°57.3′
G	26°00.5′	96°35.85′
H	26°24′	96°36′
I	26°49′	96°52′
J	27°12′	96°51′
K	27°39′	96°33′
L	27°55′	96°04′
M	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(e) *Shrimp/stone crab separation zones.* Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 68B–38.001, Florida Administrative Code, in effect as of March 1, 2005 (incorporated by reference, see § 622.413). Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59′30″	82°45′36″
B	28°59′30″	83°00′10″
C	28°26′01″	82°59′47″
D	28°26′01″	82°56′54″
E	28°41′39″	82°55′25″
F	28°41′39″	82°56′09″
G	28°48′56″	82°56′19″
H	28°53′51″	82°51′19″
I[1]	28°54′43″	82°44′52″
J[2]	28°51′09″	82°44′00″
K	28°50′59″	82°54′16″
L	28°41′39″	82°53′56″
M[3]	28°41′39″	82°38′46″
N	28°41′39″	82°53′12″
O	28°30′51″	82°55′11″
P	28°40′00″	82°53′08″
Q	28°40′00″	82°47′58″
R	28°35′14″	82°47′47″
S	28°30′51″	82°52′55″
T	28°27′46″	82°55′09″
U	28°30′51″	82°52′09″

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(1) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ from October 5 through May 20, each year.

(2) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 68B–38.001, Florida Administrative Code, in effect as of March 1, 2005 (incorporated by reference, see § 622.413).

(3) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ from October 5 through May 20, each year.

(4) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(i) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ from October 5 through December 1 and from April 2 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone IV that is in the EEZ from December 2 through April 1, each year.

(5) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(i) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ from October 5 through November 30 and from March 16 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone V that is in the EEZ from December 1 through March 15, each year.

§ 622.56 Size limits.

Shrimp not in compliance with the applicable size limit as specified in this section may not be possessed, sold, or purchased and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that shrimp on board are in compliance with the size limit specified in this section.

(a) *White shrimp.* White shrimp harvested in the Gulf EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

(b) [Reserved]

§ 622.57 Quotas.

(a) *Royal red shrimp in the Gulf.* The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(1) *Quota closure restrictions.* When the quota in § 622.57(a) is reached, or is projected to be reached, royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited. This prohibition on sale or purchase during a closure for royal red shrimp does not apply to royal red shrimp that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) [Reserved]

(b) *General quota provisions.* See § 622.8 for information regarding applicability of quotas and general quota provisions.

§ 622.58 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Royal red shrimp in the Gulf*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, exceed the commercial ACL, then during the following fishing year, if commercial landings reach or are projected to reach the commercial ACL, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of that fishing year. The commercial ACL for royal red shrimp is 334,000 lb (151,500 kg), tail weight.

(2) [Reserved]

(b) [Reserved]

§ 622.59 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the Gulf Shrimp FMP, the RA may modify or establish separation zones for shrimp trawling and the use of fixed gear to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 622.60 Adjustment of management measures.

In accordance with the framework procedures of the Gulf Shrimp FMP, the RA may establish or modify the following:

(a) *Gulf shrimp.* For a species or species group: reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

(b) *Gulf royal red shrimp.* Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait).

§ 622.61 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.50 through 622.60.

Subpart D—Coral and Coral Reefs of the Gulf of Mexico

§ 622.70 Permits.

See § 622.4 for information regarding general permit procedures including, but not limited to fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

(a) *Required permits*—(1) *Allowable chemical.* For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(2) *Aquacultured live rock.* For a person to take or possess aquacultured live rock in the Gulf EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(3) *Prohibited coral.* A Federal permit may be issued to take or possess Gulf prohibited coral only as scientific research activity, exempted fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(4) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(i) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(ii) Landing allowable octocoral in Florida.

(iii) Landing live rock in Florida.

(b) *Application.* (1) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture

activity, the applicant must be the principal shareholder or a general partner.

(2) An applicant must provide the following:

(i) Name, address, telephone number, and other identifying information of the applicant.

(ii) Name and address of any affiliated company, institution, or organization.

(iii) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(iv) Any other information that may be necessary for the issuance or administration of the permit.

(v) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(A) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(B) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(C) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(D) Describes the naturally occurring bottom habitat at the site; and

(E) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

§ 622.71 Recordkeeping and reporting.

(a) *Individuals with aquacultured live rock permits.* (1) A person with a Federal aquacultured live rock permit must report to the RA each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(2) A person who takes aquacultured live rock must submit a report of harvest to the RA. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(b) [Reserved]

§ 622.72 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Power-assisted tools.* A power-assisted tool may not be used in the Gulf EEZ to take prohibited coral or live rock.

(b) [Reserved]

§ 622.73 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited coral.* Gulf prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

§ 622.74 Area closures to protect Gulf corals.

(a) *West and East Flower Garden Banks HAPC.* The following activities are prohibited year-round in the HAPC: Fishing with a bottom longline, bottom trawl, buoy gear, dredge, pot, or trap and bottom anchoring by fishing vessels.

(1) *West Flower Garden Bank.* West Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°55′22.8″	93°53′09.6″
B	27°55′22.8″	93°46′46.0″
C	27°49′03.0″	93°46′46.0″
D	27°49′03.0″	93°53′09.6″
A	27°55′22.8″	93°53′09.6″

(2) *East Flower Garden Bank.* East Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′14.4″	93°38′58.2″
B	27°59′14.4″	93°34′03.5″
C	27°52′36.5″	93°34′03.5″
D	27°52′36.5″	93°38′58.2″
A	27°59′14.4″	93°38′58.2″

(b) *Florida Middle Grounds HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year-round in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

(c) *Tortugas marine reserves HAPC.* The following activities are prohibited within the Tortugas marine reserves HAPC: Fishing for any species and bottom anchoring by fishing vessels.

(1) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11434, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(2) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
A	24°33′00″	83°09′00″

(d) *Pulley Ridge HAPC.* Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the area of the HAPC bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°58′18″	83°38′33″
B	24°58′18″	83°37′00″
C	24°41′11″	83°37′00″
D	24°40′00″	83°41′22″
E	24°43′55″	83°47′15″
A	24°58′18″	83°38′33″

(e) *Stetson Bank HAPC.* Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°10′38.3″	94°18′36.5″
B	28°10′38.3″	94°17′06.3″

Point	North lat.	West long.
C	28°09′18.6″	94°17′06.3″
D	28°09′18.6″	94°18′36.5″
A	28°10′38.3″	94°18′36.5″

(f) *McGrail Bank HAPC.* Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′06.0″	92°37′19.2″
B	27°59′06.0″	92°32′17.4″
C	27°55′55.5″	92°32′17.4″
D	27°55′55.5″	92°37′19.2″
A	27°59′06.0″	92°37′19.2″

§ 622.75 Harvest limitations.

(a) *Aquacultured live rock.* In the Gulf EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.70(a)(2), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) Must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344):

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) [Reserved]

§ 622.76 Restrictions on sale/purchase.

(a) *Gulf wild live rock.* Wild live rock in or from the Gulf EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock from the Gulf EEZ that was harvested and landed prior to January 1, 1997.

(b) [Reserved]

§ 622.77 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Coral and Coral Reefs of the Gulf of Mexico, the RA may establish or modify the following:

(a) *Gulf coral resources.* For a species or species group: reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested corals.

(b) [Reserved]

§ 622.78 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13 of this part, it is unlawful for any person to violate any provisions of §§ 622.70 through 622.77.

Subpart E—Red Drum Fishery of the Gulf of Mexico

§ 622.90 Recordkeeping and reporting.

(a) *Dealers.* A dealer or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(1) Dealer's or processor's name and address.

(2) State and county where red drum were landed.

(3) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(b) [Reserved]

§ 622.91 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Red drum.* Red drum may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

§ 622.92 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Red Drum Fishery of the Gulf of Mexico, the RA may establish or modify the following items:

(a) Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

§ 622.93 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.90 through 622.92.

Subparts F–H [Reserved]

Subpart I—Snapper-Grouper Fishery of the South Atlantic Region

§ 622.170 Permits and endorsements.

(a) *Commercial vessel permits*—(1) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to sell South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish on board is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb (90.7 kg) of tilefish on board harvested such tilefish in the EEZ. See § 622.171 for limitations on the use, transfer, and renewal of a commercial vessel permit for South Atlantic snapper-grouper.

(2) *Wreckfish.* For a person aboard a vessel to be eligible for exemption from the bag limit for wreckfish in or from the South Atlantic EEZ, to fish under a quota for wreckfish in or from the South Atlantic EEZ, or to sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish and a commercial permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator must be an employee, contractor, or agent of the shareholder. (See § 622.172 for information on wreckfish shareholders.)

(b) *Charter vessel/headboat permits*—(1) *South Atlantic snapper-grouper.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess, in or from the EEZ, South Atlantic snapper-grouper, a valid charter vessel/headboat permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of "Charter vessel" and "Headboat" in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

(2) [Reserved]

(c) *Dealer permits and conditions*—(1) *Permits.* For a dealer to receive South Atlantic snapper-grouper or wreckfish harvested from the South Atlantic EEZ, a dealer permit for South Atlantic snapper-grouper or wreckfish, respectively, must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(d) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

(e) *South Atlantic black sea bass pot endorsement.* For a person aboard a vessel, for which a valid commercial vessel permit for South Atlantic snapper-grouper unlimited has been issued, to use a black sea bass pot in the South Atlantic EEZ, a valid South Atlantic black sea bass pot endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for South Atlantic snapper-grouper unlimited or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(1) *Initial eligibility.* To be eligible for an initial South Atlantic black sea bass pot endorsement, a person must have been issued and must possess a valid or renewable commercial vessel permit for South Atlantic snapper-grouper that has black sea bass landings using black sea bass pot gear averaging at least 2,500 lb (1,134 kg), round weight, annually during the period January 1, 1999 through December 31, 2010. Excluded from this eligibility, are trip-limited permits (South Atlantic snapper-grouper permits that have a 225-lb (102.1-kg) limit of snapper-grouper) and valid or renewable commercial vessel permits for South Atlantic snapper-grouper unlimited that have no reported landings of black sea bass using black sea bass pots from January 1, 2008, through December 31, 2010. NMFS will attribute all applicable black sea bass landings associated with a current snapper-grouper permit for the applicable landings history, including those reported by a person(s) who held the permit prior to the current permit owner, to the current permit owner. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

(2) *Initial issuance.* On or about June 1, 2012, the RA will mail each eligible permittee a black sea bass pot endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than July 1, 2012, to clarify his/her endorsement status. A permittee denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(3) *Procedure for appealing black sea bass pot endorsement eligibility and/or landings information.* The only items subject to appeal are initial eligibility for a black sea bass pot endorsement based on ownership of a qualifying snapper-grouper permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than October 1, 2012, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final NMFS decision.

(i) *Eligibility appeals.* NMFS' records of snapper-grouper permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, for example, as a result of ownership changes from individual to corporate or vice versa, must document his/her continuity of ownership.

(ii) *Landings appeals.* Determinations of appeals regarding landings data for 1999 through 2010 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2010 that were submitted in compliance with

applicable Federal and state regulations on or before December 31, 2011.

(4) *Transferability.* A valid or renewable black sea bass pot endorsement may be transferred between any two entities that hold, or simultaneously obtain, a valid South Atlantic snapper-grouper unlimited permit. Endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the endorsement was issued. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

(5) *Fees.* No fee applies to initial issuance of a black sea bass pot endorsement. NMFS charges a fee for each renewal or replacement of such endorsement and calculates the amount of each fee in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The handbook is available from the RA. The appropriate fee must accompany each application for renewal or replacement.

§ 622.171 South Atlantic snapper-grouper limited access.

(a) *General.* The only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. A commercial vessel permit for South Atlantic snapper-grouper is either a transferable commercial permit or a trip-limited commercial permit.

(b) *Transfers of permits.* A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RA.

(1) *Transferable permits.* (i) An owner of a vessel with a transferable permit may request that the RA transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit—

(A) From one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father; or

(B) From an individual to a corporation whose shares are all held by the individual or by the individual and one or more of the following: husband, wife, son, daughter, brother, sister, mother, or father. The application for transfer of a permit under this paragraph (b)(1)(ii)(B) and each application for renewal of such permit must be accompanied by a current annual report of the corporation that specifies all shareholders of the corporation. A permit will not be renewed if the annual report shows a new shareholder other than a husband, wife, son, daughter, brother, sister, mother, or father.

(iii) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(iv) A transfer of a permit that is undertaken under paragraph (b)(1)(ii) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits.* An owner of a vessel with a trip-limited permit may request that the RA transfer the permit to another vessel owned by the same entity.

(c) *Renewal.* NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

§ 622.172 Wreckfish individual transferable quota (ITQ) system.

The provisions of this section apply to wreckfish in or from the South Atlantic EEZ.

(a) *General*—(1) *Percentage shares*—(i) *Initial ITQ shares.* In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish were assigned at the beginning of the program. Each person was notified by the RA of his or her percentage share and shareholder certificate number.

(ii) *Reverted ITQ shares.* Any shares determined by NMFS to be inactive, will be redistributed proportionately among remaining shareholders (subject to cap restrictions) based on shareholder landings history. Inactive shares are, for purposes of this section, those shares held by ITQ shareholders who have not reported any wreckfish landings between April 16, 2006, and January 14, 2011.

(iii) *Percentage share set-aside to accommodate resolution of appeals.* During the 2012–2013 fishing year, the RA will reserve 1.401 percent of wreckfish ITQ shares prior to redistributing shares (see paragraph (a)(1)(ii) of this section) to accommodate resolution of appeals, if necessary. NMFS will distribute any portion of the 1.401-percent share remaining after the appeals process as soon as possible among the remaining shareholders.

(iv) *Procedure for appealing wreckfish quota share status and landings information.* Appeals must be submitted to the RA postmarked no later than January 24, 2013, and must contain documentation supporting the basis for the appeal. The only items subject to appeal are the status of wreckfish quota shares, as active or inactive, and the accuracy of the amount of landings. The RA will review and evaluate all appeals, render final decisions on the appeals, and advise the appellant of the final decision. Appeals based on hardship factors will not be considered. The RA will determine the outcome of appeals based on NMFS' logbooks. If NMFS' logbooks are not available, the RA may use state landings records. Appellants must submit NMFS' logbooks or state landings records, as appropriate, to support their appeal.

(2) *Share transfers.* All or a portion of a person's percentage shares are transferrable. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. NMFS charges a fee for each transfer of shares and calculates the amount in accordance with the procedures of the NOAA Finance Handbook. The handbook is available from the RA. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) *ITQ share cap.* No person, including a corporation or other entity, may individually or collectively hold ITQ shares in excess of 49 percent of the total shares. For the purposes of considering the share cap, a corporation's total ITQ share is determined by adding the corporation's ITQ shares to any other ITQ shares the corporation owns in another corporation. If an individual ITQ shareholder is also a shareholder in a corporation that holds ITQ shares, an individual's total ITQ share is determined by adding the applicable ITQ shares held by the individual to the applicable ITQ shares equivalent to the corporate share the individual holds in a corporation. A corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of

when a change occurs. This information must also be provided to the RA any time a commercial vessel permit for wreckfish is renewed or transferred.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually, on or about March 1, the RA will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the RA will provide each dealer who holds a dealer permit for wreckfish, as required under § 622.170(c), with a list of vessels for which wreckfish permits have been issued, as required under § 622.170(a)(2). Annually, by April 15, the RA will provide each wreckfish shareholder with a list of dealers who have been issued dealer permits for wreckfish. From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or wreckfish dealer permit holder by written request to the RA.

(c) *ITQs.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the RA will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the RA through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The RA will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel; or

(ii) That does not have on board logbook forms for that fishing trip, as required under § 622.176(a)(3)(i).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the "Fisherman" part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The "Fisherman" part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.176(a)(3)(i) for that fishing trip.

(6) The "Fish House" part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.170(c).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.170(a)(2). A dealer must receive the "Fish House" part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such "Fish House" part; and submit all such parts with the dealer reports required by § 622.176(c).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.170(c), the wreckfish shareholder or the vessel operator must advise the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344), of the location not less than 24 hours prior to offloading.

§§ 622.173–622.175 [Reserved]

§ 622.176 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators*—(1) *General reporting requirements.* The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(a)(1), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(4) of this section.

(2) *Electronic logbook/video monitoring reporting.* The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(a)(1), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(2) is required for permit renewal.

(3) *Wreckfish reporting.* The wreckfish shareholder under § 622.172, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.170(a)(2), must—

(i) Maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(4) of this section.

(ii) Make available to an authorized officer upon request all records of commercial offloadings, purchases, or sales of wreckfish.

(4) *Reporting deadlines.* Completed fishing records required by this paragraph (a) must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement.* The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(b)(1), or whose vessel fishes for or lands such snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(3) of this section.

(2) *Electronic logbook/video monitoring reporting.* The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(b)(1), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (b)(2) is required for permit renewal.

(3) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Completed fishing records required by paragraph (b)(2) of this section for charter vessels may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Completed fishing records required by paragraph (b)(2) of this section for headboats may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers.* (1) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under § 622.170(c), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(2) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(1) of this section via facsimile (fax).

(3) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.170(c), must make available to an authorized officer upon request all records of commercial offloadings, purchases, or sales of wreckfish.

(d) *Private recreational vessels in the South Atlantic snapper-grouper fishery.* The owner or operator of a vessel that fishes for or lands South Atlantic snapper-grouper in or from the South Atlantic EEZ who is selected to report by the SRD must—

(1) Maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD. Completed fishing records must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(2) Participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD.

§ 622.177 Gear identification.

(a) *Sea bass pots and associated buoys*—(1) *Sea bass pots.* A sea bass pot used or possessed in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), or a sea bass pot on board a vessel with a commercial permit for South Atlantic snapper-grouper, must have a valid identification tag issued by the RA attached.

(2) *Associated buoys.* In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number and color code assigned by the RA so as to be easily distinguished, located, and identified.

(3) *Presumption of ownership.* A sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such pots that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(4) *Unmarked sea bass pots or buoys.* An unmarked sea bass pot or a buoy deployed in the EEZ where such pot or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(b) [Reserved]

§ 622.178 At-sea observer coverage.

(a) *Required coverage.* (1) A vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(1).

(2) Any other vessel that fishes for South Atlantic snapper-grouper in the South Atlantic EEZ must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request

for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 622.179 Conservation measures for protected resources.

(a) *South Atlantic snapper-grouper commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures.* (i) The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.170(a)(1) and 622.170(b)(1), respectively, and whose vessel has on board any hook-and-line gear, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, "Careful Release Protocols for Sea Turtle Release With Minimal Injury," and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in Appendix F to this part.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board and must use a dipnet, cushioned/support device, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in Appendix F to this part. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, cushioned/support device, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted "V", long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in Appendix F to this part.

(2) *Smalltooth sawfish conservation measures.* The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.170(a)(1) and 622.170(b)(1), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except with a long-handled dehooker.

(b) [Reserved]

§ 622.180 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Poisons.* A poison may not be used to fish for South Atlantic snapper-grouper in the South Atlantic EEZ.

(b) *Rebreathers and spearfishing gear.* In the South Atlantic EEZ, a person using a rebreather may not harvest South Atlantic snapper-grouper with spearfishing gear. The possession of such snapper-grouper while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(c) *Longlines for wreckfish.* A bottom longline may not be used to fish for wreckfish in the South Atlantic EEZ. A person aboard a vessel that has a longline on board may not retain a wreckfish in or from the South Atlantic EEZ. For the purposes of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 mi (2.4 km) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

§ 622.181 Prohibited and limited-harvest species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited species*—(1) *Goliath grouper and Nassau grouper.* Goliath grouper and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Goliath grouper and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(2) *Red snapper.* Red snapper may not be harvested or possessed in or from the South Atlantic EEZ. Such fish caught in the South Atlantic EEZ must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, *i.e.*, in state or Federal waters.

(3) *Speckled hind and warsaw grouper.* Speckled hind and warsaw grouper may not be harvested or possessed in or from the South Atlantic EEZ. Such fish caught in the South Atlantic EEZ must be released immediately with a minimum of harm. These restrictions also apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, *i.e.*, in state or Federal waters.

(c) *Limited-harvest species.* A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cubera snapper.* No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

(2) [Reserved]

§ 622.182 Gear-restricted areas.

(a) *Special management zones (SMZs).* (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59′ N. lat.; on the south by 33°30.51′ N. lat.; on the east by 78°57.55′ W. long.; and on the west by 78°58.85′ W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65′ N. lat.; on the south by 33°24.80′ N. lat.; on the east by 78°51.08′ W. long.; and on the west by 78°52.97′ W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58′ N. lat.; on the south by 33°25.76′ N. lat.; on the east by 79°00.29′ W. long.; and on the west by 79°01.24′ W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90′ N. lat.; on the south by 33°13.85′ N. lat.; on the east by 78°59.45′ W. long.; and on the west by 79°00.65′ W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45′ N. lat.; on the south by 32°43.91′ N. lat.; on the east by 79°33.81′ W. long.; and on the west by 79°35.10′ W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78′ N. lat.; on the south by 32°28.25′ N. lat.; on the east by 79°59.00′ W. long.; and on the west by 80°00.95′ W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30′ N. lat.; on the south by 32°13.90′ N. lat.; on the east by 79°50.25′ W. long.; and on the west by 79°51.45′ W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72′ N. lat.; on the south by 32°12.30′ N. lat.; on the east by 80°19.23′ W. long.; and on the west by 80°21.00′ W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92′ N. lat.; on the south by 32°14.75′ N. lat.; on the east by 80°21.62′ W. long.; and on the west by 80°22.90′ W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60′ N. lat.; on the south by 32°02.88′ N. lat.; on the east by 80°24.57′ W. long.; and on the west by 80°25.50′ W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71′ N. lat.; on the south by 31°59.42′ N. lat.; on the east by 80°35.23′ W. long.; and on the west by 80°36.37′ W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°57.4′ N. lat.; on the south by 30°55.4′ N. lat.; on the east by 81°13.9′ W. long.; and on the west by 81°16.3′ W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°52.0′ N. lat.; on the south by 30°50.0′ N. lat.; on the east by 81°08.5′ W. long.; and on the west by 81°10.9′ W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 31°00.0′ N. lat.; on the south by 30°58.0′ N. lat.; on the east by 80°56.8′ W. long.; and on the west by 80°59.2′ W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.8′ N. lat.; on the south by 31°04.8′ N. lat.; on the east by 81°10.5′ W. long.; and on the west by 81°13.4′ W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7′ N. lat.; on the south by 31°34.7′ N. lat.; on the east by 80°47.3′ W. long.; and on the west by 80°50.1′ W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.0′ N. lat.; on the south by 31°44.0′ N. lat.; on the east by 80°34.7′ W. long.; and on the west by 80°37.1′ W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2′ N. lat.; on the south by 31°49.2′ N. lat.; on the east by 80°45.3′ W. long.; and on the west by 80°47.7′ W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8′ N. lat.; on the south by 27°25.8′ N. lat.; on the east by 80°09.24′ W. long.; and on the west by 80°10.36′ W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68′	80°03.95′
B	27°22.80′	80°03.60′
C	27°23.94′	80°00.02′
D	27°24.85′	80°00.33′
A	27°23.68′	80°03.95′

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82′ N. lat.; on the south by 25°41.32′ N. lat.; on the east by 80°04.22′ W. long.; and on the west by 80°05.53′ W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10′ N. lat.; on the south by 33°41.10′ N. lat.; on the east by 78°26.40′ W. long.; and on the west by 78°27.10′ W. long.

(xxiii) *BP–25 Reef* is bounded on the north by 33°21.70′ N. lat.; on the south by 33°20.70′ N. lat.; on the east by 78°24.80′ W. long.; and on the west by 78°25.60′ W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80′ N. lat.; on the south by 32°57.30′ N. lat.; on the east by 78°39.30′ W. long.; and on the west by 78°40.10′ W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00′ N. lat.; on the south by 32°59.50′ N. lat.; on the east by 79°02.01′ W. long.; and on the west by 79°02.62′ W. long.

(xxvi) *Y–73 Reef* is bounded on the north by 32°33.20′ N. lat.; on the south by 32°32.70′ N. lat.; on the east by 79°19.10′ W. long.; and on the west by 79°19.70′ W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48′ N. lat.; on the south by 32°00.98′ N. lat.; on the east by 80°30.00′ W. long.; and on the west by 80°30.65′ W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20′ N. lat.; on the south by 33°25.20′ N. lat.; on the east by 78°32.70′ W. long.; and on the west by 78°33.80′ W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40′ N. lat.; on the south by 32°26.90′ N. lat.; on the east by 79°18.80′ W. long.; and on the west by 79°19.60′ W. long.

(xxx) *Murrel's Inlet 60 Foot Reef* is bounded on the north by 33°17.50′ N. lat.; on the south by 33°16.50′ N. lat.; on the east by 78°44.67′ W. long.; and on the west by 78°45.98′ W. long.

(xxxi) *Georgetown 95 Foot Reef* is bounded on the north by 33°11.75′ N. lat.; on the south by 33°10.75′ N. lat.; on the east by 78°24.10′ W. long.; and on the west by 78°25.63′ W. long.

(xxxii) *New Georgetown 60 Foot Reef* is bounded on the north by 33°09.25′ N. lat.; on the south by 33°07.75′ N. lat.; on the east by 78°49.95′ W. long.; and on the west by 78°51.45′ W. long.

(xxxiii) *North Inlet 45 Foot Reef* is bounded on the north by 33°21.03′ N. lat.; on the south by 33°20.03′ N. lat.; on the east by 79°00.31′ W. long.; and on the west by 79°01.51′ W. long.

(xxxiv) *CJ Davidson Reef* is bounded on the north by 33°06.48′ N. lat.; on the south by 33°05.48′ N. lat.; on the east by 79°00.27′ W. long.; and on the west by 79°01.39′ W. long.

(xxxv) *Greenville Reef* is bounded on the north by 32°57.25′ N. lat.; on the south by 32°56.25′ N. lat.; on the east by 78°54.25′ W. long.; and on the west by 78°55.25′ W. long.

(xxxvi) *Charleston 60 Foot Reef* is bounded on the north by 32°33.60′ N. lat.; on the south by 32°32.60′ N. lat.; on the east by 79°39.70′ W. long.; and on the west by 79°40.90′ W. long.

(xxxvii) *Edisto 60 Foot Reef* is bounded on the north by 32°21.75′ N. lat.; on the south by 32°20.75′ N. lat.; on the east by 80°04.10′ W. longitude; and on the west by 80°05.70′ W. long.

(xxxviii) *Edisto 40 Foot Reef* is bounded on the north by 32°25.78′ N. lat.; on the south by 32°24.78′ N. lat.; on the east by 80°11.24′ W. long.; and on the west by 80°12.32′ W. long.

(xxxix) *Beaufort 45 Foot Reef* is bounded on the north by 32°07.65′ N. lat.; on the south by 32°06.65′ N. lat.; on the east by 80°28.80′ W. long.; and on the west by 80°29.80′ W. long.

(xl) *Artificial Reef—ALT* is bounded on the north by 31°18.6′ N. lat.; on the south by 31°16.6′ N. lat.; on the east by 81°07.0′ W. long.; and on the west by 81°09.4′ W. long.

(xli) *Artificial Reef—CAT* is bounded on the north by 31°40.2′ N. lat.; on the south by 31°38.2′ N. lat.; on the east by

80°56.2′ W. long.; and on the west by 80°58.6′ W. long.

(xlii) *Artificial Reef—CCA* is bounded on the north by 31°43.7′ N. lat.; on the south by 31°41.7′ N. lat.; on the east by 80°40.0′ W. long.; and on the west by 80°42.3′ W. long.

(xliii) *Artificial Reef—DRH* is bounded on the north by 31°18.0′ N. lat.; on the south by 31°16.0′ N. lat.; on the east by 80°56.6′ W. long.; and on the west by 80°59.0′ W. long.

(xliv) *Artificial Reef—DUA* is bounded on the north by 31°47.8′ N. lat.; on the south by 31°45.8′ N. lat.; on the east by 80°52.1′ W. long.; and on the west by 80°54.5′ W. long.

(xlv) *Artificial Reef—DW* is bounded on the north by 31°22.8′ N. lat.; on the south by 31°20.3′ N. lat.; on the east by 79°49.8′ W. long.; and on the west by 79°51.1′ W. long.

(xlvi) *Artificial Reef—KBY* is bounded on the north by 30°48.6′ N. lat.; on the south by 30°46.6′ N. lat.; on the east by 81°15.0′ W. long.; and on the west by 81°17.4′ W. long.

(xlvii) *Artificial Reef—KTK* is bounded on the north by 31°31.3′ N. lat.; on the south by 31°29.3′ N. lat.; on the east by 80°59.1′ W. long.; and on the west by 81°01.5′ W. long.

(xlviii) *Artificial Reef—MRY* is bounded on the north by 30°47.5′ N. lat.; on the south by 30°45.5′ N. lat.; on the east by 81°05.5′ W. long.; and on the west by 81°07.8′ W. long.

(xlix) *Artificial Reef—SAV* is bounded on the north by 31°55.4′ N. lat.; on the south by 31°53.4′ N. lat.; on the east by 80°45.2′ W. long.; and on the west by 80°47.6′ W. long.

(l) *Artificial Reef—SFC* is bounded on the north by 31°00.8′ N. lat.; on the south by 30°59.8′ N. lat.; on the east by 81°02.2′ W. long.; and on the west by 81°03.4′ W. long.

(li) *Artificial Reef—WW* is bounded on the north by 31°43.5′ N. lat.; on the south by 31°42.2′ N. lat.; on the east by 79°57.7′ W. long.; and on the west by 79°59.3′ W. long.

(2) To determine what restrictions apply in the SMZs listed in paragraph (a)(1) of this section, follow this table:

In SMZs specified in the following paragraphs of this section	These restrictions apply
(a)(1)(i) through (x), (a)(1)(xx), and (a)(1)(xxii) through (xxxix)	Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ. Harvest and possession of a South Atlantic snapper-grouper is limited to the bag-limits specified § 622.187(b).
(a)(1)(i) through (xviii) and (a)(1)(xxii) through (li)	Fishing may only be conducted with handline, rod and reel, and spearfishing gear.
(a)(1)(i) through (li)	Use of a sea bass pot or bottom longline is prohibited.
(a)(1)(xii) through (xviii) and (a)(1)(xl) through (li)	Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.187(b).
(a)(1)(xix) and (a)(1)(xx)	A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.
(a)(1)(xix) and (a)(1)(xxi)	Use of spearfishing gear is prohibited.

(b) *Longline prohibited areas.* A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10′ N. lat., or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in § 622.187(b), and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(c) *Powerhead prohibited area.* A powerhead may not be used in the EEZ off South Carolina to harvest South Atlantic snapper-grouper. The possession of a mutilated South Atlantic snapper-grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(d) *Sea bass pot prohibited area.* A sea bass pot may not be used in the South Atlantic EEZ south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). A sea bass pot deployed in the EEZ south of 28°35.1′ N. lat. may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.183 Area and seasonal closures.

(a) *Area closures*—(1) *Marine protected areas (MPAs).* (i) No person may fish for a South Atlantic snapper-grouper in an MPA, and no person may possess a South Atlantic snapper-grouper in an MPA. However, the prohibition on possession does not apply to a person aboard a vessel that is in transit with fishing gear appropriately stowed as specified in paragraph (a)(1)(ii) of this section. In addition to these restrictions, see § 635.21(d)(1)(iii) of this chapter regarding restrictions applicable within these MPAs for any vessel issued a permit under part 635 of this chapter that has longline gear on board. MPAs consist of deepwater areas as follows:

(A) *Snowy Grouper Wreck MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°25′	77°04.75′
B	33°34.75′	76°51.3′
C	33°25.5′	76°46.5′
D	33°15.75′	77°00.0′
A	33°25′	77°04.75′

(B) *Northern South Carolina MPA* is bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(C) *Edisto MPA* is bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(D) *Charleston Deep Artificial Reef MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°04′	79°12′
B	32°08.5′	79°07.5′
C	32°06′	79°05′
D	32°01.5′	79°09.3′
A	32°04′	79°12′

(E) *Georgia MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	31°43′	79°31′
B	31°43′	79°21′
C	31°34′	79°29′
D	31°34′	79°39′
A	31°43′	79°31′

(F) *North Florida MPA* is bounded on the north by 30°29′ N. lat.; on the south by 30°19′ N. lat.; on the east by 80°02′ W. long.; and on the west by 80°14′ W. long.

(G) *St. Lucie Hump MPA* is bounded on the north by 27°08′ N. lat.; on the south by 27°04′ N. lat.; on the east by 79°58′ W. long.; and on the west by 80°00′ W. long.

(H) *East Hump MPA* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°36.5′	80°45.5′
B	24°32′	80°36′
C	24°27.5′	80°38.5′
D	24°32.5′	80°48′
A	24°36.5′	80°45.5′

(ii) For the purpose of paragraph (a)(1)(i) of this section, transit means direct, non-stop progression through the MPA. Fishing gear appropriately stowed means—

(A) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(B) A trawl or try net may remain on deck, but trawl doors must be disconnected from such net and must be secured.

(C) A gillnet, stab net, or trammel net must be left on the drum. Any additional such nets not attached to the drum must be stowed below deck.

(D) Terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. A rod and reel must be removed from the rod holder and stowed securely on or below deck.

(E) A crustacean trap, golden crab trap, or sea bass pot cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(2) [Reserved]

(b) *Seasonal closures*—(1) *Seasonal closure of the recreational and commercial fisheries for gag and associated grouper species.* During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any South Atlantic shallow-water grouper (SASWG) (gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney). In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, *i.e.*, in state or Federal waters.

(2) *Wreckfish spawning-season closure.* From January 15 through April 15, each year, no person may harvest or possess on a fishing vessel wreckfish in or from the EEZ; offload wreckfish from the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

(3) *Wreckfish recreational sector closures.* The recreational sector for wreckfish in or from the South Atlantic EEZ is closed from January 1 through June 30, and September 1 through December 31, each year. During a closure, the bag and possession limit for wreckfish in or from the South Atlantic EEZ is zero.

(4) *Seasonal closure of the recreational fishery for vermilion snapper.* The recreational fishery for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. In addition, for a person on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, this closure applies in the South Atlantic, regardless of where the fish are harvested, *i.e.*, in state or Federal waters. During the closure, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero.

§ 622.184 Seasonal harvest limitations.

(a) *Greater amberjack spawning season.* During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.192(g).

(b) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

(c) *Red porgy.* During January, February, March, and April, the harvest or possession of red porgy in or from the South Atlantic EEZ is limited to three per person per day or three per person per trip, whichever is more restrictive. In addition, this limitation is applicable in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.192(f).

§ 622.185 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit, as specified in this section, in or from the South Atlantic EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) *Snapper*—(1) *Red snapper*—20 inches (50.8 cm), TL, however, see § 622.181(b)(2) for the current prohibition on the harvest and possession of red snapper.

(2) *Vermilion snapper*—12 inches (30.5 cm), TL.

(3) *Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers*—12 inches (30.5 cm), TL.

(4) *Mutton snapper*—16 inches (40.6 cm), TL.

(5) *Lane snapper*—8 inches (20.3 cm), TL.

(b) *Grouper*—(1) *Red, yellowfin, and yellowmouth grouper; and scamp*—20 inches (50.8 cm), TL.

(2) *Black grouper and gag*—24 inches (61.0 cm), TL.

(c) *Other snapper-grouper species*—(1) *Black sea bass.*

(i) For a fish taken by a person subject to the bag limit specified in § 622.187(b)(7)—13 inches (33 cm), TL.

(ii) For a fish taken by a person not subject to the bag limit specified in § 622.187(b)(7)—11 inches (28 cm), TL.

(2) *Gray triggerfish in the South Atlantic EEZ off Florida*—12 inches (30.5 cm), TL.

(3) *Hogfish*—12 inches (30.5 cm), fork length.

(4) *Red porgy*—14 inches (35.6 cm), TL.

(5) *Greater amberjack*—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.187(b)(1) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

§ 622.186 Landing fish intact.

(a) South Atlantic snapper-grouper in or from the South Atlantic EEZ must be maintained with head and fins intact, except as specified in paragraph (b) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(b) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph, a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

§ 622.187 Bag and possession limits.

(a) *Additional applicability provisions for South Atlantic snapper-grouper.* Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a) notwithstanding:

(1) The bag and other limits specified in § 622.182(b) apply for South Atlantic snapper-grouper in or from the EEZ to a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued that has on board a longline in the longline closed area.

(2) A person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (b)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.182(a)(1)(xii) through (a)(1)(xviii) or (a)(1)(xl) through (a)(1)(li).

(b) *Bag limits*—(1) *Greater amberjack*—1.

(2) *Grouper and tilefish, combined*—3. However, no grouper or tilefish may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. In addition, within the 3-fish aggregate bag limit:

(i) No more than one fish may be gag or black grouper, combined;

(ii) No more than one fish per vessel may be a snowy grouper;

(iii) No more than one fish may be a golden tilefish; and

(iv) No goliath grouper or Nassau grouper may be retained.

(3) *Hogfish in the South Atlantic off Florida*—5.

(4) *Snappers, combined*—10. However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and red snapper and vermilion snapper. (See § 622.181(b)(2) for the prohibition on harvest and possession of red snapper and § 622.181(c)(1) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(5) *Vermilion snapper*—5. However, no vermilion snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(6) *Red porgy*—3.

(7) *Black sea bass*—5.

(8) *South Atlantic snapper-grouper, combined*—20. However, excluded from this 20-fish bag limit are tomtate, blue runner, ecosystem component species (specified in Table 4 of Appendix A to part 622), and those specified in paragraphs (b)(1) through (7) and paragraphs (b)(9) and (10) of this section.

(9) No red snapper may be retained.

(10) No more than one fish per vessel may be a wreckfish.

(11) *Longline bag limits.* Other provisions of this paragraph (b) notwithstanding, a person on a trip aboard a vessel for which the bag limits apply that has a longline on board is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in this paragraph (b), and to zero for all other South Atlantic snapper-grouper. For the purposes of this paragraph (b)(11), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these elements constitutes removal of a longline.

(c) *Possession limits.* (1) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(i) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(ii) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(2) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of three per day or three per trip, whichever is more restrictive.

§ 622.188 Required gear, authorized gear, and unauthorized gear.

(a) *Required gear.* For a person on board a vessel to harvest or possess South Atlantic snapper-grouper in or from the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (a)(1) and (a)(2) of this section.

(1) *Dehooking device.* At least one dehooking device is required and must be used as needed to remove hooks embedded in South Atlantic snapper-grouper with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(2) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required to be used when fishing with hook-and-line gear and natural baits north of 28° N. lat.

(b) *Authorized gear.* Subject to the gear restrictions specified in § 622.180, the following are the only gear types authorized in a directed fishery for snapper-grouper in the South Atlantic EEZ: Bandit gear, bottom longline, buoy

gear, handline, rod and reel, sea bass pot, and spearfishing gear.

(c) *Unauthorized gear.* All gear types other than those specified in paragraph (b) of this section are unauthorized gear and the following possession and transfer limitations apply.

(1) A vessel with trawl gear on board that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, on board harvested such fish in the EEZ.

(2) Except as specified in paragraphs (d) through (f) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(i) South Atlantic snapper-grouper species for which a bag limit is specified in § 622.187—the bag limit.

(ii) All other South Atlantic snapper-grouper—zero.

(3) South Atlantic snapper-grouper on board a vessel with unauthorized gear on board may not be transferred at sea, regardless of where such transfer takes place, and such snapper-grouper may not be transferred in the EEZ.

(4) No vessel may receive at sea any South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in paragraph (c)(3) of this section.

(d) *Possession allowance regarding sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina with a sink net on board, may retain, without regard to the limits specified in paragraph (c)(2) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

(e) *Possession allowance regarding bait nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with no more than one bait net on board, may retain, without regard to the limits specified in paragraph (c)(2) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (e), a bait net is a gillnet not exceeding 50 ft (15.2 m) in length or 10 ft (3.1 m) in height with stretched mesh measurements of 1.5 inches (3.8 cm) or smaller that is attached to the vessel when deployed.

(f) *Possession allowance regarding cast nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ with a cast net on board, may retain, without regard to the limits specified in paragraph (c)(2) of this section, otherwise legal South Atlantic snapper-grouper taken with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (f), a cast net is a cone-shaped net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

(g) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: Snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

§ 622.189 Restrictions and requirements for sea bass pots.

(a) *Tending restriction.* A sea bass pot in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted.

(b) *Configuration restriction.* In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a "trawl" or trot line.

(c) *Requirement for escape mechanisms.* (1) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.19′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(i) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(A) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(B) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(ii) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(A) 1⅛ by 5¾ inches (2.9 by 14.6 cm) for a rectangular vent.

(B) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(C) 2.0-inch (5.1-cm) diameter for a round vent.

(2) [Reserved]

(d) *Construction requirements and mesh sizes.* (1) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(i) For sides of the pot other than the back panel:

(A) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(B) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(C) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(ii) For the entire back panel, *i.e.,* the side of the pot opposite the side that contains the pot entrance, mesh that is at least 2 inches (5.1 cm) between sides.

(2) [Reserved]

(e) *Requirements for pot removal.* (1) A sea bass pot must be removed from the water in the South Atlantic EEZ and the vessel must be returned to a dock, berth, beach, seawall, or ramp at the conclusion of each trip. Sea bass pots may remain on the vessel at the conclusion of each trip.

(2) A sea bass pot must be removed from the water in the South Atlantic EEZ when the applicable quota specified in § 622.190(a)(5) is reached. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(f) *Restriction on number of pots.* A vessel that has on board a valid Federal

commercial permit for South Atlantic snapper-grouper and a South Atlantic black sea bass pot endorsement that fishes in the South Atlantic EEZ on a trip with black sea bass pots, may possess only 35 black sea bass pots per vessel per permit year. Each black sea bass pot in the water or onboard a vessel in the South Atlantic EEZ, must have a valid identification tag attached. Endorsement holders must apply for new tags each permit year through NMFS to replace tags from the previous year.

§ 622.190 Quotas.

See § 622.8 for general provisions regarding quota applicability and closure and reopening procedures. This section provides quotas and specific quota closure restrictions for South Atlantic snapper-grouper.

(a) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.11 for applicability of the bag limits.) The quotas are in gutted weight, that is, eviscerated but otherwise whole.

(1) *Snowy grouper*—82,900 lb (37,603 kg).

(2) *Golden tilefish*—541,295 lb (245,527 kg).

(3) *Greater amberjack*—769,388 lb (348,989 kg).

(4) *Vermilion snapper.* (i) For the period January through June each year—315,523 lb (143,119 kg).

(ii) For the period July through December each year—302,523 lb (137,222 kg).

(iii) Any unused portion of the quota specified in paragraph (a)(4)(i) of this section will be added to the quota specified in paragraph (a)(4)(ii) of this section. Any unused portion of the quota specified in paragraph (a)(4)(ii) of this section, including any addition of quota specified in paragraph (a)(4)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

(5) *Black sea bass*—309,000 lb (140,160 kg), gutted weight; 364,620 lb (165,389 kg), round weight.

(6) *Red porgy*—190,050 lb (86,205 kg).

(7) *Gag*—352,940 lb (160,091 kg).

(b) *Wreckfish.* The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 223,250 lb (101,264 kg), round weight. See § 622.172 for information on the wreckfish shareholder under the ITQ system.

(c) *Restrictions applicable after a commercial quota closure*—(1) *South Atlantic gag, black grouper, red grouper, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish.* (i) The appropriate bag limits specified in § 622.187(b) and the possession limits specified in § 622.187(c) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from or possessed in the EEZ is prohibited. The prohibition on sale/purchase during a closure for the applicable species does not apply to fish that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(ii) The bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(iii) For gag, when the appropriate commercial quota is reached, the provisions of paragraphs (c)(1)(i) and (ii) of this section apply to gag and all other SASWG.

(2) [Reserved]

§ 622.191 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. Commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

(a) When a vessel fishes on a trip in the South Atlantic EEZ, the vessel trip limits specified in this paragraph (a) apply, provided persons aboard the vessel are not subject to the bag limits. See § 622.11 and § 622.187(a) for applicability of the bag limits.

(1) *Trip-limited permits.* A vessel for which a trip-limited permit for South Atlantic snapper-grouper has been issued is limited to 225 lb (102.1 kg) of snapper-grouper.

(2) *Golden tilefish.* (i) Until 75 percent of the fishing year quota specified in § 622.190(a)(2) is reached—4,000 lb (1,814 kg).

(ii) After 75 percent of the fishing year quota specified in § 622.190(a)(2) is reached—300 lb (136 kg). However, if 75 percent of the fishing year quota has not been taken on or before September 1, the trip limit will not be reduced. The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect a trip limit change specified in this paragraph (a)(2)(ii), when the applicable conditions have been taken.

(iii) See § 622.190(c)(1) for the limitations regarding golden tilefish after the fishing year quota is reached.

(3) *Snowy grouper.* Until the quota specified in § 622.190(a)(1) is reached—100 lb (45 kg). See § 622.190(c)(1) for the limitations regarding snowy grouper after the fishing year quota is reached.

(4) *Red porgy.* (i) From May 1 through December 31—120 fish.

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.184(c) applies.

(iii) See § 622.190(c)(1) for the limitations regarding red porgy after the fishing year quota is reached.

(5) *Greater amberjack.* Until the quota specified in § 622.190(a)(3) is reached, 1,200 lb (544 kg). See § 622.190(c)(1) for the limitations regarding greater amberjack after the quota is reached.

(6) *Vermilion snapper.* Until either quota specified in § 622.190(a)(4)(i) or (ii) is reached, 1,500 lb (680 kg). See § 622.190(c)(1) for the limitations regarding vermilion snapper after either quota is reached.

(7) *Gag.* Until the quota specified in § 622.190(a)(7) is reached, 1,000 lb (454 kg). See § 622.190(c)(1) for the limitations regarding gag after the quota is reached.

(8) *Black sea bass.* Until the applicable quota specified in § 622.190(a)(5) is reached, 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight. See § 622.190(c)(1) for the limitations regarding black sea bass after the applicable quota is reached.

(b) [Reserved]

§ 622.192 Restrictions on sale/purchase.

The restrictions in this section are in addition to the restrictions on sale/purchase related to quota closures as specified in § 622.190(c).

(a) A South Atlantic snapper-grouper harvested or possessed in the EEZ on board a vessel that does not have a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.170(a), or a South Atlantic snapper-grouper harvested in the EEZ and possessed under the bag limits specified in § 622.187(b), may not be sold or purchased. In addition, a South Atlantic snapper-grouper harvested or possessed by a vessel that is operating as a charter vessel or headboat with a

Federal charter vessel/headboat permit for South Atlantic snapper-grouper may not be sold or purchased regardless of where harvested, *i.e.*, in state or Federal waters.

(b) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.170(c).

(c) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.170(a).

(d) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(e) No person may sell or purchase a snowy grouper, gag, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic, *i.e.*, in state or Federal waters, by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.190(a) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

(f) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.*, in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (i) of this section.

(g) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.*, in state or Federal waters. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (i) of this section.

(h) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.*, in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (i) of this section.

(i) The documentation supporting a dealer's purchase or sale of applicable species during the times specified in paragraphs (f) through (h) of this section must contain:

(1) The information specified in part 300, subpart K, of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The official number, name, and home port of the vessel harvesting the applicable species;

(3) The port and date of offloading from the vessel harvesting the applicable species; and

(4) A statement signed by the dealer attesting that the applicable species was harvested from an area other than the South Atlantic.

(j) No person may sell or purchase a red snapper harvested from or possessed in the South Atlantic, *i.e.*, state or Federal waters, by a vessel for which a Federal commercial permit for South Atlantic snapper-grouper has been issued.

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Golden tilefish*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.190(a)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(2) *Recreational sector.* If recreational landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 3,019 fish, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. If recreational landings for golden tilefish, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

(b) *Snowy grouper*—(1) *Commercial fishery.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(1), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year.

(2) *Recreational fishery.* If recreational landings, as estimated by the SRD, exceed the recreational ACL of 523 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. Recreational landings will be evaluated relative to the ACL as follows. For 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(c) *Gag*—(1) *Commercial fishery.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(7), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for gag and all other SASWG for the remainder of the fishing year.

(2) *Recreational fishery.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 340,060 lb (154,249 kg), gutted weight, and gag are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the gag recreational fishery for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit for gag in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) Without regard to overfished status, if gag recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(iii) Recreational landings will be evaluated relative to the ACL as follows. For 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(d) *Red grouper*—(1) *Commercial sector.* (i) If commercial landings for red grouper, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (d)(1)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of red grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) If commercial landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(iii) The applicable commercial ACLs, in round weight, are 284,680 lb (129,129 kg) for 2012, 315,920 lb (143,299 kg) for 2013, and 343,200 lb (155,673 kg) for 2014 and subsequent fishing years.

(2) *Recreational sector.* (i) If recreational landings for red grouper, as estimated by the SRD, are projected to reach the applicable ACL in paragraph (d)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) If recreational landings for red grouper, as estimated by the SRD, exceed the applicable ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing.

(iii) The applicable recreational ACLs, in round weight, are 362,320 lb (164,346 kg) for 2012, 402,080 lb (182,380 kg) for 2013, and 436,800 lb (198,129 kg) for 2014 and subsequent fishing years.

(3) Without regard to overfished status, if the combined commercial and recreational sector ACL (total ACL), as estimated by the SRD, is exceeded in a fishing year, then during the following fishing year, an automatic increase will not be applied to the commercial and recreational sector ACLs. The SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied. The applicable combined commercial and recreational sector ACLs, in round weight are 647,000 lb (293,474 kg) for 2012, 718,000 lb (325,679 kg) for 2013, and 780,000 lb (353,802 kg) for 2014 and subsequent fishing years.

(i) Following an overage of the total ACL, if there is no overage the following fishing year, the SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied.

(ii) [Reserved]

(e) *Black sea bass*—(1) *Commercial sector.* (i) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(5), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) If commercial landings exceed the quota specified in § 622.190(a)(5), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

(2) *Recreational sector.* (i) If recreational landings for black sea bass, as estimated by the SRD, are projected to reach the recreational ACL of 409,000 lb (185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight; the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

(f) *Vermilion snapper*—(1) *Commercial fishery.* If commercial landings, as estimated by the SRD, reach or are projected to reach a quota specified in § 622.190(a)(4)(i) or (ii), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for that portion of the fishing year applicable to the respective quota.

(2) *Recreational fishery.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 307,315 lb (139,396 kg), gutted weight, and vermilion snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the recreational fishery for vermilion snapper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of vermilion snapper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for

South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) Without regard to overfished status, if vermilion snapper recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(iii) Recreational landings will be evaluated relative to the ACL as follows. For 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(g) *Black grouper*—(1) *Commercial sector*—(i) If commercial landings for black grouper, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (g)(1)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of black grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and black grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(iii) The applicable commercial ACLs, in round weight, are 90,575 lb (41,084 kg) for 2012, 94,571 lb (42,897 kg) for 2013, and 96,844 lb (43,928 kg) for 2014 and subsequent fishing years.

(2) *Recreational sector.* If recreational landings for black grouper, as estimated by the SRD, exceed the applicable ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary. The applicable recreational ACLs, in round weight, are 155,020 lb (70,316 kg) for 2012, 161,859 lb (73,418 kg) for 2013, and 165,750 lb (75,183 kg) for 2014 and subsequent fishing years.

(3) Without regard to overfished status, if the combined commercial and recreational sector ACLs, as estimated by the SRD, are exceeded in a fishing year, then during the following fishing year, the AA will file a notification with the Office of the Federal Register stating that both the commercial and recreational sectors will not have an increase in their respective sector ACLs during that following fishing year. The applicable combined commercial and recreational sector ACLs, in round weight are 245,595 lb (111,400 kg) for 2012, 256,430 lb (116,315 kg) for 2013, and 262,594 lb (119,111 kg) for 2014 and subsequent fishing years.

(h) *Deep-water complex (including yellowedge grouper, blueline tilefish, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper)*—(1) *Commercial sector*—(i) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 343,869 lb (155,976 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and at least one of the species in the deep-water complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for the deep-water complex, as estimated by the SRD, exceed the recreational ACL of 332,039 lb (150,610 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(i) *Scamp*—(1) *Commercial sector*—(i) If commercial landings for scamp, as estimated by the SRD, reach or are projected to reach the commercial ACL of 341,636 lb (154,963 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of scamp is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and scamp are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for scamp, as estimated by the SRD, exceed the recreational ACL of 150,936 lb (68,463 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the

recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(j) *Other SASWG combined (including red hind, rock hind, yellowmouth grouper, yellowfin grouper, coney, and graysby)*—(1) *Commercial sector*—(i) If commercial landings for other SASWG, as estimated by the SRD, reach or are projected to reach the commercial ACL of 49,488 lb (22,447 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of other SASWG is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and at least one of the species in the other SASWG complex is overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for other SASWG, as estimated by the SRD, exceed the recreational ACL of 48,329 lb (21,922 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(k) *Greater amberjack*—(1) *Commercial sector*—(i) If commercial landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(3), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) If commercial landings exceed the ACL, and greater amberjack are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for greater amberjack, as estimated by the SRD, exceed the recreational ACL of 1,167,837 lb (529,722 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(l) *Lesser amberjack, almaco jack, and banded rudderfish complex, combined*—(1) *Commercial sector*—(i) If commercial landings for lesser amberjack, almaco jack, and banded rudderfish, combined, as estimated by the SRD, reach or are projected to reach their combined commercial ACL of 193,999 lb (87,996 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of lesser amberjack, almaco jack, and banded rudderfish is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If the combined commercial landings for the complex exceed the ACL, and at least one of the species in the complex (lesser amberjack, almaco jack, and banded rudderfish) is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for the complex (lesser amberjack, almaco jack, and banded rudderfish), combined, as estimated by the SRD, exceed the recreational ACL of 261,490 lb (118,610 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(m) *Bar jack*—(1) *Commercial sector*—(i) If commercial landings for bar jack, as estimated by the SRD, reach or are projected to reach the commercial ACL of 6,686 lb (3,033 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of bar jack is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and bar jack is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for bar jack, as estimated by the SRD, exceed the recreational ACL of 13,834 lb (6,275 kg), round weight, then during the following fishing year, recreational landings will be monitored

for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(n) *Yellowtail snapper*—(1) *Commercial sector*—(i) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,142,589 lb (518,270 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and yellowtail snapper is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year

(2) *Recreational sector.* If recreational landings for yellowtail snapper, as estimated by the SRD, exceed the recreational ACL of 1,031,286 lb (467,783 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(o) *Mutton snapper*—(1) *Commercial sector.* (i) If commercial landings for mutton snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 157,743 lb (71,551 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of mutton snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and mutton snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for mutton snapper, as estimated by the SRD, exceed the recreational ACL of 768,857 lb (348,748 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(p) *Other snappers combined (including cubera snapper, gray snapper, lane snapper, dog snapper, and mahogany snapper) complex*—(1) *Commercial sector*—(i) If commercial landings combined for this other snappers complex, as estimated by the SRD, reach or are projected to reach the combined complex commercial ACL of 204,552 lb (92,783 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of the snappers in this complex is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the other snappers complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If the combined recreational landings for this snappers complex, as estimated by the SRD, exceed the recreational ACL of 882,388 lb (400,244 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL for this complex in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(q) *Gray triggerfish*—(1) *Commercial sector*—(i) If commercial landings for gray triggerfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 305,262 lb (138,465 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of gray triggerfish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic

snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for gray triggerfish, as estimated by the SRD, exceed the recreational ACL of 367,303 lb (166,606 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(r) *Wreckfish*—(1) *Commercial sector.* The ITQ program for wreckfish in the South Atlantic serves as the accountability measures for commercial wreckfish. The commercial ACL for wreckfish is equal to the commercial quota specified in § 622.190(b).

(2) *Recreational sector.* If recreational landings for wreckfish, as estimated by the SRD, exceed the recreational ACL of 11,750 lb (5,330 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(s) *Blue runner*—(1) *Commercial sector.* (i) If commercial landings for blue runner, as estimated by the SRD, reach or are projected to reach the commercial ACL of 188,329 lb (85,425 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blue runner is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and blue runner are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for blue runner, as estimated by the SRD, exceed the recreational ACL of 1,101,612 lb (499,683 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(t) *Atlantic spadefish*—(1) *Commercial sector.* (i) If commercial landings for Atlantic spadefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 36,476 lb (16,545 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic spadefish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and Atlantic spadefish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for Atlantic spadefish, as estimated by the SRD, exceed the recreational ACL of 246,365 lb (111,749 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(u) *Hogfish*—(1) *Commercial sector.* (i) If commercial landings for hogfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 48,772 lb (22,123 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of hogfish is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and hogfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for hogfish, as estimated by the SRD, exceed the recreational ACL of

98,866 lb (44,845 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(v) *Red porgy*—(1) *Commercial sector.* (i) If commercial landings for red porgy, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(6), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) If commercial landings exceed the ACL, and red porgy are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for red porgy, as estimated by the SRD, exceed the recreational ACL of 197,652 lb (89,653 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(w) *Jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy complex*—(1) *Commercial sector.* (i) If commercial landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 35,129 lb (15,934 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, exceed the recreational ACL of 112,485 lb (51,022 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(x) *White grunt, sailor's choice, tomtate, and margate complex*—(1) *Commercial sector.* (i) If commercial landings for white grunt, sailor's choice, tomtate, and margate, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 214,624 lb (97,352 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of white grunt, sailor's choice, tomtate, and margate, is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If the combined commercial landings for this complex exceed the ACL, and at least one of the species in the complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for white grunt, sailor's choice, tomtate, and margate, as estimated by the SRD, exceed the recreational ACL of 562,151 lb (254,987 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

§ 622.194 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Snapper-Grouper Fishery of the South Atlantic Region, the RA may establish or modify the following items specified in paragraph (a) of this section for South Atlantic snapper-grouper and wreckfish.

(a) Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, annual catch limits (ACLs), target catch levels, accountability measures (AMs), trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and

restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

(b) [Reserved]

§ 622.195 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.170 through 622.194.

Subpart J—Shrimp Fishery of the South Atlantic Region

§ 622.200 Permits.

(a) *Commercial vessel permits*—(1) *South Atlantic penaeid shrimp.* For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, a valid commercial vessel permit for South Atlantic penaeid shrimp must have been issued to the vessel and must be on board.

(2) *South Atlantic rock shrimp.* (i) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off North Carolina or off South Carolina or possess rock shrimp in or from the South Atlantic EEZ off those states, a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must be issued to the vessel and must be on board.

(ii) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off those states, a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must be issued to the vessel and must be on board. A Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) is a limited access permit. See § 622.201 for limitations on the issuance, transfer, or renewal of a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ).

(b) *Operator permits.* (1) An operator of a vessel that has or is required to have a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) issued under this section is required to have an operator permit.

(2) A person required to have an operator permit under paragraph (b)(1) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(3) An owner of a vessel that is required to have a permitted operator under paragraph (b)(1) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(4) An owner of a vessel that is required to have a permitted operator under paragraph (b)(1) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

(c) *Dealer permits.* (1) For a dealer to receive rock shrimp harvested from the South Atlantic EEZ, a dealer permit for South Atlantic rock shrimp must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(d) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.201 South Atlantic rock shrimp limited access.

(a) *Commercial Vessel Permits for Rock Shrimp (South Atlantic EEZ).* For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off those states, a Commercial Permit for Rock Shrimp (South Atlantic EEZ) must be issued to the vessel and must be on board. No applications for additional Commercial Vessel Permits for Rock Shrimp (South Atlantic EEZ) will be accepted.

(b) *Transfer of an existing permit.* A Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, a complete application for transfer must be submitted to the RA. An owner of a vessel with a permit may request that the RA transfer a valid permit to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of a permit under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(c) *Renewal.* The RA will not reissue a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) if the permit is revoked or if the RA does not receive an application for renewal of the permit within 1 year after the expiration date of the permit.

(d) *Limitation on permits.* A vessel for which a permit for South Atlantic rock shrimp is required may be issued either a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ), depending on its eligibility. However, no such vessel may be issued both permits for the same period of effectiveness.

§ 622.202 [Reserved]

§ 622.203 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators*—(1) *Reporting requirement.* The owner or operator of a vessel that fishes for shrimp in the South Atlantic EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(2) *Reporting deadline.* Completed fishing records required by paragraphs (a)(1) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *South Atlantic rock shrimp dealers.* (1) A dealer who has been issued a permit for rock shrimp, as required under § 622.200(c), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(2) On demand, a dealer who has been issued a dealer permit for rock shrimp, as required under § 622.200(c), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

§ 622.204 At-sea observer coverage.

(a) *Required coverage.* A vessel for which a Federal commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been

issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 622.205 Vessel monitoring systems (VMSs).

(a) *VMS requirement for South Atlantic rock shrimp.* An owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp (until January 27, 2010) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must ensure that such vessel has an operating VMS approved by NMFS for use in the South Atlantic rock shrimp fishery on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installation and activation of a VMS.* Only a VMS that has been approved by NMFS for the South Atlantic rock shrimp fishery may be used, and the VMS must be installed by a qualified marine electrician. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833; and

(2) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, a vendor-completed installation certification checklist, which is available from NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, phone: 800–758–4833, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of fish in a fishery subject to VMS requirements in this section, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

§ 622.206 Area and seasonal closures.

(a) *South Atlantic shrimp cold weather closure.* (1) Pursuant to the procedures and criteria established in the FMP for the Shrimp Fishery of the South Atlantic Region, when Florida, Georgia, North Carolina, or South Carolina closes all or a portion of its waters of the South Atlantic to the harvest of brown, pink, and white shrimp, the Assistant Administrator may concurrently close the South Atlantic EEZ adjacent to the closed state waters by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters, but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

(2) During a closure, as specified in paragraph (a)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (a)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(b) [Reserved]

§ 622.207 Bycatch Reduction Device (BRD) requirements.

(a) *BRD requirement for South Atlantic shrimp.* On a shrimp trawler in the South Atlantic EEZ, each net that is rigged for fishing must have a BRD installed that is listed in paragraph (a)(3) of this section and is certified or provisionally certified for the area in which the shrimp trawler is located, unless exempted as specified in paragraphs (a)(1)(i) through (iii) of this section. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(1) *Exemptions from BRD requirement*—(i) *Try net exemption.* A shrimp trawler is exempt from the

requirement to have a certified or provisionally certified BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either placed immediately in front of another net or is not connected to another net.

(ii) *Roller trawl exemption.* A shrimp trawler is exempt from the requirement to have a certified or provisionally certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(iii) *BRD certification testing exemption.* A shrimp trawler that is authorized by the RA to participate in the pre-certification testing phase or to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the "Bycatch Reduction Device Testing Manual" is granted a limited exemption from the BRD requirement specified in this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified or provisionally certified BRDs.

(2) *Procedures for certification and decertification of BRDs.* The process for the certification of BRDs consists of two phases—an optional pre-certification phase and a required certification phase. The RA may also provisionally certify a BRD.

(i) *Pre-certification.* The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the "Bycatch Reduction Device Testing Manual."

(A) A person who wants to conduct pre-certification phase testing must submit an application to the RA, as specified in the "Bycatch Reduction Device Testing Manual." The "Bycatch Reduction Device Testing Manual", which is available from the RA, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. If the RA authorizes pre-certification, the RA's LOA must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the "Bycatch Reduction Device Testing Manual." The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The operation plan submitted with the application meets the requirements of the "Bycatch Reduction Device Testing Manual"; the observer identified in the application is qualified; and the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. To be certified for use in the fishery, the BRD candidate must successfully demonstrate a 30-percent reduction in total weight of finfish bycatch. In addition, the BRD candidate must satisfy the following conditions: There is at least a 50-percent probability the true reduction rate of the BRD candidate meets the bycatch reduction criterion and there is no more than a 10-percent probability the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion. If a BRD meets both conditions, consistent with the "Bycatch Reduction Device Testing Manual", NMFS, through appropriate rulemaking procedures, will add the BRD to the list of certified BRDs in paragraph (a)(3) of this section; and provide the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) *Provisional certification.* Based on data provided consistent with the "Bycatch Reduction Device Testing Manual", the RA may provisionally certify a BRD if there is at least a 50-percent probability the true reduction rate of the BRD is no more than 5 percentage points less than the bycatch reduction criterion, *i.e.* 25 percent reduction in total weight of finfish bycatch. Through appropriate rulemaking procedures, NMFS will add the BRD to the list of provisionally certified BRDs in paragraph (a)(3) of this section; and provide the specifications for the BRD, including any special conditions deemed appropriate based on the certification testing results. A provisional certification is effective for 2 years from the date of publication of the notification in the **Federal Register** announcing the provisional certification.

(iv) *Decertification.* The RA will decertify a BRD if NMFS determines the BRD does not meet the requirements for certification or provisional certification. Before determining whether to decertify a BRD, the RA will notify the South Atlantic Fishery Management Council in writing, and the public will be provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to decertify the BRD, the RA will proceed with decertification via appropriate rulemaking.

(3) *Certified and provisionally certified BRDs*—(i) *Certified BRDS.* The following BRDs are certified for use in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D to this part.

(A) Fisheye—see Appendix D to part 622 for separate specifications in the Gulf and South Atlantic EEZ.

(B) Gulf fisheye.

(C) Jones-Davis.

(D) Modified Jones-Davis.

(E) Expanded mesh.

(F) Extended funnel.

(G) Cone Fish Deflector Composite Panel.

(H) Square Mesh Panel (SMP) Composite Panel.

(ii) [Reserved]

(b) [Reserved]

§ 622.208 Minimum mesh size applicable to rock shrimp off Georgia and Florida.

(a) The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic EEZ off Georgia and Florida is 1⅞ inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

(b) [Reserved]

§ 622.209 Restrictions on sale/purchase.

(a) *South Atlantic rock shrimp.* (1) Rock shrimp harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for rock shrimp, as required under § 622.200(a)(2), may not be transferred, received, sold, or purchased.

(2) Rock shrimp harvested on board a vessel that has a valid commercial

permit for rock shrimp may be transferred or sold only to a dealer who has a valid permit for rock shrimp, as required under § 622.200(c).

(3) Rock shrimp harvested in the South Atlantic EEZ may be received or purchased by a dealer who has a valid permit for rock shrimp, as required under § 622.200(c), only from a vessel that has a valid commercial permit for rock shrimp.

(b) [Reserved]

§ 622.210 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Shrimp Fishery of the South Atlantic Region, the RA may establish or modify the items specified in paragraph (a) of this section for South Atlantic shrimp.

(a) Biomass levels, age-structured analyses, BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, times and locations when the use of BRDs is required, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(b) [Reserved]

§ 622.211 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.200 through 622.210.

Subpart K—Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region

§ 622.220 Permits.

See § 622.4 for information regarding general permit procedures including, but not limited to fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

(a) *Required permits*—(1) *Allowable chemical.* For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(2) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(3) *Aquacultured live rock.* For a person to take or possess aquacultured live rock in the South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(4) *Prohibited coral.* A Federal permit may be issued to take or possess South Atlantic prohibited coral only as scientific research activity, exempted fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(5) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(i) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(ii) Landing allowable octocoral in Florida.

(iii) Landing live rock in Florida.

(b) *Application.* (1) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture activity, the applicant must be the principal shareholder or a general partner.

(2) An applicant must provide the following:

(i) Name, address, telephone number, and other identifying information of the applicant.

(ii) Name and address of any affiliated company, institution, or organization.

(iii) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(iv) Any other information that may be necessary for the issuance or administration of the permit.

(v) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(A) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(B) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(C) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(D) Describes the naturally occurring bottom habitat at the site; and

(E) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

§ 622.221 Recordkeeping and reporting.

(a) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RA each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RA. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(b) [Reserved]

§ 622.222 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Power-assisted tools.* A power-assisted tool may not be used in the South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(b) [Reserved]

§ 622.223 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited coral.* South Atlantic prohibited coral taken as incidental

catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(c) *Wild live rock.* Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(d) *Octocoral.* Octocoral may not be harvested or possessed in or from the portion of the South Atlantic EEZ managed under the FMP. Octocoral collected in the portion of the South Atlantic EEZ managed under the FMP must be released immediately with a minimum of harm.

§ 622.224 · Area closures to protect South Atlantic corals.

(a) *Allowable octocoral closed area.* No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Oculina Bank*—(1) *HAPC.* The Oculina Bank HAPC encompasses an area bounded on the north by 28°30′ N. lat., on the south by 27°30′ N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00′ W. long.; and two adjacent areas: the first bounded on the north by 28°30′ N. lat., on the south by 28°29′ N. lat., on the east by 80°00′ W. long., and on the west by 80°03′ W. long.; and the second bounded on the north by 28°17′ N. lat., on the south by 28°16′ N. lat., on the east by 80°00′ W. long., and on the west by 80°03′ W. long.In the Oculina Bank HAPC, no person may:

(i) Use a bottom longline, bottom trawl, dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

(2) *Experimental closed area.* Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. No person may fish for South Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area. In the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(c) *Deepwater Coral HAPCs*—(1) *Locations.* The following areas are designated Deepwater Coral HAPCs:

(i) *Cape Lookout Lophelia Banks* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin ..	34°24′37″	75°45′11″
1	34°10′26″	75°58′44″
2	34°05′47″	75°54′54″
3	34°21′02″	75°41′25″
Origin ..	34°24′37″	75°45′11″

(ii) *Cape Fear Lophelia Banks* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin ..	33°38′49″	76°29′32″
1	33°32′21″	76°32′38″
2	33°29′49″	76°26′19″
3	33°36′09″	76°23′37″
Origin ..	33°38′49″	76°29′32″

(iii) *Stetson Reefs, Savannah and East Florida Lithotherms, and Miami Terrace (Stetson-Miami Terrace)* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin ..	28°17′10″	79°00′00″
1	31°23′37″	79°00′00″
2	31°23′37″	77°16′21″
3	32°38′37″	77°16′21″
4	32°38′21″	77°34′06″
5	32°35′24″	77°37′54″
6	32°32′18″	77°40′26″
7	32°28′42″	77°44′10″
8	32°25′51″	77°47′43″
9	32°22′40″	77°52′05″
10	32°20′58″	77°56′29″
11	32°20′30″	77°57′50″
12	32°19′53″	78°00′49″
13	32°18′44″	78°04′35″
14	32°17′35″	78°07′48″
15	32°17′15″	78°10′41″
16	32°15′50″	78°14′09″
17	32°15′20″	78°15′25″
18	32°12′15″	78°16′37″
19	32°10′26″	78°18′09″
20	32°04′42″	78°21′27″
21	32°03′41″	78°24′07″
22	32°04′58″	78°29′19″
23	32°06′59″	78°30′48″
24	32°09′27″	78°31′31″
25	32°11′23″	78°32′47″
26	32°13′09″	78°34′04″
27	32°14′08″	78°34′36″
28	32°12′48″	78°36′34″
29	32°13′07″	78°39′07″
30	32°14′17″	78°40′01″
31	32°16′20″	78°40′18″
32	32°16′33″	78°42′32″
33	32°14′26″	78°43′23″
34	32°11′14″	78°45′42″
35	32°10′19″	78°49′08″
36	32°09′42″	78°52′54″
37	32°08′15″	78°56′11″
38	32°05′00″	79°00′30″
39	32°01′54″	79°02′49″
40	31°58′40″	79°04′51″
41	31°56′32″	79°06′48″
42	31°53′27″	79°09′18″
43	31°50′56″	79°11′29″
44	31°49′07″	79°13′35″
45	31°47′56″	79°16′08″
46	31°47′11″	79°16′30″
47	31°46′29″	79°16′25″
48	31°44′31″	79°17′24″
49	31°43′20″	79°18′27″
50	31°42′26″	79°20′41″
51	31°41′09″	79°22′26″
52	31°39′36″	79°23′59″
53	31°37′54″	79°25′29″
54	31°35′57″	79°27′14″
55	31°34′14″	79°28′24″
56	31°31′08″	79°29′59″
57	31°30′26″	79°29′52″
58	31°29′11″	79°30′11″
59	31°27′58″	79°31′41″
60	31°27′06″	79°32′08″
61	31°26′22″	79°32′48″
62	31°24′21″	79°33′51″
63	31°22′53″	79°34′41″
64	31°21′03″	79°36′01″
65	31°20′00″	79°37′12″
66	31°18′34″	79°38′15″
67	31°16′49″	79°38′36″
68	31°13′06″	79°38′19″
70	31°11′04″	79°38′39″
70	31°09′28″	79°39′09″
71	31°07′44″	79°40′21″
72	31°05′53″	79°41′27″
73	31°04′40″	79°42′09″
74	31°02′58″	79°42′28″
75	31°01′03″	79°42′40″
76	30°59′50″	79°42′43″
77	30°58′27″	79°42′43″
78	30°57′15″	79°42′50″
79	30°56′09″	79°43′28″
80	30°54′49″	79°44′53″
81	30°53′44″	79°46′24″
82	30°52′47″	79°47′40″
83	30°51′45″	79°48′16″
84	30°48′36″	79°49′02″
85	30°45′24″	79°49′55″
86	30°41′36″	79°51′31″
87	30°38′38″	79°52′23″
88	30°35′29″	79°52′54″
89	30°32′55″	79°54′19″
90	30°31′05″	79°55′27″
91	30°28′09″	79°56′06″
92	30°26′57″	79°56′34″
93	30°25′25″	79°57′36″
94	30°23′03″	79°58′25″
95	30°21′27″	79°59′24″
96	30°18′22″	80°00′09″
97	30°16′34″	80°00′33″
98	30°14′55″	80°00′23″
99	30°12′36″	80°01′44″
100	30°12′00″	80°01′49″
101	30°06′52″	80°01′58″
102	29°59′16″	80°04′11″
103	29°49′12″	80°05′44″
104	29°43′59″	80°06′24″
105	29°38′37″	80°06′53″
106	29°36′54″	80°07′18″
107	29°31′59″	80°07′32″
108	29°29′14″	80°07′18″

Point	North lat.	West long.
109	29°21′48″	80°05′01″
110	29°20′25″	80°04′29″
111	29°08′00″	79°59′43″
112	29°06′56″	79°59′07″
113	29°05′59″	79°58′44″
114	29°03′34″	79°57′37″
115	29°02′11″	79°56′59″
116	29°00′00″	79°55′32″
117	28°56′55″	79°54′22″
118	28°55′00″	79°53′31″
119	28°53′35″	79°52′51″
120	28°51′47″	79°52′07″
121	28°50′25″	79°51′27″
122	28°49′53″	79°51′20″
123	28°49′01″	79°51′20″
124	28°48′19″	79°51′10″
125	28°47′13″	79°50′59″
126	28°43′30″	79°50′36″
127	28°41′05″	79°50′04″
128	28°40′27″	79°50′07″
129	28°39′50″	79°49′56″
130	28°39′04″	79°49′58″
131	28°36′43″	79°49′35″
132	28°35′01″	79°49′24″
133	28°30′37″	79°48′35″
134	28°14′00″	79°46′20″
135	28°11′41″	79°46′12″
136	28°08′02″	79°45′45″
137	28°01′20″	79°45′20″
138	27°58′13″	79°44′51″
139	27°56′23″	79°44′53″
140	27°49′40″	79°44′25″
141	27°46′27″	79°44′22″
142	27°42′00″	79°44′33″
143	27°36′08″	79°44′58″
144	27°30′00″	79°45′29″
145	27°29′04″	79°45′47″
146	27°27′05″	79°45′54″
147	27°25′47″	79°45′57″
148	27°19′46″	79°45′14″
149	27°17′54″	79°45′12″
150	27°12′28″	79°45′00″
151	27°07′45″	79°46′07″
152	27°04′47″	79°46′29″
153	27°00′43″	79°46′39″
154	26°58′43″	79°46′28″
155	26°57′06″	79°46′32″
156	26°49′58″	79°46′54″
157	26°48′58″	79°46′56″
158	26°47′01″	79°47′09″
159	26°46′04″	79°47′09″
160	26°35′09″	79°48′01″
161	26°33′37″	79°48′21″
162	26°27′56″	79°49′09″
163	26°25′55″	79°49′30″
164	26°21′05″	79°50′03″
165	26°20′30″	79°50′20″
166	26°18′56″	79°50′17″
167	26°16′19″	79°54′06″
168	26°13′48″	79°54′48″
169	26°12′19″	79°55′37″
170	26°10′57″	79°57′05″
171	26°09′17″	79°58′45″
172	26°07′11″	80°00′22″
173	26°06′12″	80°00′33″
174	26°03′26″	80°01′02″
175	26°00′35″	80°01′13″
176	25°49′10″	80°00′38″
177	25°48′30″	80°00′23″
178	25°46′42″	79°59′14″
179	25°27′28″	80°02′26″
180	25°24′06″	80°01′44″
181	25°21′04″	80°01′27″
182	25°21′04″	79°42′04″

(B) The outer boundary of the EEZ in a northerly direction from Point 182 to the Origin.

(iv) *Pourtales Terrace* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	24°20′12″	80°43′50″
1	24°33′42″	80°34′23″
2	24°37′45″	80°31′20″
3	24°47′18″	80°23′08″
4	24°51′08″	80°27′58″
5	24°42′52″	80°35′51″
6	24°29′44″	80°49′45″
7	24°15′04″	81°07′52″
8	24°10′55″	80°58′11″

(B) The outer boundary of the EEZ in a northerly direction from Point 8 to the Origin.

(v) *Blake Ridge Diapir* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	32°32′28″	76°13′16″
1	32°30′44″	76°13′24″
2	32°30′37″	76°11′21″
3	32°32′21″	76°11′13″
Origin	32°32′28″	76°13′16″

(2) *Restrictions.* In the Deepwater Coral HAPCs specified in paragraph (c)(1) of this section, no person may:

(i) Use a bottom longline, trawl (mid-water or bottom), dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for coral or possess coral in or from the Deepwater Coral HAPC on board a fishing vessel.

(3) *Shrimp fishery access areas.* The provisions of paragraph (c)(2)(i) of this section notwithstanding, an owner or operator of a vessel for which a valid commercial vessel permit for rock shrimp (South Atlantic EEZ) has been issued may trawl for shrimp in the following portions of the Stetson-Miami Terrace Deepwater Coral HAPC:

(i) *Shrimp access area A* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	30°12′00″	80°01′49″
1	30°06′52″	80°01′58″
2	29°59′16″	80°04′11″
3	29°49′12″	80°05′44″
4	29°43′59″	80°06′24″
5	29°38′37″	80°06′53″
6	29°36′54″	80°07′18″
7	29°31′59″	80°07′32″
8	29°29′14″	80°07′18″
9	29°21′48″	80°05′01″
10	29°20′25″	80°04′29″
11	29°20′25″	80°03′11″
12	29°21′48″	80°03′52″
13	29°29′14″	80°06′08″
14	29°31′59″	80°06′23″
15	29°36′54″	80°06′00″
16	29°38′37″	80°05′43″
17	29°43′59″	80°05′14″
18	29°49′12″	80°04′35″
19	29°59′16″	80°03′01″
20	30°06′52″	80°00′46″
21	30°12′00″	80°00′42″
Origin	30°12′00″	80°01′49″

(ii) *Shrimp access area B* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	29°08′00″	79°59′43″
1	29°06′56″	79°59′07″
2	29°05′59″	79°58′44″
3	29°03′34″	79°57′37″
4	29°02′11″	79°56′59″
5	29°00′00″	79°55′32″
6	28°56′55″	79°54′22″
7	28°55′00″	79°53′31″
8	28°53′35″	79°52′51″
9	28°51′47″	79°52′07″
10	28°50′25″	79°51′27″
11	28°49′53″	79°51′20″
12	28°49′01″	79°51′20″
13	28°48′19″	79°51′10″
14	28°47′13″	79°50′59″
15	28°43′30″	79°50′36″
16	28°41′05″	79°50′04″
17	28°40′27″	79°50′07″
18	28°39′50″	79°49′56″
19	28°39′04″	79°49′58″
20	28°36′43″	79°49′35″
21	28°35′01″	79°49′24″
22	28°30′37″	79°48′35″
23	28°30′37″	79°47′27″
24	28°35′01″	79°48′16″
25	28°36′43″	79°48′27″
26	28°39′04″	79°48′50″
27	28°39′50″	79°48′48″
28	28°40′27″	79°48′58″
29	28°41′05″	79°48′56″
30	28°43′30″	79°49′28″
31	28°47′13″	79°49′51″
32	28°48′19″	79°50′01″
33	28°49′01″	79°50′13″
34	28°49′53″	79°50′12″
35	28°50′25″	79°50′17″
36	28°51′47″	79°50′58″
37	28°53′35″	79°51′43″
38	28°55′00″	79°52′22″
39	28°56′55″	79°53′14″
40	29°00′00″	79°54′24″
41	29°02′11″	79°55′50″
42	29°03′34″	79°56′29″
43	29°05′59″	79°57′35″
44	29°06′56″	79°57′59″
45	29°08′00″	79°58′34″
Origin	29°08′00″	79°59′43″

(iii) *Shrimp access area C* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	28°14′00″	79°46′20″

Point	North lat.	West long.
1	28°11′41″	79°46′12″
2	28°08′02″	79°45′45″
3	28°01′20″	79°45′20″
4	27°58′13″	79°44′51″
5	27°56′23″	79°44′53″
6	27°49′40″	79°44′25″
7	27°46′27″	79°44′22″
8	27°42′00″	79°44′33″
9	27°36′08″	79°44′58″
10	27°30′00″	79°45′29″
11	27°29′04″	79°45′47″
12	27°27′05″	79°45′54″
13	27°25′47″	79°45′57″
14	27°19′46″	79°45′14″
15	27°17′54″	79°45′12″
16	27°12′28″	79°45′00″
17	27°07′45″	79°46′07″
18	27°04′47″	79°46′29″
19	27°00′43″	79°46′39″
20	26°58′43″	79°46′28″
21	26°57′06″	79°46′32″
22	26°57′06″	79°44′52″
23	26°58′43″	79°44′47″
24	27°00′43″	79°44′58″
25	27°04′47″	79°44′48″
26	27°07′45″	79°44′26″
27	27°12′28″	79°43′19″
28	27°17′54″	79°43′31″
29	27°19′46″	79°43′33″
30	27°25′47″	79°44′15″
31	27°27′05″	79°44′12″
32	27°29′04″	79°44′06″
33	27°30′00″	79°43′48″
34	27°30′00″	79°44′22″
35	27°36′08″	79°43′50″
36	27°42′00″	79°43′25″
37	27°46′27″	79°43′14″
38	27°49′40″	79°43′17″
39	27°56′23″	79°43′45″
40	27°58′13″	79°43′43″
41	28°01′20″	79°44′11″
42	28°04′42″	79°44′25″
43	28°08′02″	79°44′37″
44	28°11′41″	79°45′04″
45	28°14′00″	79°45′12″
Origin	28°14′00″	79°46′20″

(iv) *Shrimp access area D* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	26°49′58″	79°46′54″
1	26°48′58″	79°46′56″
2	26°47′01″	79°47′09″
3	26°46′04″	79°47′09″
4	26°35′09″	79°48′01″
5	26°33′37″	79°48′21″
6	26°27′56″	79°49′09″
7	26°25′55″	79°49′30″
8	26°21′05″	79°50′03″
9	26°20′30″	79°50′20″
10	26°18′56″	79°50′17″
11	26°18′56″	79°48′37″
12	26°20′30″	79°48′40″
13	26°21′05″	79°48′08″
14	26°25′55″	79°47′49″
15	26°27′56″	79°47′29″
16	26°33′37″	79°46′40″
17	26°35′09″	79°46′20″
18	26°46′04″	79°45′28″
19	26°47′01″	79°45′28″
20	26°48′58″	79°45′15″
21	26°49′58″	79°45′13″
Origin	26°49′58″	79°46′54″

(4) *Golden crab fishery access areas.* The provisions of paragraphs (c)(2)(i) and (ii) of this section notwithstanding, an owner or operator of a vessel for which a valid commercial permit for South Atlantic golden crab has been issued may use a trap to fish for golden crab and use a grapple and chain while engaged in such fishing in the following portions of the Stetson-Miami Terrace and the Pourtales Terrace Deepwater Coral HAPCs. Access to an area specified in paragraph (c)(4)(i) through (v) of this section is contingent on that zone being authorized on the vessel's permit for South Atlantic golden crab. See § 622.241(b) for specification of zones.

(i) *Golden crab northern zone access area* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	29°00′00″	79°54′24″
1	28°56′55″	79°53′14″
2	28°55′00″	79°52′22″
3	28°53′35″	79°51′43″
4	28°51′47″	79°50′58″
5	28°50′25″	79°50′17″
6	28°49′53″	79°50′12″
7	28°49′01″	79°50′13″
8	28°48′19″	79°50′01″
9	28°47′13″	79°49′51″
10	28°43′30″	79°49′28″
11	28°41′05″	79°48′56″
12	28°40′27″	79°48′58″
13	28°39′50″	79°48′48″
14	28°39′04″	79°48′50″
15	28°36′43″	79°48′27″
16	28°35′01″	79°48′16″
17	28°30′37″	79°47′27″
18	28°30′37″	79°42′12″
19	28°14′00″	79°40′54″
20	28°14′00″	79°45′12″
21	28°11′41″	79°45′04″
22	28°08′02″	79°44′37″
23	28°04′42″	79°44′25″
24	28°01′20″	79°44′11″
25	28°00′00″	79°43′59″
26	28°00′00″	79°38′16″
27	28°11′42″	79°38′13″
28	28°23′02″	79°38′57″
29	28°36′50″	79°40′25″
30	28°38′33″	79°41′33″
31	28°38′20″	79°43′04″
32	28°41′00″	79°43′39″
33	28°48′16″	79°44′32″
34	28°54′29″	79°45′55″
35	29°00′00″	79°45′50″
Origin	29°00′00″	79°54′24″

(ii) *Golden crab middle zone access area A* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	26°58′45″	79°35′05″
1	27°00′39″	79°36′26″
2	27°07′55″	79°37′52″
3	27°14′52″	79°37′09″
4	27°29′21″	79°37′15″
5	28°00′00″	79°38′16″
6	28°00′00″	79°43′59″
7	27°58′13″	79°43′43″
8	27°56′23″	79°43′45″
9	27°49′40″	79°43′17″
10	27°46′27″	79°43′14″
11	27°42′00″	79°43′25″
12	27°36′08″	79°43′50″
13	27°30′00″	79°44′22″
14	27°30′00″	79°43′48″
15	27°29′04″	79°44′06″
16	27°27′05″	79°44′12″
17	27°25′47″	79°44′15″
18	27°19′46″	79°43′33″
19	27°17′54″	79°43′31″
20	27°12′28″	79°43′19″
21	27°07′45″	79°44′26″
22	27°04′47″	79°44′48″
23	27°00′43″	79°44′58″
24	26°58′43″	79°44′47″
25	26°57′06″	79°44′52″
26	26°57′06″	79°42′34″
27	26°49′58″	79°42′34″
28	26°49′58″	79°45′13″
29	26°48′58″	79°45′15″
30	26°47′01″	79°45′28″
31	26°46′04″	79°45′28″
32	26°35′09″	79°46′20″
33	26°33′37″	79°46′40″
34	26°27′56″	79°47′29″
35	26°25′55″	79°47′49″
36	26°21′05″	79°48′08″
37	26°20′30″	79°48′40″
38	26°18′56″	79°48′37″
39	26°03′38″	79°48′16″
40	26°03′35″	79°46′09″
41	25°58′33″	79°46′08″
42	25°54′27″	79°45′37″
43	25°46′55″	79°44′14″
44	25°38′04″	79°45′58″
45	25°38′05″	79°42′27″

(B) The outer boundary of the EEZ in a northerly direction from Point 45 to Point 46.

(C) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
46	26°07′49″	79°36′07″
47	26°17′36″	79°36′06″
48	26°21′18″	79°38′04″
49	26°50′46″	79°35′12″
50	26°50′40″	79°33′45″

(D) The outer boundary of the EEZ in a northerly direction from Point 50 to the Origin.

(iii) *Golden crab middle zone access area B* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin	25°49′10″	80°00′38″

Point	North lat.	West long.
1	25°48′30″	80°00′23″
2	25°46′42″	79°59′14″
3	25°27′28″	80°02′26″
4	25°24′06″	80°01′44″
5	25°21′04″	80°01′27″
6	25°21′04″	79°58′12″
7	25°23′25″	79°58′19″
8	25°32′52″	79°54′48″
9	25°36′58″	79°54′46″
10	25°37′20″	79°56′20″
11	25°49′11″	79°56′00″
Origin ..	25°49′10″	80°00′38″

(iv) *Golden crab middle zone access area C* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin ..	25°33′32″	79°42′18″
1	25°33′32″	79°47′14″
2	25°21′04″	79°53′45″
3	25°21′04″	79°42′04″

(B) The outer boundary of the EEZ in a northerly direction from Point 3 to the Origin.

(v) *Golden crab southern zone access area* is bounded by—

(A) Rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
Origin ..	24°14′07″	80°53′27″
1	24°13′46″	81°04′54″
2	24°10′55″	80°58′11″

(B) The outer boundary of the EEZ in a northerly direction from Point 2 to the Origin.

§ 622.225 Harvest limitations.

(a) *Aquacultured live rock.* In the South Atlantic EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.220(a)(3), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) Must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand.

(4) The following activities are also prohibited: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of "Allowable octocoral" for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(4), chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(5) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344):

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) [Reserved]

§ 622.226 Restrictions on sale/purchase.

(a) *South Atlantic wild live rock.* Wild live rock in or from the South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock from the South Atlantic EEZ that was harvested and landed prior to January 1, 1996.

(b) [Reserved]

§ 622.227 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region, the RA may establish or modify the following:

(a) *South Atlantic coral, coral reefs, and live/hard bottom habitats.* Definitions of essential fish habitat and essential fish habitat HAPCs or Coral HAPCs.

(b) [Reserved]

§ 622.228 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.220 through 622.227.

Subpart L—Golden Crab Fishery of the South Atlantic Region

§ 622.240 Permits.

(a) *Commercial vessel permits.* For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board a vessel in the South Atlantic or off-loaded from a vessel in a port adjoining the South Atlantic was harvested from the South Atlantic EEZ. See § 622.241 for limitations on the use, transfer, and renewal of a commercial vessel permit for golden crab.

(b) *Dealer permits and conditions*—(1) *Permits.* For a dealer to receive South Atlantic golden crab harvested from the South Atlantic EEZ, a dealer permit for South Atlantic golden crab, respectively, must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(c) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.241 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional

permits may be issued except for the northern zone as follows:

(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(4) A vessel permit for the northern zone issued under paragraph (a)(1) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

(b) *Fishing zones*—(1) *Designation of fishing zones.* The South Atlantic EEZ is divided into three fishing zones for golden crab as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 28° N. lat. to 25° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) *Authorization to fish in zones.* Each vessel permit indicates one of the zones specified in paragraph (b)(1) of this section. A vessel with a permit to fish for golden crab in the northern zone or the middle zone may fish only in that zone. A vessel with a documented length overall greater than 65 ft (19.8 m) with a permit to fish for golden crab in the southern zone may fish in that zone, consistent with the provisions of paragraph (b)(3) of this section. A vessel may possess golden crab only in a zone in which it is authorized to fish, except that other zones may be transited if the vessel notifies NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344) in advance and does not fish in a zone in which it is not authorized to fish.

(3) *Small-vessel sub-zone.* Within the southern zone, a small-vessel sub-zone is established bounded on the north by 24°15′ N. lat., on the south by 24°07′ N. lat., on the east by 81°22′ W. long., and on the west by 81°56′ W. long. No vessel with a documented length overall greater than 65 ft (19.8 m) may fish for golden crab in this sub-zone, and a vessel with a documented length overall of 65 ft (19.8 m) or less that is permitted for the southern zone may fish for golden crab only in this sub-zone.

(4) *Procedure for changing zones.* Upon request from an owner of a permitted vessel, the RA will change the zone specified on a permit from the middle or southern zone to the northern zone. No other changes in the zone specified on a permit are allowed. An owner of a permitted vessel who desires a change to the northern zone must submit his/her request with the existing permit to the RA.

(c) *Transferring permits between vessels*—(1) *Procedure for transferring.* An owner of a vessel who desires a golden crab permit may request that NMFS transfer an existing permit or permits to his or her vessel by returning an existing permit or permits to the RA with an application for a permit for the replacement vessel.

(2) *Vessel size limitations on transferring.* (i) To obtain a permit for the middle or southern zone via transfer, the documented length overall of the replacement vessel may not exceed the documented length overall, or aggregate documented lengths overall, of the replaced vessel(s) by more than 20 percent. The owner of a vessel permitted for the middle or southern zone who has requested that NMFS transfer that permit to a smaller vessel (*i.e.*, downsized) may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(ii) There are no vessel size limitations to obtain a permit for the northern zone via transfer.

(d) *Permit renewal.* NMFS will not renew a commercial vessel permit for South Atlantic golden crab if the permit is revoked or if the RA does not receive a required application for renewal within 6 months after the permit's expiration. See § 622.4(g) for the applicable general procedures and requirements for permit renewals.

§ 622.242 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* (1) The owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.240(a), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(2) Reporting forms required in paragraph (a)(1) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Dealers.* A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

§ 622.243 Gear identification.

(a) *Golden crab traps and associated buoys*—(1) *Golden crab traps.* A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RA may be used for this purpose but is not required.

(2) *Associated buoys.* In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number assigned by the RA so as to be easily distinguished, located, and identified.

(3) *Presumption of ownership.* A golden crab trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(4) *Unmarked golden crab traps.* An unmarked golden crab trap or a buoy deployed in the EEZ where such trap or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(b) [Reserved]

§ 622.244 At-sea observer coverage.

(a) *Required coverage.* A vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 622.245 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Female golden crabs.* It is intended that no female golden crabs in or from the South Atlantic EEZ be retained on board a vessel and that any female golden crab in or from the South Atlantic EEZ be released in a manner that will ensure maximum probability of survival. However, to accommodate legitimate incidental catch and retention, the number of female golden crabs in or from the South Atlantic EEZ retained on board a vessel may not exceed 0.5 percent, by number, of all golden crabs on board. See § 622.250(a) regarding the prohibition of sale of female golden crabs.

(c) *Snapper-grouper aboard a golden crab vessel.* South Atlantic snapper-grouper may not be possessed in whole, gutted, or filleted form by a person aboard a vessel fishing for or possessing golden crab in or from the South Atlantic EEZ or possessing a golden crab trap in the South Atlantic. Only the head, fins, and backbone (collectively the "rack") of South Atlantic snapper-grouper may be possessed for use as bait.

§ 622.246 Area closures.

(a) *Golden crab trap closed areas.* In the golden crab northern zone, a golden crab trap may not be deployed in waters less than 900 ft (274 m) deep. In the golden crab middle and southern zones, a golden crab trap may not be deployed in waters less than 700 ft (213 m) deep. See § 622.241(b)(1) for specification of the golden crab zones.

(b) [Reserved]

§ 622.247 Landing golden crab intact.

The operator of a vessel that fishes in the EEZ is responsible for ensuring that golden crab on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore.

(a) A golden crab in or from the South Atlantic EEZ must be maintained in whole condition through landing ashore. For the purposes of this paragraph, whole means a crab that is in its natural condition and that has not been gutted or separated into component pieces, *e.g.*, clusters.

(b) [Reserved]

§ 622.248 Authorized gear.

(a) *Traps.* Traps are the only fishing gear authorized in directed fishing for golden crab in the South Atlantic EEZ. Golden crab in or from the South Atlantic EEZ may not be retained on board a vessel possessing or using unauthorized gear.

(b) *Buoy line or mainline.* Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap.

§ 622.249 Gear restrictions and requirements.

(a) *Maximum trap sizes.* A golden crab trap deployed or possessed in the South Atlantic EEZ may not exceed 64 ft^3 (1.8 m^3) in volume in the northern zone or 48 ft^3 (1.4 m^3) in volume in the middle and southern zones. See § 622.241(b)(1) for specification of the golden crab zones.

(b) *Required escape mechanisms for traps.* (1) A golden crab trap that is used or possessed in the South Atlantic EEZ must have at least one escape gap or escape ring on each of two opposite vertical sides. The minimum allowable inside dimensions of an escape gap are 2.75 by 3.75 inches (7.0 by 9.5 cm); the minimum allowable inside diameter of an escape ring is 4.5 inches (11.4 cm). In addition to the escape gaps—

(i) A golden crab trap constructed of webbing must have an opening (slit) at least 1 ft (30.5 cm) long that may be closed (relaced) only with untreated cotton string no larger than 3/16 inch (0.48 cm) in diameter.

(ii) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at least 11 7/8 by 11 7/8 inches (30.2 by 30.2 cm), located on at least one side, excluding top and bottom. The hinges or fasteners of such door or panel must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge (0.04 inch (1.0 mm) in diameter) or untreated cotton string no larger than 3/16 inch (4.8 mm) in diameter.

(2) [Reserved]

(c) *Restriction on tending traps.* A golden crab trap in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted. A vessel with written consent on board must also possess a valid commercial vessel permit for golden crab.

§ 622.250 Restrictions on sale/purchase.

(a) A female golden crab in or from the South Atlantic EEZ may not be sold or purchased.

(b) A golden crab harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for golden crab, as required under § 622.240(a), may not be sold or purchased.

(c) A golden crab harvested on board a vessel that has a valid commercial permit for golden crab may be sold only to a dealer who has a valid permit for golden crab, as required under § 622.240(b)(1).

(d) A golden crab harvested in the South Atlantic EEZ may be purchased by a dealer who has a valid permit for golden crab, as required under § 622.240(b)(1), only from a vessel that has a valid commercial permit for golden crab.

§ 622.251 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Commercial sector*—(1) If commercial landings for golden crab, as estimated by the SRD, reach or are projected to reach the ACL of 2 million lb (907,185 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the golden crab fishery for the remainder of the fishing year. On and after the effective date of such a notification, all harvest,

possession, sale or purchase of golden crab in or from the South Atlantic EEZ is prohibited.

(2) If commercial landings exceed the ACL, and golden crab are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(b) [Reserved]

§ 622.252 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Golden Crab Fishery of the South Atlantic Region, the RA may establish or modify the following:

(a) *South Atlantic golden crab.* Biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RA to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(b) [Reserved]

§ 622.253 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.240 through 622.252.

Subpart M—Dolphin and Wahoo Fishery Off the Atlantic States

§ 622.270 Permits.

(a) *Commercial vessel permits.* (1) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2) of this section. (See paragraph (c)(1) of this section for the requirements for operator permits in the Atlantic dolphin and wahoo fishery).

(2) The provisions of paragraph (a)(1) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.278(a)(2). (A charter vessel/headboat permit is not a commercial vessel permit.)

(b) *Charter vessel/headboat permits.* (1) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Atlantic dolphin or wahoo, in or from the Atlantic EEZ, a valid charter vessel/headboat permit for Atlantic dolphin and wahoo must have been issued to the vessel and must be on board. (See paragraph (c)(1) of this section for the requirements for operator permits in the dolphin and wahoo fishery.)

(2) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of "Charter vessel" and "Headboat" in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

(c) *Operator permits.* (1) An operator of a vessel that has or is required to have a charter vessel/headboat or commercial permit for Atlantic dolphin and wahoo issued under this section is required to have an operator permit.

(2) A person required to have an operator permit under paragraph (c)(1) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(3) An owner of a vessel that is required to have a permitted operator under paragraph (c)(1) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(4) An owner of a vessel that is required to have a permitted operator under paragraph (c)(1) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

(d) *Dealer permits.* (1) For a dealer to receive dolphin or wahoo harvested from the Atlantic EEZ, a dealer permit for Atlantic dolphin and wahoo must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(e) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.271 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators*—(1) *Reporting requirement.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.270(a)(1), or whose vessel fishes for or lands Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(2) *Reporting deadlines.* Completed fishing records required by paragraph (a)(1) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Reporting requirement.* The owner or operator of a vessel for which a charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, as required under § 622.270(b)(1), or whose vessel fishes for or lands such Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an

authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers.* (1) A dealer who has been issued a permit for Atlantic dolphin and wahoo, as required under § 622.270(d)(1), and who is selected by the SRD must provide information on receipts of Atlantic dolphin and wahoo and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(2) For the purposes of paragraph (c)(1) of this section, in the states from Maine through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, (see Table 1 of § 600.502 of this chapter), or a designee.

(3) On demand, a dealer who has been issued a dealer permit for Atlantic dolphin and wahoo, as required under § 622.270(d)(1), must make available to an authorized officer all records of offloadings, purchases, or sales of dolphin and wahoo.

§ 622.272 Authorized gear.

(a) *Atlantic dolphin and wahoo*—(1) *Authorized gear.* The following are the only authorized gear types in the fisheries for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) [Reserved]

(b) [Reserved]

§ 622.273 Conservation measures for protected species.

(a) *Atlantic dolphin and wahoo pelagic longliners.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.270(a)(1), and that has on board a pelagic longline must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS. Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, as specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively. For the purpose of this paragraph, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(b) [Reserved]

§ 622.274 Pelagic longline closed areas.

(a) If pelagic longline gear is on board a vessel, a person aboard such vessel may not fish for or retain a dolphin or wahoo—

(1) In the Northeastern United States closed area from June 1 through June 30 each year. The Northeastern United States closed area is that portion of the EEZ between 40° N. lat. and 39° N. lat. from 68° W. long. to 74° W. long.

(2) In the Charleston Bump closed area from February 1 through April 30 each year. The Charleston Bump closed area is that portion of the EEZ off North Carolina, South Carolina, and Georgia between 34° N. lat. and 31° N. lat. and west of 76° W. long.

(3) In the East Florida Coast closed area year round. The East Florida Coast closed area is that portion of the EEZ off Georgia and the east coast of Florida from the inner boundary of the EEZ at 31° N. lat.; thence due east to 78° W. long.; thence by a rhumb line to 28°17′ N. lat., 79°12′ W. long.; thence proceeding in a southerly direction along the outer boundary of the EEZ to 24° N. lat.; thence due west to 24° N. lat., 81°47′ W. long.; thence due north to the innermost boundary of the EEZ at 81°47′ W. long.

(b) A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and gangions with hooks are on board. Removal of any one of these elements constitutes removal of pelagic longline gear.

(c) If a vessel is in a closed area during a time specified in paragraph (a) of this section with pelagic longline gear on board, it is a rebuttable presumption that fish on board such vessel were taken with pelagic longline gear in the closed area.

§ 622.275 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit, as specified in this section, in or from the Atlantic EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) *Dolphin in the Atlantic off Florida, Georgia, and South Carolina*—20 inches (50.8 cm), fork length.

(b) [Reserved]

§ 622.276 Landing fish intact.

(a) Dolphin and wahoo in or from the Atlantic EEZ must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

(b) The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

§ 622.277 Bag and possession limits.

Section 622.11(a) provides the general applicability for bag and possession limits.

(a) *Atlantic dolphin and wahoo.* Bag and possession limits are as follows:

(1) Dolphin—10, not to exceed 60 per vessel, whichever is less, except, on board a headboat, 10 per paying passenger.

(2) Wahoo—2.

(b) [Reserved]

§ 622.278 Commercial trip limits.

Commercial trip limits are limits on the amount of Atlantic dolphin and wahoo that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. Commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

(a) *Atlantic dolphin and wahoo.* (1) The trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(2) The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined,

provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

(b) [Reserved]

§ 622.279 Restrictions on sale/purchase.

(a) *Atlantic dolphin and wahoo.* (1) A person may sell dolphin or wahoo harvested in the Atlantic EEZ only if it is harvested by a vessel that has a commercial permit for Atlantic dolphin and wahoo, as required under § 622.270(a)(1), or by a vessel authorized a 200-lb (91-kg) trip limit for dolphin or wahoo, as specified in § 622.278(a)(2), and only to a dealer who has a permit for Atlantic dolphin or wahoo, as required under § 622.270(d)(1).

(2) In addition to the provisions of paragraph (a)(1) of this section, a person may not sell dolphin or wahoo possessed under the bag limit harvested in the Atlantic EEZ by a vessel while it is operating as a charter vessel or headboat. A dolphin or wahoo harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for Atlantic dolphin and wahoo may not be purchased or sold if harvested from the Atlantic EEZ.

(3) Dolphin or wahoo harvested in the Atlantic EEZ may be purchased only by a dealer who has a permit for Atlantic dolphin and wahoo and only from a vessel authorized to sell dolphin or wahoo under paragraph (a)(1) of this section.

(b) [Reserved]

§ 622.280 Annual catch limits (ACLs) and accountability measures (AMs).

(a) *Atlantic dolphin*—(1) *Commercial sector.* If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,065,524 lb (483,314 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic dolphin is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(2) *Recreational sector.* If recreational landings for Atlantic dolphin, as estimated by the SRD, exceed the recreational ACL of 13,530,692 lb (6,137,419 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(b) *Atlantic wahoo*—(1) *Commercial sector.* If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 64,147 lb (29,097 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of Atlantic wahoo is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(2) *Recreational sector.* If recreational landings for Atlantic wahoo, as estimated by the SRD, exceed the recreational ACL of 1,427,638 lb (647,566 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

§ 622.281 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Dolphin and Wahoo Fishery off the Atlantic States, the RA may establish or modify the following items specified in paragraph (a) of this section for Atlantic dolphin and wahoo.

(a) *Atlantic dolphin and wahoo.* Biomass levels, age-structured analyses, MSY, OY, ABC, TAC, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the RA to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

(b) [Reserved]

§ 622.282 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.270 through 622.281.

Subpart N—Pelagic Sargassum Habitat of the South Atlantic Region

§ 622.300 At-sea observer coverage.

(a) *Required coverage.* (1) A vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) [Reserved]

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's

bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 622.301 Area and seasonal restrictions.

(a) *Pelagic sargassum area and seasonal restrictions*—(1) *Area restrictions.* (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°33′01.0″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal restriction.* No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

(b) [Reserved]

§ 622.302 Minimum mesh size.

(a) The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

(b) [Reserved]

§ 622.303 Quotas.

See § 622.8 for general provisions regarding quota applicability and closure and reopening procedures. This section provides quotas and specific quota closure restrictions for South Atlantic pelagic sargassum.

(a) *Quota.* The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight. See § 622.301(a) for area and seasonal limitations on the harvest of pelagic sargassum.

(b) *Restrictions applicable after a quota closure.* Pelagic sargassum may not be fished for or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited. The prohibition on sale/purchase during a closure for pelagic sargassum does not apply to pelagic sargassum that was harvested and landed ashore prior to the effective date of the closure.

§ 622.304 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.300 through 622.303.

Subparts O–P [Reserved]

Subpart Q—Coastal Migratory Pelagic Resources (Gulf of Mexico and South Atlantic)

§ 622.370 Permits.

(a) *Commercial vessel permits*—(1) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (*i.e.*, harvest and first sale of fish) or from charter fishing during one of the three calendar years preceding the application. See § 622.371 regarding a limited access system applicable to commercial vessel permits for king mackerel, transfers of permits under the limited access system, and limited exceptions to the earned income or gross sales requirement for a permit.

(2) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.384(b)(1)(i)(C)), a commercial vessel permit for king mackerel and a king mackerel gillnet permit must have been issued to the vessel and must be on board. See § 622.372 regarding a limited access system applicable to king mackerel gillnet permits in the southern Florida west coast subzone and restrictions on transferability of king mackerel gillnet permits.

(3) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (*i.e.*, harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

(b) *Charter vessel/headboat permits.* (1) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess, in or from the EEZ, Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish, a valid charter vessel/headboat permit for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish, respectively, must have been issued to the vessel and must be on board.

(i) See § 622.373 regarding a limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

(ii) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of "Charter vessel" and "Headboat" in § 622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

(2) [Reserved]

(c) *Permit procedures.* See § 622.4 of this part for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.371 Limited access system for commercial vessel permits for king mackerel.

(a) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (b) through (e) of this section, and are subject to the requirement for timely renewal in paragraph (f) of this section.

(b) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity.

(c) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under this limited access system may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of § 622.370(a)(1).

However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(d) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(e) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of § 622.370(a)(1). However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(f) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

§ 622.372 Limited access system for king mackerel gillnet permits applicable in the southern Florida west coast subzone.

(a) Except for applications for renewals of king mackerel gillnet permits, no applications for king mackerel gillnet permits will be accepted. Application forms for permit renewal are available from the RA.

(b) An owner of a vessel with a king mackerel gillnet permit issued under this limited access system may transfer that permit upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such permit also may be transferred to another vessel owned by the same entity.

(c) A king mackerel gillnet permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within one year after the expiration date of the permit.

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

(a) No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b) of this section, and are subject to the renewal requirements in paragraph (c) of this section.

(b) *Transfer of permits*—(1) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(2) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(3) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See § 622.4(f) for additional transfer-related requirements applicable to all permits issued under this section.

(c) *Renewal.* (1) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the approved fishing data surveys. Surveys include, but are not limited to—

(i) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(ii) NMFS' Southeast Headboat Survey (as required by § 622.26(b)(1));

(iii) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(iv) A data collection system that replaces one or more of the surveys in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(d) *Requirement to display a vessel decal.* Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, the RA will issue the owner of the permitted vessel a vessel decal for that fishery. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

§ 622.374 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under § 622.370(a)(1) or (3), respectively, who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD. These completed fishing records must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Reporting requirement.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands such Gulf or South Atlantic coastal migratory pelagic fish in or from state waters adjoining the Gulf or South

Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers.* (1) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(i) Dealer's or processor's name and address.

(ii) County where fish were landed.

(iii) Total poundage of each species received during that month, or other requested interval.

(iv) Average monthly price paid for each species.

(v) Proportion of total poundage landed by each gear type.

(2) *Alternate SRD.* For the purposes of paragraph (c)(1) of this section, in the states from New York through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter), or a designee.

§ 622.375 Authorized and unauthorized gear.

(a) *Authorized gear.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for coastal migratory pelagic fish:

(1) King mackerel, Atlantic migratory group—

(i) North of 34°37.3′ N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(ii) South of 34°37.3′ N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(2) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.384(b)(1)(i)(C) for a description of the southern Florida west coast subzone.)

(3) Spanish mackerel, Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(4) Spanish mackerel, Gulf migratory group—all gear except drift gillnet, long gillnet, and purse seine.

(5) Cobia in the Mid-Atlantic and South Atlantic EEZ—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(6) Cobia in the Gulf EEZ—all gear except drift gillnet and long gillnet.

(b) *Unauthorized gear.* Gear types other than those specified in paragraph (a) of this section are unauthorized gear and the following possession limitations apply:

(1) *Long gillnets.* A vessel with a long gillnet on board in, or that has fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board on that trip a coastal migratory pelagic fish.

(2) *Drift gillnets.* A vessel with a drift gillnet on board in, or that has fished on a trip in, the Gulf EEZ may not have on board on that trip a coastal migratory pelagic fish.

(3) *Other unauthorized gear.* Except as specified in paragraph (b)(4) of this section, a person aboard a vessel with unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (a) of this section, is subject to the bag limits for king and Spanish mackerel specified in § 622.382(a)(1)(ii) and (iv), respectively, and to the limit on cobia specified in § 622.383(b).

(4) *Exception for king mackerel in the Gulf EEZ.* The provisions of this paragraph (b)(4) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (b)(3) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(i) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(ii) If such a vessel has a drift gillnet or a long gillnet on board or a run-around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(iii) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.384(e) and the trip limits specified in § 622.385(a). See also § 622.379 regarding the purse seine incidental catch allowance of king mackerel.

§ 622.376 Gear identification.

(a) *Spanish mackerel gillnet buoys.* On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, the float line of each gillnet possessed, including any net in use, must have a maximum of nine distinctive floats, *i.e.,* different from the usual net buoys, spaced uniformly at a distance of 100 yd (91.4 m) or less. Each such distinctive float must display the official number of the vessel.

(b) [Reserved]

§ 622.377 Gillnet restrictions.

(a) *Gillnets for king mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 4.75 (12.1 cm) inches, stretched mesh, may not possess on that trip an incidental catch of king mackerel that exceeds 10 percent, by number, of

the total lawfully possessed Spanish mackerel on board.

(b) *Gillnets for Spanish mackerel.* (1) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(i) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(ii) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

(2) On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary—

(i) No person may fish with, set, place in the water, or have on board a gillnet with a float line longer than 800 yd (732 m).

(ii) No person may fish with, set, or place in the water more than one gillnet at any one time.

(iii) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm).

(iv) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water.

(v) The float line of each gillnet possessed, including any net in use, must have the distinctive floats specified in § 622.376(a).

§ 622.378 Seasonal closures of the Gulf group king mackerel gillnet fishery.

(a) The gillnet fishery for Gulf group king mackerel in or from the Gulf EEZ is closed each fishing year from July 1 until 6 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.8(b). Weekend closures are effective from 6 a.m. Saturday to 6 a.m. Monday. Holiday closures are effective from 6 a.m. on the observed Federal holiday to 6 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf group king mackerel.

(b) [Reserved]

§ 622.379 Purse seine incidental catch allowance.

(a) A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under § 622.375(b), in violation of the possession limits under § 622.375(b)(3), or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.8(b), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.384 and are subject to the prohibition of sale under § 622.384(e)(3).

(b) [Reserved]

§ 622.380 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit, as specified in this section, in or from the Gulf, South Atlantic, or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) Cobia in the Gulf, Mid-Atlantic, or South Atlantic—33 inches (83.8 cm), fork length.

(b) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.384(b) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

(c) Spanish mackerel in the Gulf, South Atlantic, or Mid-Atlantic—12 inches (30.5 cm), fork length, except that a vessel fishing under a quota for Spanish mackerel specified in § 622.384(c) may possess undersized Spanish mackerel in quantities not exceeding 5 percent, by weight, of the Spanish mackerel on board.

§ 622.381 Landing fish intact.

(a) Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel and Spanish mackerel in paragraph (b) of this section, must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(b) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.380(b) and (c), respectively, and the trip limits in § 622.385(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

§ 622.382 Bag and possession limits.

Section 622.11(a) provides the general applicability for bag and possession limits.

(a) *King and Spanish mackerel*—(1) *Bag limits.* (i) Atlantic migratory group king mackerel—

(A) Mid-Atlantic and South Atlantic, other than off Florida—3.

(B) Off Florida—2, which is the daily bag limit specified by Florida for its waters (Rule 68B–12.004(1), Florida Administrative Code, in effect as of July 15, 1996 (incorporated by reference, see § 622.413). If Florida changes its limit, the bag limit specified in this paragraph (a)(1)(i)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 5.

(ii) Gulf migratory group king mackerel—2.

(iii) Atlantic migratory group Spanish mackerel—15.

(iv) Gulf migratory group Spanish mackerel—15.

(v) Coastal migratory pelagic fish within certain South Atlantic SMZs—§ 622.11(a) notwithstanding, all harvest and possession of coastal migratory pelagic fish within the South Atlantic SMZs specified in § 622.182(a)(1)(i) through (xi), (a)(1)(xx), and (a)(1)(xxii) through (xxxix) is limited to the bag limits specified in paragraphs (a)(1)(i) through (iv) of this section.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(b) [Reserved]

§ 622.383 Limited harvest species.

(a) *General.* (1) The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(2) A person who fishes in the EEZ may not combine a harvest limitation specified in this section with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(b) *Cobia.* No person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

§ 622.384 Quotas.

See § 622.8 for general provisions regarding quota applicability and closure and reopening procedures. This section provides quotas and specific quota closure restrictions for coastal migratory pelagic fish.

(a) *Specific quota applicability.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.370(a)(1) or (3). Cobia quotas apply to persons who fish for cobia and sell their catch. A fish is counted against the quota for the area where it is caught.

(b) *Quotas for migratory groups of king mackerel*—(1) *Gulf migratory group.* For the 2012 to 2013 fishing year, the quota for the Gulf migratory group of king mackerel is 3.808 million lb (1.728 million kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(i) *Eastern zone.* The eastern zone is divided into subzones with quotas as follows:

(A) *Florida east coast subzone.* For the 2012 to 2013 fishing year, the quota is 1,215,228 lb (551,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg).

(B) *Florida west coast subzone*—(*1*) *Southern.* For the 2012 to 2013 fishing year, the quota is 1,215,228, (515,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg), which is further divided into a quota for vessels fishing with hook-and-line and a quota for vessels fishing with run-around gillnets. For the 2012 to 2013 fishing year, the hook-and-line quota is 607,614 lb (275,609 kg) and the run-around gillnet quota is 607,614 lb (275,609 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the hook-and-line quota is 551,448 lb (250,133 kg) and the run-around gillnet quota is 551,448 lb (250,133 kg).

(*2*) *Northern.* For the 2012 to 2013 fishing year, the quota is 197,064 lb (89,387 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 178,848 lb (81,124 kg).

(C) *Description of Florida subzones.* From November 1 through March 31, the Florida east coast subzone is that part of the eastern zone south of 29°25′ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary) and north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary). From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4′ N. lat., north to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 25°48′ N. lat. (a line directly west from the Monroe/Collier County, FL, boundary). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. north and west to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary) year round.

(ii) *Western zone.* For the 2012 to 2013 fishing year, the quota is 1,180,480 lb (535,457 kg). For the 2013 to 2014 fishing years and subsequent fishing years, the quota is 1,071,360 lb (485,961 kg).

(2) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(c) *Quotas for migratory groups of Spanish mackerel*—(1) *Gulf migratory group.* [Reserved]

(2) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.13 million lb (1.42 million kg).

(d) *Quotas for migratory groups of cobia*—(1) *Gulf migratory group.* [Reserved]

(2) *Atlantic migratory group.* The quota for the Atlantic migratory group of cobia is 125,712 lb (57,022 kg).

(e) *Restrictions applicable after a quota closure.* (1) A person aboard a vessel for which a commercial permit for king or Spanish mackerel has been issued, as required under § 622.370(a)(1) or (3), may not fish for king or Spanish mackerel in the EEZ or retain king or Spanish mackerel in or from the EEZ under a bag or possession limit specified in § 622.382(a) for the closed species, migratory group, zone, subzone, or gear, except as provided for under paragraph (e)(2) of this section.

(2) A person aboard a vessel for which valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish and a valid commercial vessel permit for king or Spanish mackerel have been issued may continue to retain fish under a bag and possession limit specified in § 622.382(a), provided the vessel is operating as a charter vessel or headboat.

(3) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, subzone, or gear type, is prohibited,

including any king or Spanish mackerel taken under the bag limits, or cobia taken under the limited-harvest species possession limit specified in § 622.383(b). The prohibition on sale/purchase during a closure for coastal migratory pelagic fish does not apply to coastal migratory pelagic fish that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

§ 622.385 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. Commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

(a) *King mackerel*—(1) *Atlantic group.* The following trip limits apply to vessels for which commercial permits for king mackerel have been issued, as required under § 622.370(a)(1):

(i) North of 29°25′ N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(ii) In the area between 29°25′ N. lat. and 28°47.8′ N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(iii) In the area between 28°47.8′ N. lat. and 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

(iv) In the area between 25°20.4′ N. lat. and 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,250 lb (567 kg) from April 1 through October 31.

(2) *Gulf group.* Commercial trip limits are established in the eastern and western zones as follows. (See § 622.384(b)(1) for specification of the eastern and western zones and § 622.384(b)(1)(i)(C) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone–Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board at any time or landed in a day from a vessel with a commercial permit for king mackerel as required under § 622.370(a)(1) as follows:

(A) From November 1 through January 31—not to exceed 50 fish.

(B) Beginning on February 1 and continuing through March 31—

(*1*) If 75 percent or more of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken—not to exceed 50 fish.

(*2*) If less than 75 percent of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken—not to exceed 75 fish.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear.* (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.370(a)(2), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.378(a) or § 622.8(b).

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial vessel permit for king mackerel and a king mackerel gillnet permit.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued will be counted against the run-around gillnet quota of § 622.384(b)(1)(i)(B)(*1*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued.

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.370(a)(1), and operating under the hook-and-line gear quotas in § 622.384(b)(1)(i)(B)(*1*) or (b)(1)(i)(B)(*2*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.8(b)—in amounts not exceeding 500 lb (227 kg) per day.

(iii) *Notice of trip limit changes.* The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section when the requisite harvest level has been reached or is projected to be reached.

(iv) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.370(a)(1), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.8(b)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) *Spanish mackerel.* (1) Commercial trip limits are established for Atlantic migratory group Spanish mackerel as follows:

(i) North of 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.370(a)(3), in amounts exceeding 3,500 lb (1,588 kg).

(ii) South of 30°42′45.6″ N. lat., Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.370(a)(3)—

(A) From March 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227 kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 2.88 million (1.31 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Total commercial harvest is still subject to the annual catch limit and accountability measures. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

§ 622.386 Restrictions on sale/purchase.

The restrictions in this section are in addition to the restrictions on sale/purchase related to quota closures as specified in § 622.384(e)(3).

(a) *Cut-off (damaged) king or Spanish mackerel.* A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.380(b) or (c), respectively, or that is in excess of the trip limits specified in § 622.385(a) or (b), respectively.

(b) [Reserved]

§ 622.387 Prevention of gear conflicts.

(a) In accordance with the procedures and restrictions of the FMP for Coastal Migratory Pelagic Resources, when the RA determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in the South Atlantic EEZ off the east coast of Florida between 27°00.6′ N. lat. and 27°50.0′ N. lat., the RA may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the **Federal Register**.

(b) [Reserved]

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Gulf migratory group king mackerel*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(b)(1) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 8.092 million lb (3.670 million kg), the AA will file a notification with the Office of the Federal Register to implement a bag and possession limit for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary. This bag and possession limit would also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(3) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year, July 1 through June 1.

(b) *Atlantic migratory group king mackerel*—(1) *Commercial sector*—(i) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(b)(2) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (b)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (b)(3) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(2) *Recreational sector.* (i) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (b)(3) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational annual catch target (ACT), but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 6.11 million lb (2.77 million kg). The recreational ACL is 6.58 million lb (2.99 million lb).

(ii) In addition to the measures specified in paragraph (b)(2)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (b)(3) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(iii) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) The stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

(c) *Gulf migratory group Spanish mackerel.* (1) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in paragraph (c)(3) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group Spanish mackerel is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(2) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, April through March.

(3) The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

(d) *Atlantic migratory group Spanish mackerel*—(1) *Commercial sector.* (i) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(c)(2) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (d)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (d)(3) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(2) *Recreational sector.* (i) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (d)(3) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 2.32 million lb (1.05 million kg). The recreational ACL is 2.56 million lb (1.16 million kg).

(ii) In addition to the measures specified in paragraph (d)(2)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (d)(3) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(iii) For purposes of tracking the ACL and ACT, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) The stock ACL for Atlantic migratory group Spanish mackerel is 5.69 million lb (2.58 million kg).

(e) *Gulf migratory group cobia.* (1) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACT, as specified in paragraph (e)(2) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This bag and possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(2) The stock ACT for Gulf migratory group cobia is 1.31 million lb (0.59 million kg). The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg).

(f) *Atlantic migratory group cobia*—(1) *Commercial sector.* (i) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d)(2) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (f)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(2) *Recreational sector.* (i) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational harvest achieves but does not exceed the intended harvest level. The recreational ACT is 1,184,688 lb (537,365 kg). The recreational ACL is 1,445,687 (655,753 kg).

(ii) In addition to the measures specified in paragraph (f)(2)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(iii) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) The stock ACL for Atlantic migratory group cobia is 1,571,399 lb (712,775 kg).

§ 622.389 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Coastal Migratory Pelagic Resources, the RA may establish or modify the following items specified in paragraph (a) of this section for coastal migratory pelagic fish.

(a) For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea

provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

§ 622.390 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.370 through 622.389.

Subpart R—Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

§ 622.400 Permits and fees.

(a) *Applicability*—(1) *Licenses, certificates, and permits*—(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 622.408(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a "commercial harvester." as defined in Rule 68B–24.002, Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 622.413).

(ii) *EEZ other than off Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 622.408(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

(2) *Tail-separation permits.* For a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a valid Federal tail-separation permit must be issued to the vessel and must be on board. Permitting prerequisites for the tail-separation permit are either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement.

(3) *Corporation/partnership-owned vessels.* For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1)(ii) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) *Operator-qualified permits.* A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Applications for permits.* (1) An application for a Federal vessel and/or tail-separation permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the RA and included on the application form.

(vi) A sworn statement by the applicant for a vessel permit certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his or her fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit.

(3) The RA may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (i) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The RA will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required

must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 622.402. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

§ 622.401 Recordkeeping and reporting. [Reserved]

§ 622.402 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in sections 379.367(2)(a)(1) and 379.367(3), Florida Statutes, in effect as of July 1, 2008 and in Rule 68B–24.006(3), (4), and (5), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 622.413).

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 68B–24.006(6), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 622.413).

(b) *EEZ other than off Florida.* (1) The owner or operator of a vessel that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the RA, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue, and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Environmental Protection for a trap that bears a Florida crawfish license or trap number, or the RA, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear.

(1) *EEZ off Florida.* Such trap or buoy, and any connecting lines, during times other than the authorized fishing season, will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap or buoy remains subject to appropriate civil penalties.

(2) *EEZ other than off Florida.* Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

§ 622.403 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons*—(i) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 622.404 for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off the Gulf states, other than Florida, during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 622.404 for prohibitions on gear and methods.)

(3) *Possession of traps.* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B–24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994 (incorporated by reference, see

§ 622.413), apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized in this paragraph will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph (b)(1) of this section, beginning on August 1 and must be removed from the water after such season not later than April 5. A spiny lobster trap, buoy, or rope in the EEZ off the Gulf states, other than Florida, during periods not authorized in this paragraph will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters.* In the EEZ off Florida and the Gulf states, a whole or a part of a spiny lobster subject to these regulations may only be possessed during the commercial and recreational fishing season and the special recreational fishing season specified in § 622.403, unless accompanied by proof of lawful harvest in the waters of a foreign nation. Consistent with the provisions of paragraphs (b)(3)(i) and (ii) of this section, a spiny lobster in a trap in this area will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water between March 31 and April 15.

(c) *Primacy of seasonal restrictions in the EEZ off Florida.* The seasonal restrictions applicable in the EEZ off Florida apply to all spiny lobsters and traps in the EEZ off Florida, without regard to harvest or use elsewhere, unless accompanied by proof of lawful harvest elsewhere.

§ 622.404 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster. Hook, as used in this paragraph (a), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

(b) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 622.408(b)(4) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(c) Poisons and explosives may not be used to take a spiny lobster in the EEZ. For the purposes of this paragraph (c), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

§ 622.405 Trap construction specifications and tending restrictions.

(a) *Construction specifications.* In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(b) *Tending restrictions.* (1) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(2) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, except that permission to pull or work traps belonging to another person may be granted—

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B–24.006(7), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 622.413).

(ii) For traps in the EEZ, other than off Florida, by the RA, as may be arranged upon written request.

§ 622.406 Areas closed to lobster trap gear.

(a) Fishing with spiny lobster trap gear is prohibited year-round in the following areas bounded by rhumb lines connecting, in order, the points listed.

(1) Lobster Trap Gear Closed Area 1.

Point	North lat.	West long.
A	24°31′15.002″	81°31′00.000″
B	24°31′15.002″	81°31′19.994″
C	24°31′29.999″	81°31′19.994″
D	24°31′29.999″	81°31′00.000″
A	24°31′15.002″	81°31′00.000″

(2) Lobster Trap Gear Closed Area 2.

Point	North lat.	West long.
A	24°31′20.205″	81°30′17.213″
B	24°31′17.858″	81°30′27.700″
C	24°31′27.483″	81°30′30.204″
D	24°31′29.831″	81°30′19.483″
A	24°31′20.205″	81°30′17.213″

(3) Lobster Trap Gear Closed Area 3.

Point	North lat.	West long.
A	24°31′42.665″	81°30′02.892″
B	24°31′45.013″	81°29′52.093″
C	24°31′34.996″	81°29′49.745″
D	24°31′32.335″	81°30′00.466″
A	24°31′42.665″	81°30′02.892″

(4) Lobster Trap Gear Closed Area 4.

Point	North lat.	West long.
A	24°31′50.996″	81°28′39.999″
B	24°31′50.996″	81°29′03.002″
C	24°31′56.998″	81°29′03.002″
D	24°31′56.998″	81°28′39.999″
A	24°31′50.996″	81°28′39.999″

(5) Lobster Trap Gear Closed Area 5.

Point	North lat.	West long.
A	24°32′20.014″	81°26′20.390″
B	24°32′13.999″	81°26′41.999″
C	24°32′27.004″	81°26′45.611″
D	24°32′33.005″	81°26′23.995″
A	24°32′20.014″	81°26′20.390″

(6) Lobster Trap Gear Closed Area 6.

Point	North lat.	West long.
A	24°32′30.011″	81°24′47.000″
B	24°32′23.790″	81°24′56.558″
C	24°32′45.997″	81°25′10.998″
D	24°32′52.218″	81°25′01.433″
A	24°32′30.011″	81°24′47.000″

(7) Lobster Trap Gear Closed Area 7.

Point	North lat.	West long.
A	24°32′46.834″	81°27′17.615″
B	24°32′41.835″	81°27′35.619″
C	24°32′54.003″	81°27′38.997″
D	24°32′59.002″	81°27′21.000″

Point	North lat.	West long.
A	24°32′46.834″	81°27′17.615″

(8) Lobster Trap Gear Closed Area 8.

Point	North lat.	West long.
A	24°33′10.002″	81°25′50.995″
B	24°33′04.000″	81°26′18.996″
C	24°33′17.253″	81°26′21.839″
D	24°33′23.254″	81°25′53.838″
A	24°33′10.002″	81°25′50.995″

(9) Lobster Trap Gear Closed Area 9.

Point	North lat.	West long.
A	24°33′22.004″	81°30′31.998″
B	24°33′22.004″	81°30′41.000″
C	24°33′29.008″	81°30′41.000″
D	24°33′29.008″	81°30′31.998″
A	24°33′22.004″	81°30′31.998″

(10) Lobster Trap Gear Closed Area 10.

Point	North lat.	West long.
A	24°33′33.004″	81°30′00.000″
B	24°33′33.004″	81°30′09.998″
C	24°33′41.999″	81°30′09.998″
D	24°33′41.999″	81°30′00.000″
A	24°33′33.004″	81°30′00.000″

(11) Lobster Trap Gear Closed Area 11.

Point	North lat.	West long.
A	24°33′50.376″	81°23′35.039″
B	24°33′27.003″	81°24′51.003″
C	24°33′40.008″	81°24′54.999″
D	24°34′03.382″	81°23′39.035″
A	24°33′50.376″	81°23′35.039″

(12) Lobster Trap Gear Closed Area 12.

Point	North lat.	West long.
A	24°34′00.003″	81°19′29.996″
B	24°34′00.003″	81°20′04.994″
C	24°34′24.997″	81°20′04.994″
D	24°34′24.997″	81°19′29.996″
A	24°34′00.003″	81°19′29.996″

(13) Lobster Trap Gear Closed Area 13.

Point	North lat.	West long.
A	24°35′19.997″	81°14′25.002″
B	24°35′19.997″	81°14′34.999″
C	24°35′29.006″	81°14′34.999″
D	24°35′29.006″	81°14′25.002″
A	24°35′19.997″	81°14′25.002″

(14) Lobster Trap Gear Closed Area 14.

Point	North lat.	West long.
A	24°44′37.004″	80°46′47.000″
B	24°44′37.004″	80°46′58.000″
C	24°44′47.002″	80°46′58.000″
D	24°44′47.002″	80°46′47.000″
A	24°44′37.004″	80°46′47.000″

(15) Lobster Trap Gear Closed Area 15.

Point	North lat.	West long.
A	24°49′53.946″	80°38′17.646″
B	24°48′32.331″	80°40′15.530″
C	24°48′44.389″	80°40′23.879″
D	24°50′06.004″	80°38′26.003″
A	24°49′53.946″	80°38′17.646″

(16) Lobster Trap Gear Closed Area 16.

Point	North lat.	West long.
A	24°53′32.085″	80°33′22.065″
B	24°53′38.992″	80°33′14.670″
C	24°53′31.673″	80°33′07.155″
D	24°53′24.562″	80°33′14.886″
A	24°53′32.085″	80°33′22.065″

(17) Lobster Trap Gear Closed Area 17.

Point	North lat.	West long.
A	24°53′33.410″	80°32′50.247″
B	24°53′40.149″	80°32′42.309″
C	24°53′32.418″	80°32′35.653″
D	24°53′25.348″	80°32′43.302″
A	24°53′33.410″	80°32′50.247″

(18) Lobster Trap Gear Closed Area 18.

Point	North lat.	West long.
A	24°54′06.317″	80°32′34.115″
B	24°53′59.368″	80°32′41.542″
C	24°54′06.667″	80°32′48.994″
D	24°54′13.917″	80°32′41.238″
A	24°54′06.317″	80°32′34.115″

(19) Lobster Trap Gear Closed Area 19.

Point	North lat.	West long.
A	24°54′06.000″	80°31′33.995″
B	24°54′06.000″	80°31′45.002″
C	24°54′36.006″	80°31′45.002″
D	24°54′36.006″	80°31′33.995″
A	24°54′06.000″	80°31′33.995″

(20) Lobster Trap Gear Closed Area 20.

Point	North lat.	West long.
A	24°56′21.104″	80°28′52.331″
B	24°56′17.012″	80°29′05.995″
C	24°56′26.996″	80°29′08.996″
D	24°56′31.102″	80°28′55.325″
A	24°56′21.104″	80°28′52.331″

(21) Lobster Trap Gear Closed Area 21.

Point	North lat.	West long.
A	24°56′53.006″	80°27′46.997″
B	24°56′21.887″	80°28′25.367″
C	24°56′35.002″	80°28′36.003″
D	24°57′06.107″	80°27′57.626″
A	24°56′53.006″	80°27′46.997″

(22) Lobster Trap Gear Closed Area 22.

Point	North lat.	West long.
A	24°57′35.001″	80°27′14.999″
B	24°57′28.011″	80°27′21.000″
C	24°57′33.999″	80°27′27.997″
D	24°57′40.200″	80°27′21.106″
A	24°57′35.001″	80°27′14.999″

(23) Lobster Trap Gear Closed Area 23.

Point	North lat.	West long.
A	24°58′58.154″	80°26′03.911″
B	24°58′48.005″	80°26′10.001″
C	24°58′52.853″	80°26′18.090″
D	24°59′03.002″	80°26′11.999″
A	24°58′58.154″	80°26′03.911″

(24) Lobster Trap Gear Closed Area 24.

Point	North lat.	West long.
A	24°59′17.009″	80°24′32.999″
B	24°58′41.001″	80°25′21.998″
C	24°58′57.591″	80°25′34.186″
D	24°59′33.598″	80°24′45.187″
A	24°59′17.009″	80°24′32.999″

(25) Lobster Trap Gear Closed Area 25.

Point	North lat.	West long.
A	24°59′44.008″	80°25′38.999″
B	24°59′27.007″	80°25′48.997″
C	24°59′32.665″	80°25′58.610″
D	24°59′49.666″	80°25′48.612″
A	24°59′44.008″	80°25′38.999″

(26) Lobster Trap Gear Closed Area 26.

Point	North lat.	West long.
A	25°01′00.006″	80°21′55.002″
B	25°01′00.006″	80°22′11.996″
C	25°01′18.010″	80°22′11.996″
D	25°01′18.010″	80°21′55.002″
A	25°01′00.006″	80°21′55.002″

(27) Lobster Trap Gear Closed Area 27.

Point	North lat.	West long.
A	25°01′34.997″	80°23′12.998″
B	25°01′18.010″	80°23′44.000″
C	25°01′22.493″	80°23′46.473″

Point	North lat.	West long.
D	25°01′36.713″	80°23′37.665″
E	25°01′46.657″	80°23′19.390″
A	25°01′34.997″	80°23′12.998″

(28) Lobster Trap Gear Closed Area 28.

Point	North lat.	West long.
A	25°01′38.005″	80°21′25.998″
B	25°01′28.461″	80°21′46.158″
C	25°01′45.009″	80°21′53.999″
D	25°01′54.553″	80°21′33.839″
A	25°01′38.005″	80°21′25.998″

(29) Lobster Trap Gear Closed Area 29.

Point	North lat.	West long.
A	25°01′53.001″	80°23′08.995″
B	25°01′53.001″	80°23′17.997″
C	25°02′01.008″	80°23′17.997″
D	25°02′01.008″	80°23′08.995″
A	25°01′53.001″	80°23′08.995″

(30) Lobster Trap Gear Closed Area 30.

Point	North lat.	West long.
A	25°02′20.000″	80°22′11.001″
B	25°02′10.003″	80°22′50.002″
C	25°02′22.252″	80°22′53.140″
D	25°02′32.250″	80°22′14.138″
A	25°02′20.000″	80°22′11.001″

(31) Lobster Trap Gear Closed Area 31.

Point	North lat.	West long.
A	25°02′29.503″	80°20′30.503″
B	25°02′16.498″	80°20′43.501″
C	25°02′24.999″	80°20′52.002″
D	25°02′38.004″	80°20′38.997″
A	25°02′29.503″	80°20′30.503″

(32) Lobster Trap Gear Closed Area 32.

Point	North lat.	West long.
A	25°02′34.008″	80°21′57.000″
B	25°02′34.008″	80°22′14.997″
C	25°02′50.007″	80°22′14.997″
D	25°02′50.007″	80°21′57.000″
A	25°02′34.008″	80°21′57.000″

(33) Lobster Trap Gear Closed Area 33.

Point	North lat.	West long.
A	25°03′11.294″	80°21′36.864″
B	25°03′02.540″	80°21′43.143″
C	25°03′08.999″	80°21′51.994″
D	25°03′17.446″	80°21′45.554″
A	25°03′11.294″	80°21′36.864″

(34) Lobster Trap Gear Closed Area 34.

Point	North lat.	West long.
A	25°03′30.196″	80°21′34.263″
B	25°03′39.267″	80°21′29.506″
C	25°03′35.334″	80°21′19.801″
D	25°03′26.200″	80°21′24.304″
A	25°03′30.196″	80°21′34.263″

(35) Lobster Trap Gear Closed Area 35.

Point	North lat.	West long.
A	25°03′26.001″	80°19′43.001″
B	25°03′26.001″	80°19′54.997″
C	25°03′41.011″	80°19′54.997″
D	25°03′41.011″	80°19′43.001″
A	25°03′26.001″	80°19′43.001″

(36) Lobster Trap Gear Closed Area 36.

Point	North lat.	West long.
A	25°07′03.008″	80°17′57.999″
B	25°07′03.008″	80°18′10.002″
C	25°07′14.997″	80°18′10.002″
D	25°07′14.997″	80°17′57.999″
A	25°07′03.008″	80°17′57.999″

(37) Lobster Trap Gear Closed Area 37.

Point	North lat.	West long.
A	25°07′51.156″	80°17′27.910″
B	25°07′35.857″	80°17′37.091″
C	25°07′43.712″	80°17′50.171″
D	25°07′59.011″	80°17′40.998″
A	25°07′51.156″	80°17′27.910″

(38) Lobster Trap Gear Closed Area 38.

Point	North lat.	West long.
A	25°08′12.002″	80°17′09.996″
B	25°07′55.001″	80°17′26.997″
C	25°08′04.998″	80°17′36.995″
D	25°08′22.000″	80°17′20.000″
A	25°08′12.002″	80°17′09.996″

(39) Lobster Trap Gear Closed Area 39.

Point	North lat.	West long.
A	25°08′18.003″	80°17′34.001″
B	25°08′18.003″	80°17′45.997″
C	25°08′29.003″	80°17′45.997″
D	25°08′29.003″	80°17′34.001″
A	25°08′18.003″	80°17′34.001″

(40) Lobster Trap Gear Closed Area 40.

Point	North lat.	West long.
A	25°08′45.002″	80°15′50.002″
B	25°08′37.999″	80°15′56.998″
C	25°08′42.009″	80°16′00.995″
D	25°08′48.999″	80°15′53.998″
A	25°08′45.002″	80°15′50.002″

(41) Lobster Trap Gear Closed Area 41.

Point	North lat.	West long.
A	25°08′58.007″	80°17′24.999″
B	25°08′58.007″	80°17′35.999″
C	25°09′09.007″	80°17′35.999″
D	25°09′09.007″	80°17′24.999″
A	25°08′58.007″	80°17′24.999″

(42) Lobster Trap Gear Closed Area 42.

Point	North lat.	West long.
A	25°09′10.999″	80°16′00.000″
B	25°09′10.999″	80°16′09.997″
C	25°09′20.996″	80°16′09.997″
D	25°09′20.996″	80°16′00.000″
A	25°09′10.999″	80°16′00.000″

(43) Lobster Trap Gear Closed Area 43.

Point	North lat.	West long.
A	25°09′28.316″	80°17′03.713″
B	25°09′14.006″	80°17′17.000″
C	25°09′21.697″	80°17′25.280″
D	25°09′36.006″	80°17′12.001″
A	25°09′28.316″	80°17′03.713″

(44) Lobster Trap Gear Closed Area 44.

Point	North lat.	West long.
A	25°10′00.011″	80°16′06.000″
B	25°10′00.011″	80°16′17.000″
C	25°10′09.995″	80°16′17.000″
D	25°10′09.995″	80°16′06.000″
A	25°10′00.011″	80°16′06.000″

(45) Lobster Trap Gear Closed Area 45.

Point	North lat.	West long.
A	25°10′29.002″	80°15′52.995″
B	25°10′29.002″	80°16′04.002″
C	25°10′37.997″	80°16′04.002″
D	25°10′37.997″	80°15′52.995″
A	25°10′29.002″	80°15′52.995″

(46) Lobster Trap Gear Closed Area 46.

Point	North lat.	West long.
A	25°11′05.998″	80°14′25.997″
B	25°11′05.998″	80°14′38.000″
C	25°11′20.006″	80°14′38.000″
D	25°11′20.006″	80°14′25.997″
A	25°11′05.998″	80°14′25.997″

(47) Lobster Trap Gear Closed Area 47.

Point	North lat.	West long.
A	25°12′00.998″	80°13′24.996″
B	25°11′43.008″	80°13′35.000″
C	25°11′48.007″	80°13′44.002″

Point	North lat.	West long.
D	25°12′06.011″	80°13′33.998″
A	25°12′00.998″	80°13′24.996″

(48) Lobster Trap Gear Closed Area 48.

Point	North lat.	West long.
A	25°12′18.343″	80°14′32.768″
B	25°12′02.001″	80°14′44.001″
C	25°12′07.659″	80°14′52.234″
D	25°12′24.001″	80°14′41.001″
A	25°12′18.343″	80°14′32.768″

(49) Lobster Trap Gear Closed Area 49.

Point	North lat.	West long.
A	25°15′23.998″	80°12′29.000″
B	25°15′04.676″	80°12′36.120″
C	25°15′09.812″	80°12′50.066″
D	25°15′29.148″	80°12′42.946″
A	25°15′23.998″	80°12′29.000″

(50) Lobster Trap Gear Closed Area 50.

Point	North lat.	West long.
A	25°16′01.997″	80°12′32.996″
B	25°15′33.419″	80°12′52.394″
C	25°15′44.007″	80°13′08.001″
D	25°16′12.585″	80°12′48.597″
A	25°16′01.997″	80°12′32.996″

(51) Lobster Trap Gear Closed Area 51.

Point	North lat.	West long.
A	25°16′33.006″	80°13′30.001″
B	25°16′33.006″	80°13′41.001″
C	25°16′34.425″	80°13′41.026″
D	25°16′41.850″	80°13′37.475″
E	25°16′42.001″	80°13′30.001″
A	25°16′33.006″	80°13′30.001″

(52) Lobster Trap Gear Closed Area 52.

Point	North lat.	West long.
A	25°17′04.715″	80°12′11.305″
B	25°16′17.007″	80°12′27.997″
C	25°16′23.997″	80°12′47.999″
D	25°17′11.705″	80°12′31.300″
A	25°17′04.715″	80°12′11.305″

(53) Lobster Trap Gear Closed Area 53.

Point	North lat.	West long.
A	25°17′23.008″	80°12′40.000″
B	25°17′23.008″	80°12′49.997″
C	25°17′33.005″	80°12′49.997″
D	25°17′33.005″	80°12′40.000″
A	25°17′23.008″	80°12′40.000″

(54) Lobster Trap Gear Closed Area 54.

Point	North lat.	West long.
A	25°20′57.996″	80°09′50.000″
B	25°20′57.996″	80°10′00.000″
C	25°21′07.005″	80°10′00.000″
D	25°21′07.005″	80°09′50.000″
A	25°20′57.996″	80°09′50.000″

(55) Lobster Trap Gear Closed Area 55.

Point	North lat.	West long.
A	25°21′45.004″	80°09′51.998″
B	25°21′38.124″	80°09′56.722″
C	25°21′49.124″	80°10′12.728″
D	25°21′56.004″	80°10′07.997″
A	25°21′45.004″	80°09′51.998″

(56) Lobster Trap Gear Closed Area 56.

Point	North lat.	West long.
A	25°21′49.000″	80°09′21.999″
B	25°21′49.000″	80°09′31.996″
C	25°21′58.998″	80°09′31.996″
D	25°21′58.998″	80°09′21.999″
A	25°21′49.000″	80°09′21.999″

(57) Lobster Trap Gear Closed Area 57.

Point	North lat.	West long.
A	25°24′31.008″	80°07′36.997″
B	25°24′31.008″	80°07′48.999″
C	25°24′41.005″	80°07′48.999″
D	25°24′41.005″	80°07′36.997″
A	25°24′31.008″	80°07′36.997″

(58) Lobster Trap Gear Closed Area 58.

Point	North lat.	West long.
A	25°25′14.005″	80°07′27.995″
B	25°25′14.005″	80°07′44.001″
C	25°25′26.008″	80°07′44.001″
D	25°25′26.008″	80°07′27.995″
A	25°25′14.005″	80°07′27.995″

(59) Lobster Trap Gear Closed Area 59.

Point	North lat.	West long.
A	25°35′13.996″	80°05′39.999″
B	25°35′13.996″	80°05′50.999″
C	25°35′24.007″	80°05′50.999″
D	25°35′24.007″	80°05′39.999″
A	25°35′13.996″	80°05′39.999″

(60) Lobster Trap Gear Closed Area 60.

Point	North lat.	West long.
A	25°40′57.003″	80°05′43.000″
B	25°40′57.003″	80°05′54.000″
C	25°41′06.550″	80°05′53.980″
D	25°41′18.136″	80°05′49.158″
E	25°41′18.001″	80°05′43.000″
A	25°40′57.003″	80°05′43.000″

(b) [Reserved]

§ 622.407 Minimum size limits and other harvest limitations.

(a) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(b) *Berried lobsters.* A berried (egg-bearing) spiny lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster may not be retained in the trap. A berried spiny lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (a)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, and one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of ¾ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day. No more than fifty undersized spiny lobsters and one per trap aboard the

vessel, may be retained aboard for use as attractants.

(d) *Tail separation.* (1) The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ, is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a valid Federal tail-separation permit, and either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement, as specified in § 622.400(a)(2), has been issued to and are on board the vessel.

(2) Spiny lobster must be landed either all whole or all tailed on a single fishing trip.

§ 622.408 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 622.403(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 622.403(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 622.403(b)(1), a person is exempt from the bag and possession limit specified in paragraph (b)(1) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 622.400(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 622.403(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 622.400(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term "net or trawl" does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 622.400(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

§ 622.409 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* There are two minimum size limits that apply to importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a spiny lobster with less than a 5-ounce (142-gram) tail weight into any place subject to the jurisdiction of the United States excluding Puerto Rico and the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 5-ounce (142-gram) tail weight is defined as a tail that weighs 4.2–5.4 ounces (119–153 grams). If the documentation accompanying an imported spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster actually does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 5-ounce (142-gram) tail-weight requirement.

(2) See § 622.458 regarding a more restrictive minimum size limit that applies to spiny lobster imported into Puerto Rico or the U.S. Virgin Islands.

(b) *Additional spiny lobster import prohibitions*—(1) *Prohibition related to tail meat.* No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

§ 622.410 Restrictions within the Tortugas marine reserves.

The following activities are prohibited within the Tortugas marine reserves:

Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(b) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
A	24°33′00″	83°09′00″

§ 622.411 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

For recreational and commercial spiny lobster landings combined, the ACL is 7.32 million lb (3.32 million kg), whole weight. The ACT is 6.59 million lb, (2.99 million kg) whole weight.

§ 622.412 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RA may establish or modify the following items:

(a) Reporting and monitoring requirements, permitting requirements, bag and possession limits, size limits, vessel trip limits, closed seasons, closed areas, reopening of sectors that have been prematurely closed, annual catch limits (ACLs), annual catch targets (ACTs), quotas, accountability measures (AMs), maximum sustainable yield (or proxy), optimum yield, total allowable catch (TAC), management parameters such as overfished and overfishing definitions, gear restrictions, gear markings and identification, vessel identification requirements, allowable biological catch (ABC) and ABC control rule, rebuilding plans, and restrictions relative to conditions of harvested fish (such as tailing lobster, undersized attractants, and use as bait).

(b) [Reserved]

§ 622.413 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. All material incorporated by reference is available for inspection at the NMFS, Office of Sustainable Fisheries, Office of the RA, 1315 East-West Highway, Silver Spring, MD; and the National Archives and Records Administration (NARA), Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. For more information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) Florida Administrative Code (F.A.C.): Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676; *http://laws.flrules.org.*

(1) F.A.C., Chapter 68B–12: King mackerel resource renewal, Rule 68B–12.004: Bag limits, in effect as of July 15, 1996, IBR approved for § 622.382(a).

(2) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.002: Definitions, in effect as of July 1, 2008, IBR approved for § 622.400(a).

(3) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.005: Seasons, in effect as of June 1, 2004, IBR approved for § 622.403(b).

(4) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited Devices, in effect as of July 1, 2008, IBR approved for § 622.402(a) and § 622.405(b).

(5) F.A.C., Chapter 68B–38: Shrimping and trapping: Closed areas and seasons, Rule 68B–38.001: Citrus-Hernando Shrimping and Trapping Closed Areas and Seasons, in effect as of March 1, 2005, IBR approved for § 622.55(e).

(6) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris, in effect as of October 15, 2007, IBR approved for § 622.402(c), § 622.403(b), and § 622.450(c).

(7) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, in effect as of October 15, 2007, IBR approved for § 622.402(c), § 622.403(b), and § 622.450(c).

(c) Florida Statute: Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676; *http://www.leg.state.fl.us/Statutes/index.cfm.*

(1) Florida Statutes, Chapter 379: Fish and Wildlife Conservation, Part VII: Nonrecreational Licenses, Section 379.367: Spiny lobster; regulation, 379.367, in effect as of July 1, 2008, IBR approved for § 622.402(a).

(2) [Reserved]

§ 622.414 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.400 through 622.413.

§ 622.415 Limited exemption regarding harvest in waters of a foreign nation.

(a) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobster, or separated tails, in the EEZ incidental to such foeign harvesting is exempt from the requirements of this subpart, except for § 622.409 with which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

Subpart S—Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

§ 622.430 Gear identification.

(a) *Fish traps and associated buoys.* A fish trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified. Traps used in the Caribbean reef fish fishery that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps used in the Caribbean reef fish fishery that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable, so as to be easily distinguished, located, and identified.

(b) *Presumption of ownership of fish traps.* A fish trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect

to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(c) *Disposition of unmarked fish traps or buoys.* An unmarked fish trap or a buoy deployed in the EEZ where such trap or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.431 Trap construction specifications and tending restrictions.

(a) *Construction specifications*—(1) *Minimum mesh size.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *Escape mechanisms.* A fish trap used or possessed in the Caribbean EEZ must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(b) *Tending restrictions.* A fish trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

§ 622.432 Anchoring restriction.

(a) The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

(b) [Reserved]

§ 622.433 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Poisons.* A poison, drug, or other chemical may not be used to fish for Caribbean reef fish in the Caribbean EEZ.

(b) *Powerheads.* A powerhead may not be used in the Caribbean EEZ to harvest Caribbean reef fish. The possession of a mutilated Caribbean reef fish in or from the Caribbean EEZ and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(c) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean reef fish. Possession of a gillnet or trammel net and any Caribbean reef fish in or from the Caribbean EEZ is *prima facie* evidence of violation of this paragraph (c). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species must be tended at all times.

§ 622.434 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) No person may fish for or possess goliath grouper and Nassau grouper in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(c) No person may fish for or possess midnight parrotfish, blue parrotfish, or rainbow parrotfish in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released with a minimum of harm.

§ 622.435 Seasonal and area closures.

(a) *Seasonal closures*—(1) *Seasonal closures applicable to specific species only*—(i) *Red, black, tiger, yellowfin, or yellowedge grouper closure.* From February 1 through April 30, each year, no person may fish for or possess red, black, tiger, yellowfin, or yellowedge grouper in or from the Caribbean EEZ. This prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(ii) *Red hind closure.* From December 1 through the last day of February, each year, no person may fish for or possess red hind in or from the Caribbean EEZ west of 67°10′ W. longitude. This prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(iii) *Vermilion, black, silk, or blackfin snapper closure.* From October 1 through December 31, each year, no person may fish for or possess vermilion, black, silk, or blackfin snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(iv) *Lane or mutton snapper closure.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(2) *Seasonal closures applicable to broad categories of fish or to all fishing*—(i) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(ii) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(A) *East of St. Croix.*

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(B) *West of Puerto Rico*—(*1*) [Reserved]

(*2*) *Tourmaline Bank.*

Point	North lat.	West long.
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(*3*) *Abrir La Sierra Bank.*

Point	North lat.	West long.
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

(iii) *Grammanik Bank closed area.* (A) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(B) From February 1 through April 30, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank closed area. This prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of this paragraph, "*fish*" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. "*Highly migratory species*" means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to part 635 of this title); and white marlin, blue marlin, sailfish, and longbill spearfish.

(iv) *Bajo de Sico closed area.* (A) The Bajo de Sico closed area is bounded by rhumb lines connecting, in order the following points:

Point A	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.2′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

(B) From October 1 through March 31, each year, no person may fish for or possess any Caribbean reef fish, as listed in Table 2 of Appendix A to part 622, in or from those parts of the Bajo de Sico closed area that are in the EEZ. The prohibition on possession does not apply to such Caribbean reef fish harvested and landed ashore prior to the closure.

(b) *Year-round closures*—(1) *Hind Bank Marine Conservation District (MCD).* The following activities are prohibited within the Hind Bank MCD: Fishing for any species and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(2) *Areas closed year-round to certain fishing gear.* Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(2)(i), (ii), (iii), and (iv) of this section.

(3) *Anchoring prohibition year-round in Bajo de Sico.* Anchoring, by fishing vessels, is prohibited year-round in those parts of the Bajo de Sico closed area, described in paragraph (a)(2)(iv) of this section, that are in the EEZ.

§ 622.436 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit, as specified in this section, in or from the Caribbean EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section. See § 622.10 regarding requirements for landing fish intact.

(a) *Yellowtail snapper.* The minimum size limit for yellowtail snapper is 12 inches (30.5 cm), TL.

(b) [Reserved]

§ 622.437 Bag limits.

(a) *Applicability.* Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a)(1) notwithstanding, the bag limits of paragraph (b) of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(b) *Bag limits.* (1) Groupers, snappers, and parrotfishes combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

(2) Other reef fish species combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.

§ 622.438 Restrictions on sale/purchase.

(a) *Live red hind or live mutton snapper.* A live red hind or live mutton snapper in or from the Caribbean EEZ may not be sold or purchased and used in the marine aquarium trade.

(b) [Reserved]

§ 622.439 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

See § 622.12 for applicable ACLs and AMs.

§ 622.440 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands, the RA may establish or modify the following items:

(a) Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(b) [Reserved]

§ 622.441 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.430 through 622.440.

Subpart T—Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands

§ 622.450 Gear identification.

(a) *Caribbean spiny lobster traps and associated buoys.* A Caribbean spiny lobster trap used or possessed in the Caribbean EEZ must display the official

number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified. Traps used in the Caribbean spiny lobster fishery that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps used in the Caribbean spiny lobster fishery that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable, so as to be easily distinguished, located, and identified.

(b) *Presumption of ownership of Caribbean spiny lobster traps.* A Caribbean spiny lobster trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(c) *Disposition of unmarked Caribbean spiny lobster traps or buoys.* An unmarked Caribbean spiny lobster trap or a buoy deployed in the EEZ where such trap or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In the EEZ off Florida, during times other than the authorized fishing season, a Caribbean spiny lobster trap, buoy, or any connecting lines will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413).

§ 622.451 Trap construction specifications and tending restrictions.

(a) *Construction specifications*—(1) *Escape mechanisms.* A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(i) Untreated fiber of biological origin with a diameter not exceeding ⅛ inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(ii) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(2) [Reserved]

(b) *Tending restrictions.* A Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

§ 622.452 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Spears and hooks.* A spear, hook, or similar device may not be used in the Caribbean EEZ to harvest a Caribbean spiny lobster. The possession of a speared, pierced, or punctured Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this section.

(b) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean spiny lobster. Possession of a gillnet or trammel net and any Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this paragraph (b). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species must be tended at all times.

§ 622.453 Prohibition on harvest of egg-bearing spiny lobster.

(a) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(b) [Reserved]

§ 622.454 Minimum size limit.

(a) The minimum size limit for Caribbean spiny lobster is 3.5 inches (8.9 cm), carapace length.

(b) A spiny lobster not in compliance with its size limit, as specified in this section, in or from the Caribbean EEZ, may not be possessed, sold, or purchased and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that spiny lobster on board are in compliance with the size limit specified in this section.

§ 622.455 Landing spiny lobster intact.

(a) A Caribbean spiny lobster in or from the Caribbean EEZ must be maintained with head and carapace intact.

(b) The operator of a vessel that fishes in the EEZ is responsible for ensuring that spiny lobster on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

§ 622.456 Bag limits.

(a) *Applicability.* Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a)(1) notwithstanding, the bag limit of paragraph (b) of this section does not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(b) *Bag limit.* The bag limit for spiny lobster in or from the Caribbean EEZ is 3 per person per day, not to exceed 10 per vessel per day, whichever is less.

§ 622.457 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

See § 622.12 for applicable ACLs and AMs.

§ 622.458 Caribbean spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* There are two minimum size limits that apply to importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a Caribbean spiny lobster with less than a 6-ounce (170-gram) tail weight into Puerto Rico or the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 6-ounce (170-gram) tail weight is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams). If the documentation accompanying an imported Caribbean spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster actually does satisfy the minimum tail-weight requirement or that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a

carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied such Caribbean spiny lobster will be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

(2) See § 622.409 regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(b) *Additional Caribbean spiny lobster import prohibitions*—(1) *Prohibition related to tail meat.* No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster with eggs attached or Caribbean spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

§ 622.459 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands, the RA may establish or modify the following items:

(a) Fishery management unit (FMU), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(b) [Reserved]

§ 622.460 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.450 through 622.459.

Subpart U—Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands

§ 622.470 Permits.

See § 622.4 of this part for information regarding general permit procedures including, but not limited to fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

(a) *Required permits*—(1) *Prohibited coral.* A Federal permit may be issued to take or possess Caribbean prohibited coral only as scientific research activity, exempted fishing, or exempted educational activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(2) [Reserved]

(b) *Application.* (1) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit.

(2) An applicant must provide the following:

(i) Name, address, telephone number, and other identifying information of the applicant.

(ii) Name and address of any affiliated company, institution, or organization.

(iii) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(iv) Any other information that may be necessary for the issuance or administration of the permit.

§ 622.471 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource.

(b) [Reserved]

§ 622.472 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Caribbean prohibited coral.* Caribbean prohibited coral may not be fished for or possessed in or from the Caribbean EEZ. The taking of Caribbean prohibited coral in the Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

§ 622.473 Restrictions on sale/purchase.

(a) *Caribbean prohibited coral.* (1) No person may sell or purchase a Caribbean prohibited coral harvested in the Caribbean EEZ.

(2) A Caribbean prohibited coral that is sold in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the Caribbean EEZ, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual, harvesting the Caribbean prohibited coral.

(iii) The port and date of landing the Caribbean prohibited coral.

(iv) A statement signed by the person selling the Caribbean prohibited coral attesting that, to the best of his or her knowledge, information, and belief, such Caribbean prohibited coral was harvested other than in the Caribbean EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

(b) [Reserved]

§ 622.474 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, the RA may establish or modify the following items:

(a) Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(b) [Reserved]

§ 622.475 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.470 through 622.474.

Subpart V—Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands

§ 622.490 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) In the Caribbean EEZ, no person may harvest queen conch by diving while using a device that provides a continuous air supply from the surface.

(b) [Reserved]

§ 622.491 Seasonal and area closures.

(a) No person may fish for or possess on board a fishing vessel a Caribbean queen conch in or from the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands, except during November 1 through May 31.

(b) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources in Puerto Rico and the U.S. Virgin Islands, when the ACL, as specified in § 622.12(a)(2)(i)(A), is reached or projected to be reached, the Regional Administrator will close the Caribbean EEZ to the harvest and possession of queen conch, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register. During the closure, no person may fish for or possess on board a fishing vessel, a Caribbean queen conch, in or from the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands.

§ 622.492 Minimum size limit.

(a) The minimum size limit for Caribbean queen conch is 9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, and 3/8 inch (9.5 mm) in lip width at its widest point. A queen conch with a length of at least 9 inches (22.9 cm) or a lip width of at least 3/8 inch (9.5 mm) is not undersized.

(b) A Caribbean queen conch not in compliance with its size limit, as specified in this section, in or from the Caribbean EEZ, may not be possessed, sold, or purchased and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that Caribbean queen conch on board are in compliance with the size limit specified in this section.

§ 622.493 Landing Caribbean queen conch intact.

(a) A Caribbean queen conch in or from the Caribbean EEZ must be maintained with meat and shell intact.

(b) The operator of a vessel that fishes in the EEZ is responsible for ensuring that Caribbean queen conch on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

§ 622.494 Bag limit.

(a) *Applicability.* Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a)(1) notwithstanding, the bag limit of paragraph (b) of this section does not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(b) *Bag limit.* The bag limit for queen conch in or from the Caribbean EEZ is 3 per person or, if more than 4 persons are aboard, 12 per boat.

§ 622.495 Commercial trip limit.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(a) A person who fishes in the Caribbean EEZ and is not subject to the bag limit may not possess in or from the Caribbean EEZ more than 150 queen conch per day.

(b) [Reserved]

§ 622.496 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

See § 622.12 for applicable ACLs and AMs.

§ 622.497 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, the RA may establish or modify the following items:

(a) Quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing year, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(b) [Reserved]

§ 622.498 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter and the general prohibitions in § 622.13, it is unlawful for any person to violate any provisions of §§ 622.490 through 622.497.

Appendix A to Part 622—Species Tables

Table 1 of Appendix A to Part 622—Caribbean Coral Reef Resources

I. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis spp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce

Leptoseris cucullota, Sunray lettuce
Family Astrocoeniidae
Stephonocoenio michelinii, Blushing star
Family Caryophyllidae
Eusmilia fostigiato, Flower coral
Tubostrea ourea, Cup coral
Family Faviidae
Clodocora orbusculo, Tube coral
Colpaphyllia natans, Boulder coral
Diploria clivasa, Knobby brain coral
D. lobyrinthiformis, Grooved brain
D. strigoso, Symmetrical brain
Fovio frogum, Golfball coral
Manicina areolata, Rose coral
M. moyori, Tortugas rose coral
Mantastrea onnularis, Boulder star coral
M. covernoso, Great star coral
Salenastrea bournani, Smooth star coral
Family Meandrinidae
Dendragyra cylindrus, Pillar coral
Dichocoenia stelloris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isaphyllostreo rigida, Rough star coral
Isaphyllia sinuosa, Sinuous cactus
Musso anguloso, Large flower coral
Mycetophyllia oliciae, Thin fungus coral
M. donae, Fat fungus coral
M. ferax, Grooved fungus
M. lomorckiona, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculino diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreaides, Mustard hill coral
P. branneri, Blue crust coral
P. divoricoto, Small finger coral
P. parites, Finger coral
Family Rhizangiidae
Astrongio solitorio, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastreo rodians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipothes spp., Bushy black coral
Stichopothes spp., Wire coral
II. Sea grasses—Phylum Angiospermae
Holadule wrightii, Shoal grass
Halaphila spp., Sea vines
Ruppia maritimo, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Aquarium Trade Species in the Coral FMP—The following species are included for data collection purposes only.

I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compresso, Erect rope sponge
Chandrilla nucula, Chicken liver sponge
Cynochirella ollaclada
Geadia neptuni, Potato sponge
Holiclono spp., Finger sponge
Myriostra spp.
Niphates digitolis, Pink vase sponge
N. erecto, Lavender rope sponge
Spinosello policifero
S. voginolis
Tethyo crypto
II. Coelenterates—Phylum Coelenterata
A. Anthozoans—Class Anthozoa
1. Anemones—Order Actiniaria
Aiptasio tagetes, Pale anemone
Bortholomeo onnulato, Corkscrew anemone
Condyloctis gigantea, Giant pink-tipped anemone
Hereroctis lucido, Knobby anemone
Lebrunio spp., Staghorn anemone
Stichadactyla helianthus, Sun anemone
2. Colonial Anemones—Order Zoanthidea
Zoonthus spp., Sea mat
3. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis*), False coral
Ricordio florido, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifico, Magnificent duster
Family Serpulidae
Spirabranchus giganteus, Christmas tree worm
IV. Mollusks—Phylum Mollusca
A. Gastropods—Class Gastropoda
Family Elysiidae
Tridochia crispata, Lettuce sea slug
Family Olividae
Olivo reticularis, Netted olive
Family Ovulidae
Cyphonia gibbosum, Flamingo tongue
B. Bivalves—Class Bivalvia
Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americonus, Atlantic thorny oyster
C. Cephalopods—Class Cephalopoda
1. Octopuses—Order Octopoda
Family Octopodidae
Octapus spp. (except the Common octopus, *O. vulgaris*)
V. Arthropods—Phylum Arthropoda
A. Crustaceans—Subphylum Crustacea
1. Decapods—Order Decapoda
Family Alpheidae
Alpheaus armotus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Grapsidae
Percnan gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thar ambainensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus, Green clinging
Stenarhynchus seticarnis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Squillidae, Mantis crabs
Gonodoctylus spp.
Lysiasquilla spp.
Family Stenopodidae, Coral shrimp
Stenapus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
VI. Echinoderms—Phylum Echinodermata
A. Feather stars—Class Crinoidea
Analcidametra ormato, Swimming crinoid
Davidaster spp., Crinoids
Nemaster spp., Crinoids
B. Sea stars—Class Asteroidea
Astropecten spp., Sand stars
Linckio guildingii, Common comet star
Ophidioster guildingii, Comet star
Oreaster reticulotus, Cushion sea star
C. Brittle and basket stars—Class Ophiuroidea
Astrophytan muricatum, Giant basket star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
D. Sea Urchins—Class Echinoidea
Diadema ontillorum, Long-spined urchin
Echinometro spp., Purple urchin
Eucidaris tribulaides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg
E. Sea Cucumbers—Class Holothuroidea
Holothuria spp., Sea cucumbers
VII. Chordates—Phylum Chordata
A. Tunicates—Subphylum Urochordata

Toble 2 of Appendix A to Part 622—Coribbeon Reef Fish

Lutjanidae—Snappers
Unit 1
Black snapper, *Apsilus dentatus*
Blackfin snapper, *Lutjanus buccanella*
Silk snapper, *Lutjanus vivonus*
Vermilion snapper, *Rhambaplites aurarubens*
Wenchman, *Pristipamaides aquilanaris*
Unit 2
Cardinal, *Pristipamaides macraphthalmus*
Queen snapper, *Etelis aculatus*
Unit 3
Gray snapper, *Lutjanus griseus*
Lane snapper, *Lutjanus synogris*
Mutton snapper, *Lutjonus anolis*
Dog snapper, *Lutjonus jocu*
Schoolmaster, *Lutjanus apadus*
Mahogany snapper, *Lutjonus mohogani*
Unit 4
Yellowtail snapper, *Ocyurus chrysurus*
Serranidae—Sea basses and Groupers
Unit 1
Nassau Grouper, *Epinephelus striatus*
Unit 2
Goliath grouper, *Epinephelus itajara*
Unit 3
Coney, *Epinephelus fulvus*
Graysby, *Epinephelus cruentatus*
Red hind, *Epinephelus guttatus*
Rock hind, *Epinephelus adscensionis*
Unit 4
Black grouper, *Mycteraperca banaci*
Red grouper, *Epinephelus maria*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteraperca venenasa*
Unit 5
Misty grouper, *Epinephelus mystocinus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Haemulidae—Grunts
White grunt, *Haemulon plumieri*
Margate, *Haemulan album*
Tomtate, *Hoemulan aurolineatum*
Bluestriped grunt, *Haemulon sciurus*
French grunt, *Haemulan flavolineatum*
Porkfish, *Anisatremus virginicus*
Mullidae—Goatfishes
Spotted goatfish, *Pseudupeneus maculatus*
Yellow goatfish, *Mullaidichthys martinicus*
Sparidae—Porgies
Jolthead porgy, *Calamus bajanada*
Sea bream, *Archasargus rhambaidalis*
Sheepshead porgy, *Calamus penna*

Pluma, *Calamus pennatula*
Holocentridae—Squirrelfishes
Blackbar soldierfish, *Myripristis jacobus*
Bigeye, *Priacanthus arenatus*
Longspine squirrelfish, *Holocentrus rufus*
Squirrelfish, *Holocentrus adscensionis*
Malacanthidae—Tilefishes
Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*
Carangidae—Jacks
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Almaco jack, *Seriola rivoliana*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Yellow jack, *Caranx bartholomaei*
Scaridae—Parrotfishes
Blue parrotfish, *Scarus coeruleus*
Midnight parrotfish, *Scarus coelestinus*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Rainbow parrotfish, *Scarus guacamaia*
Redfin parrotfish, *Sparisoma rubripinne*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*
Redband parrotfish, *Sparisoma aurofrenatum*
Striped parrotfish, *Scarus croicensis*
Acanthuridae—Surgeonfishes
Blue tang, *Acanthurus coeruleus*
Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Balistidae—Triggerfishes
Ocean triggerfish, *Canthidermis sufflamen*
Queen triggerfish, *Balistes vetula*
Sargassum triggerfish, *Xanthichthys ringens*
Monacanthidae—Filefishes
Scrawled filefish, *Aluterus scriptus*
Whitespotted filefish, *Cantherhines macrocerus*
Black durgon, *Melichthys niger*
Ostraciidae—Boxfishes
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Spotted trunkfish, *Lactophrys bicaudalis*
Smooth trunkfish, *Lactophrys triqueter*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Spanish hogfish, *Bodianus rufus*
Pomacanthidae—Angelfishes
Queen angelfish, *Holacanthus ciliaris*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Aquarium Trade—The following aquarium trade species are included for data collection purposes only:

Frogfish, *Antennarius* spp.
Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*
Redlip blenny, *Ophioblennius atlanticus*
Peacock flounder, *Bothus lunatus*
Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*
Redspotted hawkfish, *Amblycirrhitus pinos*
Flying gurnard, *Dactylopterus volitans*
Atlantic spadefish, *Chaetodipterus faber*
Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*
Royal gramma, *Gramma loreto*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Bluehead wrasse, *Thalassoma bifasciatum*
Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Batfish, *Ogcocepahalus* spp.
Goldspotted eel, *Myrichthys ocellatus*
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Cherubfish, *Centropyge argi*
Rock beauty, *Holacanthus tricolor*
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*
Glasseye snapper, *Priacanthus cruentatus*
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Caribbean tonguefish, *Symphurus arawak*
Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.
Sand diver, *Synodus intermedius*
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

Table 3 of Appendix A to Part 622—Gulf Reef Fish

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Goldface tilefish, *Caulolatilus chrysops*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*
Serranidae—Groupers
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

Table 4 of Appendix A to Part 622—South Atlantic Snapper-Grouper

Balistidae—Triggerfishes:
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks:
Blue runner, *Caranx bartholomuei*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes:
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts:
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Sailor's choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Labridae—Wrasses:
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers:
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes:
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses:
Wreckfish, *Polyprion americanus*
Serranidae—Groupers:
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*

Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteraperca micralepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteraperca venenasa*
Serranidae—Sea Basses:
Black sea bass, *Centropristis striata*
Sparidae—Porgies:
Grass porgy, *Calamus arctifrans*
Jolthead porgy, *Calamus bajonada*
Saucereye porgy, *Calamus calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nadasus*
Red porgy, *Pagrus pagrus*
Scup, *Stenatomus chrysops*

The following species are designated as ecosystem component species:

Cottonwick, *Haemulon melanurum*
Bank sea bass, *Centropristis acyurus*
Rock sea bass, *Centrapristis philadelphica*
Longspine porgy, *Stenatomus caprinus*
Ocean triggerfish, *Canthidermis sufflamen*
Schoolmaster, *Lutjanus apadus*

Table 5 af Appendix A to Part 622—Caribbean Canch Resaurces

Queen conch, *Strambus gigas*

Appendix B to Part 622—Gulf Areas

TABLE 1 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point Number and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Carrabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bellbuoy—20 fathoms	29°21.0′	85°30.0′
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of the Mississippi River	29°14.5′	88°28.0′
18 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′
19 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
20 West side of Mississippi Canyon	28°34.5′	89°59.5′
21 South of Timbalier Bay	28°22.5′	90°02.5′
22 South of Terrebonne Bay	28°10.5′	90°31.5′
23 South of Freeport	27°58.0′	95°00.0′
24 Off Matagorda Island	27°43.0′	96°02.0′
25 Off Aransas Pass	27°30.0′	96°23.5′
26 Northeast of Port Mansfield	27°00.0′	96°39.0′
27 East of Port Mansfield	26°44.0′	96°37.5′
28 Northeast of Port Isabel	26°22.0′	96°21.0′
29 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA

Point Number and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5′	84°38.6′
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida/Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′
18 Horn/Chandeleur Islands	30°01.5′	88°40.5′
19 Chandeleur Islands	29°35.5′	88°37.0′
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3′	89°00.0′
Thence southerly and westerly along the seaward limit of Louisiana's waters to:		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3′	89°28.2′
22 Southeast of Grand Isle	29°09.0′	89°47.0′

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point Number and reference location [1]	North lat.	West long.
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
24 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
25 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
26 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
27 East of Aransas Pass	27°49.0′	96°19.5′
28 East of Baffin Bay	27°12.0′	96°51.0′
29 Northeast of Port Mansfield	26°46.5′	96°52.0′
30 Northeast of Port Isabel	26°21.5′	96°35.0′
31 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

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Appendix C to Part 622—Fish Length Measurements

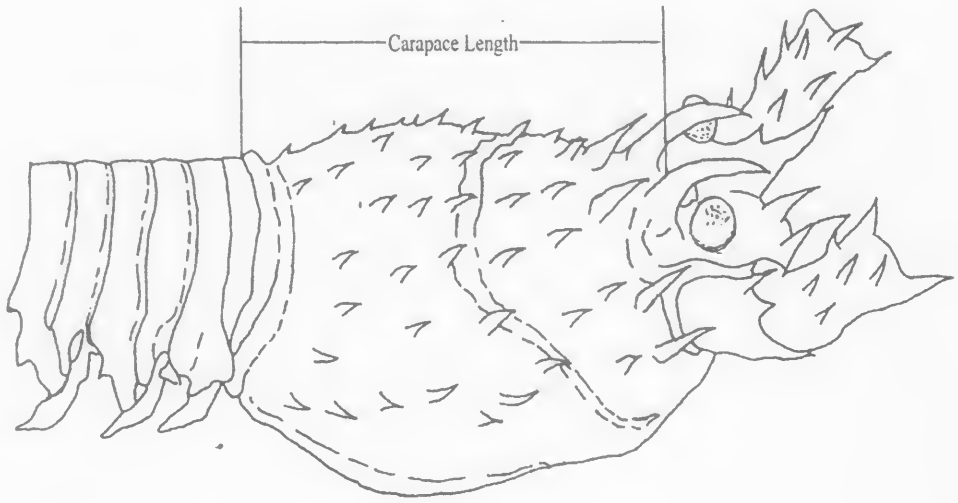

Figure 1 of Appendix C to Part 622--Carapace Length

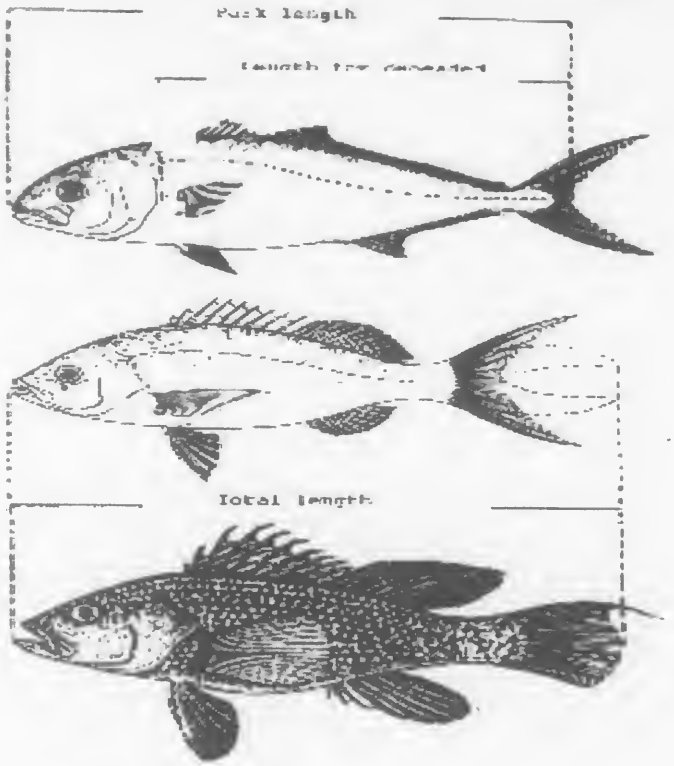

Figure 2. Appendix C to Part 622—Illustration of length measurements.

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Appendix D to Part 622—Specifications for Certified BRDs

A. *Extended Funnel.*

1. *Description.* The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the cod end. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The cod end of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The cod end of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35-mm) diameter, which is inserted into the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in² (91.4 cm²). When the fisheye BRD is installed, no part of the lazy line attachment system (*i.e.*, any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

(a) In the Gulf EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 9 ft (2.7 m) from the cod end drawstring (tie-off rings).

(b) In the South Atlantic EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an escape opening in the trawl facing the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the cod end tie-off rings.

D. *Gulf fisheye.*

1. *Description.* The Gulf fisheye is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35-mm) diameter, which is inserted into the top center of the cod end, and is offset not more than 15 meshes perpendicular to the top center of the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The Gulf fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in² (91.4 cm²). To be used in the South Atlantic EEZ, the Gulf fisheye BRD must be installed in the cod end of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no less than 8.5 ft (2.59 m) and no further forward than 12.5 ft (3.81 m) from the cod end tie-off rings, and may be offset no more than 15 meshes perpendicular to the top center of the cod end. When the Gulf fisheye BRD is installed, no part of the lazy line attachment system (*i.e.*, any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

E. *Jones-Davis.*

1. *Description.* The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements.* The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single piece of 1⅝-inch (3.5-cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.

(b) *28-inch (71.1-cm) cable hoop.* A single hoop must be constructed of ½-inch (1.3-cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of ½-inch (1.3-cm) aluminum pipe and pressed with a ⅜-inch (0.95-cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) hoop.* A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or ⅜-inch (0.95-cm) steel cable 75½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe and pressed together with a ¼-inch (0.64-cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1½-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension.* The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings.* The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in² (5,574.2 cm²). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in

the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings.* The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cahle hoop (front hoop); clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position; the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and, the area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4½-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10½-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3½ meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side.

(h) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.13-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(i) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension.* The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch (71.1-cm) cable hoop at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

F. *Modified Jones-Davis.*

1. *Description.* The Modified Jones-Davis BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Modified Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1⅝-inch (4.1-cm) stretch mesh number 30 nylon with dimensions of 39½ meshes by 150 meshes. A tube is formed from the extension webbing by sewing the 39½-mesh-sides together.

(b) *Funnel.* The funnel must be constructed from two sections of 1⅝-inch (4.1-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 25 meshes on the leading edge by 21 meshes deep. The 25-mesh leading edge of each polyethylene webbing section must be sewn evenly two meshes in from the front of the extension webbing starting 25 meshes from the top center on each side. The 21-mesh edge must be sewn to the extension webbing on a 9-bar and 1-mesh angle in the top and bottom, forming a V-shape funnel.

(c) *Cutting the escape opening.* The leading edge of the escape openings must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 635 in^2 (4,097 cm^2). Two escape openings, 6 meshes wide by 12 meshes deep, must be cut 4 meshes apart in the extension webbing, starting at the top center extension seam, 7 meshes back from the leading edge, and 30 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cahle 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension.* The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier wehhing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

G. [Reserved]

H. *Cone Fish Deflector Composite Panel.* 1. *Description.* The Cone Fish Deflector Composite Panel BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD, except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing with square mesh panels on the inside instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Cone Fish Deflector Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1½-inch to 1¼-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24½-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1½-inch to 1⅝-inch (3.8-cm to 4.1-cm) heat-set and depth-

stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening.* There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension.* The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

I. *Square Mesh Panel (SMP) Composite Panel*

1. *Description.* The SMP is a panel of square mesh webbing placed in the top of the cod end to provide finfish escape openings.

2. *Minimum Construction and Installation Requirements.* The SMP Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1½-inch to 1¾-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24½-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1½-inch to 1⅝-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening.* There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *SMP.* The SMP is constructed from a single piece of square mesh webbing with a minimum dimension of 5 squares wide and 12 squares in length with a minimum mesh size of 3-inch (76-mm) stretched mesh. The maximum twine diameter of the square mesh is number 96 twine (4 mm).

(e) *Cutting the SMP escape opening.* The escape opening is a rectangular hole cut in the top center of the cod end webbing. The posterior edge of the escape opening must be placed no farther forward that 8 ft (2.4 m) from the cod end drawstring (tie-off rings). The width of the escape opening, as

measured across the cod end, must be four cod end meshes per square of the SMP (*i.e.*, a cut of 20 cod end meshes for a SMP that is 5 meshes wide). The stretched mesh length of the escape opening must be equal to the total length of the SMP. No portion of the SMP escape opening may be covered with additional material or netting such as chaffing webbing, which might impede or prevent fish escapement.

(f) *Instollotion of the SMP.* The SMP must be attached to the edge of the escape opening evenly around the perimeter of the escape opening cut with heavy twine.

Appendix E to Part 622—Caribbean Island/Island Group Management Areas

Table 1 of Appendix E to Part 622—*Coordinotes of the Puerto Rico Monogement Areo.*

The Puerto Rico management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′ 57″
B (intersects with the EEZ/Territorial boundary)	18°25′46.3015″	65°06′31.866″
From Point B, proceed southerly along the EEZ/Territorial boundary to Point C		
C (intersects with the EEZ/Territorial boundary)	18°13′59.0606″	65°05′33.058″
D	18°01′16.9636″	64°57′38.817″
E	17°30′00.000″	65°20′00.1716″
F	16°02′53.5812″	65°20′00.1716″
From Point F, proceed southwesterly, then northerly, then easterly, and finally southerly along the International/EEZ boundary to Point A		
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″

Table 2 of Appendix E to Part 622—*Coordinotes of the St. Croix Monogement Area.*

The St. Croix management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
G	18°03′03″	64°38′03″
From Point G, proceed easterly, then southerly, then southwesterly along the EEZ/Territorial boundary to Point F		
F	16°02′53.5812″	65°20′00.1716″
E	17°30′00.000″	65°20′00.1716″
D	18°01′16.9636″	64°57′38.817″
G	18°03′03″	64°38′03″

Table 3 of Appendix E to Part 622—*Coordinotes of the St. Thomas/St. John Monogement Areo.*

The St. Thomas/St. John management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″
From Point A, proceed southeasterly along the EEZ/Territorial boundary to Point G		
G	18°03′03″	64°38′03″
D	18°01′16.9636″	64°57′38.817″
C (intersects with the EEZ/Territorial boundary)	18°13′59.0606″	65°05′33.058″
From Point C, proceed northerly along the EEZ/Territorial boundary to Point B		
B (intersects with the EEZ/Territorial boundary)	18°25′46.3015″	65°06′31.866″
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″

Appendix F to Part 622—Specifications for Sea Turtle Mitigation Gear and Sea Turtle Handling and Release Requirements

A. *Seo turtle mitigotion gear.*

1. *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(a) *A protected ond secured cutting blode.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in.–0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(b) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

2. *Long-hondled dehooker for internal hooks.* A long-handled dehooking device is

intended to remove internal hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove internal hooks is required onboard. The minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel or similar material and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

3. *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for internal hooks described in paragraph 2. of this Appendix F would meet this requirement. The minimum design standards are as follows:

(a) *Construction.* A long-handled dehooker must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel rod and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

4. *Long-handled device to pull an "inverted V".* This tool is used to pull a "V" in the fishing line when implementing the "inverted V" dehooking technique, as described in the document entitled "Careful Release Protocols for Sea Turtle Release With Minimal Injury," for disentangling and dehooking entangled sea turtles. One long-handled device to pull an "inverted V" is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph 4. of this Appendix F, it will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook end.* This device, such as a standard boat hook, gaff, or long-handled J-style dehooker, must be constructed of stainless steel or aluminum. The semicircular or "J" shaped end must be securely attached to a handle. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(b) *Extended reach handle.* The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

5. *Dipnet.* One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet or hoist. The minimum design standards for dipnets are as follows:

(a) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) by 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle. There is no requirement for the hoop to be circular as long as it meets the minimum specifications.

(b) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and be able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

6. *Cushion/support device.* A standard automobile tire (free of exposed steel belts), a boat cushion, a large turtle hoist, or any other comparable cushioned elevated surface, is required for supporting a turtle in an upright orientation while the turtle is onboard. The cushion/support device must be appropriately sized to fully support a range of turtle sizes.

7. *Short-handled dehooker for internal hooks.* One short-handled device for removing internal hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 1 7/8-inches (4.76 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3/4-inch (1.91 cm) inside diameter high impact plastic cylinder (*e.g.*, Schedule 80 PVC) that is 4 to 6 inches (10.2 to 15.2 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 cm to 60.69 cm) in length, with approximately a 4 to 6-inch (10.2 to 15.2-cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

8. *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for internal hooks required to comply with paragraph 7. of this Appendix F will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook removal device.* The dehooker must be constructed of approximately 3/16-inch (4.76 cm) to 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 to 60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle, wire loop handle or similar, of approximately 1 inch (2.54 cm) in diameter.

9. *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal or for removing hooks from the front of the mouth. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(a) *General.* They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(b) [Reserved]

10. *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(a) *General.* They must be approximately 14 to 17 inches (35.56 to 43.18 cm) in total length, with approximately 4-inch (10.16 cm) long blades that are 2 1/4 inches (5.72 cm) wide, when closed, and with approximately 10 to 13-inch (25.4 to 33.02-cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4-inch (6.35 mm) diameter.

(b) [Reserved]

11. *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(a) *Generol.* Monofilament line cutters must be approximately 7½ inches (19.05 cm) in length. The blades must be 1 inch (4.45 cm) in length and ⅝ inches (1.59 cm) wide, when closed.

(b) [Reserved]

12. *Mouth openers/mouth gogs.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(a) *A block of hord wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) by 1 inch (2.54 cm) by 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(b) *A set of three conine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. These tools are only for use on small and medium sized turtles, as larger turtles may be able to crush the mouth gag. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. The ends must be covered with clear vinyl tubing, friction tape, or similar, to pad the surface.

(c) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–8 inches (13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(d) *A set of two rope loops covered with protective tubing.* A set of two pieces of poly braid rope covered with light duty garden hose or similar flexible tubing each tied or spliced into a loop to provide a one-handed method for keeping the turtle's mouth open during hook and/or line removal. A required set consists of two 3-ft (0.91 m) lengths of poly braid rope (⅜-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) tubing, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(e) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-ft (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(f) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(g) *A lorge ovion orol speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9-inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter), friction tape, or similar to pad the surface.

B. *Seo turtle hondling and releose requirements.* Sea turtle bycatch mitigation gear, as specified in paragraphs A.1. through 4. of this Appendix F, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as specified in paragraphs A.5. through 12. of this Appendix F, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines provided by NMFS and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1)of this title.

1. *Booted turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as specified in paragraph A.5. of this Appendix F. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(a) A boated turtle should be placed on a cushioned/support device, as specified in paragraph A.6. of this Appendix F, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as specified in paragraph A.11. of this Appendix F, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using bolt cutters as specified in paragraph A.10. of this Appendix F. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as specified in paragraph A.12. of this Appendix F, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for internal hooks, or long-nose or needle-nose pliers, as specified in paragraphs A.7. and A.8. of this Appendix F, respectively, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in § 622.10(c)(1), and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(b) [Reserved]

2. *Non-booted turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear specified in paragraphs A.1. through 4. of this Appendix F must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in § 622.10(c)(1).

(a) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as specified in paragraph A.1. of this Appendix F. If the hook can be removed, it must be removed using a long-handled dehooker as specified in paragraphs A.2. and A.3. of this Appendix F. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in § 622.10(c)(1), and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(b) [Reserved]

■ 4. Effective April 17, 2013 through September 23, 2013, definitions for "Off Alabama", "Off Louisiana", and "Off

Mississippi" are added to § 622.2 to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Off Alabama means the waters in the Gulf west of a rhumb line at 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary, to a rhumb line at 88°23.1′ W. long., which is a line directly south from the Mississippi/Alabama boundary.

* * * * *

Off Louisiana means the waters in the Gulf west of a rhumb line at 89°10.0′ W. long., which is a line extending directly south from South Pass Light, to a rhumb line beginning at 29°32.1′ N. lat., 93°47.7′ W. long. and extending to 26°11.4′ N. lat., 92°53.0′ W. long., which line is an extension of the boundary between Louisiana and Texas.

* * * * *

Off Mississippi means the waters in the Gulf west of a rhumb line at 88°23.1′ W. long., which is a line directly south from the Mississippi/Alabama boundary, to a rhumb line at 89°10.0′ W. long., which is a line extending directly south from South Pass Light.

* * * * *

■ 5. Effective April 17, 2013 through May 15, 2013, § 622.39(a)(1)(vi) is suspended, and § 622.39(a)(1)(vii) is added to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(vii) Gray triggerfish—60,900 lb (27,624 kg), round weight.

* * * * *

■ 6. Effective April 17, 2013 through September 23, 2013, § 622.39(c)(1) is suspended, and § 622.39(c)(3) is added to read as follows:

§ 622.39 Quotas.

* * * * *

(c) * * *

(3) After closure of the recreational quota for red snapper. The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

* * * * *

■ 7. Effective April 17, 2013 through May 15, 2013, § 622.41(b) is suspended, and § 622.41(q) is added to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) *Gray triggerfish*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.39(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the applicable annual catch limit (ACL), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the quota for that following year by the amount the prior-year ACL was exceeded. The commercial ACL for 2010 and subsequent fishing years is 138,000 lb (62,596 kg).

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target catch for that following fishing year. The recreational ACL for 2010 and subsequent fishing years is 457,000 lb (207,291 kg). The recreational ACT for 2010 and subsequent fishing years is 405,000 lb (183,705 kg). Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

■ 8. Effective April 17, 2013 through May 6, 2013, § 622.193(n)(1) is suspended, and § 622.193(n)(3) is added to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(n) * * *

(3) *Commercial sector*—(i) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,596,510 lb (724,165 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and yellowtail snapper is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

* * * * *

PART 640—[REMOVED]

■ 9. Under the authority of 16 U.S.C. 1801 *et seq.*, part 640 is removed.

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Part III

Library of Congress

Copyright Royalty Board

37 CFR Part 382

Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services; Final Rule

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 382

[Docket No. 2011–1 CRB PSS/Satellite II]

Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Copyright Royalty Judges are announcing their final determination of the rates and terms for the digital transmission of sound recordings and the reproduction of ephemeral recordings by preexisting subscription services and preexisting satellite digital audio radio services for the period beginning January 1, 2013, and ending on December 31, 2017.

DATES: *Effective date:* April 17, 2013.

Applicability date: The regulations apply to the license period January 1, 2013, through December 31, 2017.

ADDRESSES: The final determination also is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Copyright Royalty Judges ("Judges") convened this rate determination proceeding in accordance with 17 U.S.C. 803(b) and 37 CFR 351. On January 5, 2011, the Judges published in the **Federal Register** a notice announcing commencement of this proceeding with request for Petitions to Participate in this proceeding. The purpose of the proceeding is to determine the rates and terms of royalty payments payable by Preexisting Subscription Services ("PSS") and Satellite Digital Audio Radio Services ("SDARS") under the Copyright Act, 17 U.S.C. 112 and 114. The rates and terms set in this proceeding apply to the period January 1, 2013, to December 31, 2017. Having carefully considered the relevant law and the evidence received in this proceeding, the Copyright Royalty Judges determine that the appropriate Section 114(f)(1) rates for the PSS are 8% of *Gross Revenues* for 2013 and 8.5% for 2014 through 2017. The Section 114(f)(1) rates for Sirius XM are 9% of *Gross Revenues* for 2013, 9.5% for 2014, 10.0% for 2015, 10.5% for 2016, and 11.0% for 2017.

A. The 2012 Proceeding [1]

The following entities filed Petitions to Participate and were the only remaining, non-settling participants at the time of hearing: SoundExchange, Music Choice, and Sirius XM. On May 25, 2012, the participants submitted a stipulation in which they agreed to the proposed Section 112 license rates and terms.

On June 5, 2012, the remaining participants in the proceeding commenced the direct case relating to Section 114 rates and terms. The Judges heard the rebuttal case beginning August 13, 2012. All parties presented evidence in the form of written testimony, live testimony, documentary evidence,[2] and oral argument by counsel. Participants also designated background testimony from the last rate determination relating to SDARS and PSS. The parties submitted written proposed Findings of Fact and Conclusions of Law and responses to the same. On October 16, 2012, all parties presented closing argument. In all, the Judges heard evidence and oral argument for a period of 19 days. The parties presented 32 fact and expert witnesses.

The Judges make this Final Determination of Rates and Terms pursuant to 17 U.S.C. 803(c)(2) and 37 CFR Part 353. After evaluating the evidence to determine a range of reasonable royalty rates based on market benchmarks, the Judges subjected those presumed rates to the policy analysis required by 17 U.S.C. 801(b) of the Act.

On December 14, 2012, the Judges issued to the parties their Initial Determination. Pursuant to 17 U.S.C. 803(c)(2) and 37 CFR Part 353, SoundExchange and Sirius XM each filed a motion for rehearing. The Judges requested responses from the parties regarding each of the motions. *Order Requesting Responses to Motions for Rehearing,* Docket No. 2011–1 CRB PSS/Satellite II (Jan. 8, 2013). SoundExchange and Sirius XM each filed timely responses. After reviewing both motions and the responses thereto, the Judge denied both motions for rehearing. *Order Denying Motions for Rehearing,* Docket No. 2011–1 CRB PSS/Satellite II (Jan. 30, 2013). As explained in the January 30, 2013, Order, the Judges determined that none of the grounds set forth in the motions constituted the type of exceptional case—namely, (1) an intervening change in controlling law, (2) the availability of new evidence, or (3) a need to correct a clear error or prevent manifest injustice—warranting a rehearing. *Id.*

The Judges agreed with the parties, however, that clarification was needed in order to prevent "an unintended double exclusion" from *Gross Revenues* for the Direct License Share in § 382.12(d) and the Pre-1972 Recording Share in § 382.12(e). *Id.* at 5. After reviewing the respective proposals of SoundExchange and Sirius XM, the Judges adopted Sirius XM's proposal, finding that "Sirius XM's approach adequately addresses SoundExchange's double credit concern and in a way that may help to ensure a more accurate reflection of the legal status of the pre-1972 recordings with respect to the licenses at issue in this proceeding." *Id.* Consequently, in this Final Determination, the Judges adopt Sirius XM's proposed language which will appear as § 382.12(d)(4): "No performance shall be credited as an Internet Performance of a Directly-Licensed Sound Recording under this section if that performance is separately credited as an Internet Performance of a Pre-1972 sound recording under paragraph (e)(1) of this section."

B. Prior Proceedings

For the current licensing period, the Judges adopted agreed royalty rates for the PSS and made a determination of applicable rates for SDARS after a contested hearing. The Judges caused the prior SDARS determination *[hereinafter SDARS–I]* to be published in the **Federal Register** *[hereinafter* FR*]* at 73 FR 4080 (Jan. 24, 2008).

The Judges' predecessors considered the reasonable rate standard and the Section 801(b)(1) policy factors in three prior proceedings: a Section 116 jukebox rate adjustment by the Copyright Royalty Tribunal ("Tribunal"); a Section 115 mechanical rate adjustment, also by the Tribunal; and a proceeding under the Copyright Arbitration Royalty Panel ("CARP") system administered by the Librarian of Congress ("Librarian") for preexisting subscription services under Section 114(f)(1)(B), the same section involved in this proceeding. Participants sought judicial review of all three prior

[1] During the course of the proceeding, Chief Judge Sledge and Judge Wisniewski retired. Judge Sledge retired in April 2012 before the start of oral testimony. The Librarian of Congress appointed his successor, Chief Judge Barnett, in April 2012. Judge Wisniewski retired on August 31, 2012, after the conclusion of oral testimony; the Librarian appointed an interim Copyright Royalty Judge, Judge Strasser, on September 17, 2012, pending the appointment of Judge Wisniewski's successor.

[2] The Judges did not consider all of the offered testimony. Ruling on motions to strike or exclude, the Judges edited or excluded testimony during the course of the hearing. This determination is based solely on the evidence the Judges admitted.

determinations. A fuller history of prior proceedings and the outcomes and resolutions of those proceedings is included in *SDARS–I*. *See* 73 FR 4080, 4082–4085 (Jan. 24, 2008).

In *Recording Indus. Ass'n of America* v. *Copyright Royalty Tribunal*, 662 F.2d 1 (DC Cir. 1981), the U.S. Court of Appeals for the DC Circuit discussed its judicial review standard. The DC Circuit concluded that

> To the extent that the statutory objectives [set forth in Section 801(b)] determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a "zone of reasonableness."

Id. at 9 (footnotes omitted).

In 1993, Congress replaced the Tribunal with the CARP system. In 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995, creating the Section 114 digital performance right license that is the subject of this proceeding. The Copyright Royalty Distribution and Reform Act of 2004 established the Copyright Royalty Judges as a decision-making body in the Library of Congress. The Judges follow relevant precedent of the Tribunal and CARP system and strive to adopt reasonable royalty rates that satisfy the policy objectives set forth in Section 801(b). To determine rates, the Judges begin with an analysis of proposed market benchmarks, if any, and voluntary license agreements as described in Section 114(f)(1)(B), and the participants' supporting testimony. The Judges then measure the rate or range of rates that process yields against the statutory policy objectives to reach a determination of rates and terms.

II. The Standard for Determining Royalty Rates

Section 801(b)(1) of the Copyright Act provides that the Judges shall "make determinations and adjustments of reasonable terms and rates of royalty payments" for the statutory licenses set forth in Sections 114(f)(1) ("digital performance license") and 112(e) ("ephemeral license") of the Act. These licenses contain similarities and important differences in their standards for setting royalty rates. Both require the determination of reasonable rates and terms. The digital performance license requires that the rates (but not the terms) be calculated to achieve the following objectives:

- To maximize the availability of creative works to the public.
- To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.
- To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.
- To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 801(b)(1).[3]

The participants in this proceeding reached agreement on the rates and terms of the Section 112 license prior to the hearing; consequently, the focus of this determination is the application of the Section 801(b) factors to Section 114 rates. In *SDARS–I*, the Judges set forth in great detail the historical treatment of these factors by the Tribunal and the Librarian in his administration of the CARP system. *See, SDARS–I*, 73 FR at 4082–84. Consideration of this history produces the following approach.

> [The Judges] shall adopt reasonable royalty rates that satisfy all of the objectives set forth in Section 801(b)(1)(A)–(D). In doing so, [they will] begin with a consideration and analysis of the [market] benchmarks and testimony submitted by the parties, and then measure the rate or rates yielded by that process against the [Section 801(b)] statutory objectives to reach [a] decision * * *.
>
> The issue at hand is whether these policy objectives weigh in favor of divergence from the results indicated by the benchmark marketplace evidence.

Id. at 4084, 4094 (citations omitted).[4]

In this proceeding, Music Choice argues that the Judges must consider an additional factor, applicable only to the PSS rate. Music Choice parses the Librarian's PSS determination *[hereinafter, PSS–I]*, 63 FR 25394 (May 8, 1998), and Section 803(a)(1) to conclude that the Judge's benchmark analysis must begin with the current royalty fees paid by Music Choice to the performing rights societies (ASCAP, BMI and SESAC) for musical works. Music Choice contends that the Librarian's use of the musical works benchmark in 1998 mandates that the Judges must use that same benchmark in these proceedings in the absence of a better, comparable benchmark. *See Music Choice PCL* ¶ 53.

The Judges reject Music Choice's argument for several reasons. First, Music Choice does not, and cannot, cite any statutory license rate proceeding in which the adjudicator found that factual marketplace observations in a particular royalty rate proceeding must be given *a priori* consideration in a subsequent proceeding. Second, in the *PSS–I* decision, the Librarian did not rely solely upon the musical works benchmark, but instead relied upon some unspecified combination of factors. *See PSS–I*, 63 FR at 25410. Even if the Judges were inclined to accord some precedential value to the musical works benchmark from *PSS–I* in this proceeding, the Judges cannot discern the degree to which that benchmark influenced or altered the Librarian's decision.

Third, Music Choice fails to place the *PSS–I* decision in its historical context. The Librarian had before him for consideration only the musical works fees and the Music Choice partnership license agreement. The Judges have more evidence in this proceeding upon which to base a decision.

Therefore, in this proceeding, the Judges consider the musical works evidence offered by Music Choice not as binding precedent but as evidence offered in the normal course, along with all other current evidence, not giving the musical works benchmark any preference as a starting point for, default position in, or other limitation on a proper evaluation of all of the benchmark evidence.

III. Determination of the Royalty Rates

The Judges have considered carefully the relevant law and the evidence received in this proceeding. Based upon that evidence and law, and for the reasons detailed in the following discussion, the Judges have determined applicable royalty rates for the licensing period January 1, 2013, through December 31, 2017, for the only existing SDARS, Sirius XM, and for the PSS.[5]

IV. The Section 112 Ephemeral License

With respect to the Section 112(e) ephemeral license, the parties submitted a joint stipulation. SoundExchange and

[3] The ephemeral license requires the Judges, among other things, to "establish rates that most clearly represent the fees that would have been negotiated between a willing buyer and a willing seller." 17 U.S.C. 112(e)(4). The ephemeral license requires adoption of a minimum fee for each type of service offered by a transmitting organization.

[4] The Judges followed the same approach in determining royalty rates for the Section 115 mechanical license, the only proceeding involving the Section 801(b)(1) factors decided since *SDARS–I*. *See, Phonorecords I*, 74 FR 4510 (Jan. 26, 2009). None of the parties in this proceeding contend that this approach is erroneous or must be abandoned.

[5] The PSS are Music Choice and Muzak. Muzak's PSS service is, apparently, only a small part of its business, and it did not participate in this proceeding. Digital Music Express, Inc., which was a PSS in *SDARS–I*, ceased operation. 6/11/12 Tr. 1469:14–1470:6 (Del Beccaro).

Music Choice ask for continued application of the language of 37 CFR 382.2(c), which requires a minimum fee advance payment of $100,000 per year, payable no later than January 20 of each year, with royalties accruing during the year recoupable against the advance. *Joint Stipulation* at 2–3 (May 25, 2012). SoundExchange and Sirius XM ask that the same minimum fee proposal apply to Sirius XM. *Id.*

All parties agree that the value accorded the Section 112 license is combined with that of the Section 114 license and that the value is allocated 5% to the Section 112 license and 95% to the Section 114 license, consistent with the current regulations applicable to webcasters, broadcasters, SDARS, and new subscription services. *See* 37 CFR 380.3, 380.12, 380.22; 382.12; and 383.3. The parties submitted no other evidence on either the minimum fee or the Section 112(e) license fee allocation; consequently, the Judges approve and adopt the respective minimum fees and Section 112(e) royalty rates for PSS and SDARS as set forth in the Joint Stipulation.

V. The Section 114 Digital Performance License

With respect to the royalty rates for the Section 114 digital performance license, Music Choice requests a rate of 2.6% of *Gross Revenues*, applicable to each of the years in the licensing period. SoundExchange requests the following percentage of *Gross Revenues* rates for the PSS: 15% for 2013; 20% for 2014; 25% for 2015; 35% for 2016; and 45% for 2017. *Second Revised Proposed Rates and Terms of SoundExchange, Inc.*, at 6 (Sept. 26, 2012). Both SoundExchange and Music Choice ask that the definition of *Gross Revenues*, currently set forth in 37 CFR 382.2(e), apply in the new licensing period.

A. Section 114 Rates for PSS

Since 1998, when the decision in *PSS–I* established the initial royalty rates, the PSS have paid a fee based on a percentage of *Gross Revenues* [6] as defined by regulation. Neither Music Choice nor SoundExchange proposes altering this rate structure for the 2013–17 license term, nor do they propose changes to the *Gross Revenues* definition. As discussed in detail below, however, SoundExchange requests that the Judges add an adjustment to the percentage-of-revenue metric to address what it perceives as a deliberate reduction in revenues paid to Music Choice for its residential audio service by certain cable operators that are co-owners (partners) of Music Choice.

The rates the Judges establish under Section 114(f)(1) for the digital performance of sound recordings must be calculated to achieve the objectives set forth in Section 801(b)(1)(A) through (D) of the Act. Where the determination standard is reasonable rates calculated to achieve the Section 801(b)(1) factors, the Judges have found market benchmarks, if any, to be a useful starting point. *See SDARS–I*, 73 FR at 4088; *Phonorecords I*, 74 FR 4510, 4517 (Jan. 26, 2009). As discussed below, the parties disagree about what constitutes the most appropriate benchmark to guide the Judges in determining a reasonable rate.

1. Music Choice's Proposed Musical Works Benchmark for PSS Rates

As discussed above, Music Choice argues that the annual royalties it pays to the three performing rights societies (ASCAP, BMI, and SESAC) for the right to perform musical works to subscribers of its residential audio service is, by virtue of the Librarian's determination in *PSS–I*, a precedential benchmark in this proceeding. Although the Judges reject the *PSS–I* benchmark as a precedent in this proceeding, they nevertheless weigh whether the rates are a useful benchmark in this proceeding.

Music Choice represents that it pays ASCAP and BMI each 2.5% of gross revenues attributable to residential service each and pays an annual flat fee to SESAC that amounts to approximately [REDACTED] of net revenue, for a total of [REDACTED].[7] Del Beccaro Corrected WDT at 21–22, MC 17, MC 18 and MC 19, PSS Trial Ex. 1. Music Choice submits that this rate (i.e., [REDACTED]) represents the upper bound of a reasonable royalty rate for the Section 114 and Section 112 licenses.

Two pieces of evidence, in Music Choice's view, corroborate use of musical works licensing rates as a benchmark. First, Music Choice observes equivalence between the fees for the performance of sound recordings and musical works in Canada and the United Kingdom. Music Choice cites four decisions of the Canadian Copyright Board, involving licensing fees for commercial radio, cable television, satellite music services and radio services of the Canadian Broadcasting Corporation ("CBC"). According to Music Choice, in those decisions, the Canadian Board found that royalty rates for sound recordings and musical compositions have equivalent value. *See, e.g.*, Del Beccaro Corrected WDT at MC 6 at 30–33 (commercial radio) and MC 7 at 14 (cable television), PSS Trial Ex. 1.[8] Moreover, Music Choice represents that in the United Kingdom, sound recording royalty rates for commercial broadcasting services are less than those for musical works. *Id.* at 19. According to Music Choice, if Music Choice's service were transmitted through cable in the U.K., Music Choice would pay 5.25% of 85% of gross revenues for the musical works performance right, but would pay only 5% of 85% of gross revenues for the sound recording performance right. *Id.* at 19, MC 11. Music Choice represents that the U.K. Copyright Tribunal has found the same equivalence. *Id.* at 19–20 & MC 12, ¶ 53.

Music Choice further asserts that the validity of the proposed musical works benchmark to set rates in this proceeding is corroborated by an economic model called the Asymmetric Nash Bargaining Framework ("Nash Framework") offered by Dr. Crawford.[9] Dr. Crawford uses the Nash Framework to determine potential outcomes that could occur in hypothetical negotiations between record labels and PSS providers. Crawford Corrected WDT at 12, PSS Trial Ex. 4. According to Dr. Crawford, as a non-cooperative bargaining model, the Nash Framework is designed to yield predictions about how outcomes are determined when firms negotiate; that is, how two firms would split the surplus of their interaction (i.e., revenues minus costs) in a hypothetical negotiation. *Id.* at 16. Three factors (the Nash factors) are analyzed to determine the split: (1) The combined agreement surplus; [10] (2) each

[6] The current regulation defining *Gross Revenues* for PSS is set forth in 37 CFR 382.2(e). As discussed *infra*, the Judges are adopting SoundExchange's proposal to house all PSS definitions in a single location; consequently, the PSS definitions will be located in a new § 382.2.

[7] The definitions of "revenues" used to calculate the different musical works royalties are not revealed in the evidence, nor is the "revenue" to which the [REDACTED] could be applied for comparison.

[8] SoundExchange's expert economist, Dr. George Ford, who recently submitted testimony before the Canadian Copyright Board, acknowledged that in Canada the musical composition and sound recording performance royalties are equal. 8/21/12 Tr. 4304:5–22 (Ford).

[9] Dr. Crawford concludes that his economic model confirms that the sound recording performance royalty rate for PSS should be less than its musical works rate. 6/12/12 Tr. 1803:11–1804:20 (Crawford); *see also* Crawford Corrected WDT at 6, 23, 25, 30, PSS Trial Ex. 4.

[10] "Combined Agreement Surplus" is the revenue a PSS would earn in the market for the PSS provider when an agreement is reached with the record label less the costs net of the digital performance right in sound recordings. Crawford Corrected WDT at 16, PSS Trial Ex. 4. "Surplus" is the payment a good or service can command beyond its cost of production. *Id.* at n.33.

firm's "threat point";[11] and (3) each firm's bargaining power. *Id.*

Dr. Crawford's stated goal in applying the Nash Framework was to first establish the Nash factors for the hypothetical market (the sale of rights between one record company and one PSS provider) and compare them to the Nash factors in the actual musical works market (the sale of rights between the three performing rights societies and one PSS provider). *Id.* at 18. Dr. Crawford determined that the combined agreement surplus in the hypothetical PSS market was the total profits that the PSS provider earned before paying the royalty for digital performance rights. *Id.* at 45.

Dr. Crawford determined that in the hypothetical market, the threat point for a PSS provider would be zero because, in the absence of an agreement, the PSS provider could not offer music and therefore could not earn a surplus. *Id.* at 19. He determined, however, that the threat point for a hypothetical record company would be negative because the failure to reach an agreement would have negative implications for the record company in other, non-PSS markets. Specifically, a record company's failure to reach an agreement with a PSS provider could diminish that record company's sales of compact disks, because, according to Music Choice, there is a significant promotional benefit to the record company from the PSS.[12, 13] *Id.*

With respect to the last Nash factor, bargaining power, Dr. Crawford assumed it to be equal based on his assessment of Music Choice's existing technology platform and contract, which, he contended, cannot be easily replaced or replicated, and his observations of Music Choice's bargaining efforts for sound recording performance rights with respect to music videos. *Id.* at 15, 22.

Applying the Nash factors to the existing market for the PSS musical works performance right, Dr. Crawford determined that the threat point for a PSS provider would again be zero. He determined that the "threat point" for the performing rights society would be negative due to the predicted loss of promotional value from the PSS. *Id.* at 28. Dr. Crawford again assumes equal bargaining power between the PSS provider and the performing rights society, based largely upon his observations that the two possess equal patience in their negotiations. *Id.* at 29. Dr. Crawford opines that his analysis of the Nash factors in the hypothetical musical works market indicates that there should be a 50/50 split of the surplus in hypothetical negotiations between the PSS and the performing rights society, the same conclusion he reached with respect to the hypothetical market for the rights in this proceeding. Because of the similarities between the Nash factors in the PSS hypothetical market and the market for musical works, Dr. Crawford concludes that the musical works market makes for a good benchmark for the hypothetical sound recording performance right market at issue in this proceeding. *Id.* at 30.

Dr. Crawford also proffered a surplus splitting analysis which he asserted helped to corroborate the reasonableness of Music Choice's rate proposal. This analysis involved Music Choice's own operating profits to estimate how PSS profits would be allocated between a Licensee and Licensor in the PSS market. Crawford Corrected WDT at 43, PSS Trial Ex. 4. Dr. Crawford adjusted Music Choice's 2006–2010 operating profit to remove the actual royalty paid by Music Choice for sound recording performance rights. He then applied the capital asset pricing model [14] to derive an expected rate of return on Music Choice's assets. He determined that that hypothetical rate of return would be 8.33%. *Id.* at Appendix B.3, B.4. He then multiplied the 8.33% rate by Music Choice's average operating profits to determine cost of capital. He then subtracted cost of capital from the royalty-adjusted operating profits to derive the residual profits for each year. *Id.* at 47. According to Dr. Crawford, this calculation showed that Music Choice's cumulative returns in excess of its cost of capital, but before payment of sound recording royalties, would amount to 3.05% of Music Choice's 2006–2010 royalties. *Id.* He then applied a range of allocations for the hypothetical cumulative returns of between 20% and 80%. This calculation yielded a range of royalties from 0.61% to 2.43%. *Id.* at 48.

2. SoundExchange's Proposed Marketplace Agreements Benchmark for PSS Rates

In an effort to frame a zone of reasonable rates, SoundExchange offers rates from over 2,000 marketplace agreements, representing a variety of rights licensed. SoundExchange witness, Dr. George Ford, observes that PSS like Music Choice have certain distinctive features that make it difficult to identify a suitable benchmark market. 6/18/12 Tr. 2814:9–20 (Ford). First, according to Dr. Ford, Music Choice does not sell its service directly to subscribers, but rather to cable television operators who then bundle the Music Choice programming with a package of television programming for ultimate sale to subscribers. Music Choice is, therefore, an intermediary between cable operators and their subscribers, unlike any of the digital music services the Copyright Royalty Judges have previously dealt with. Ford Second Corrected WDT at 12–13, SX Trial Ex. 79; 6/18/12 Tr. 2810:20–2811:4 (Ford). Second, Music Choice's service is almost always bundled with a hundred or more channels of video and is almost never sold on a stand-alone basis. Ford Second Corrected WDT at 13, SX Trial Ex. 79. According to Dr. Ford, this bundling makes it difficult to determine the specific consumer value for Music Choice's programming alone. *Id.*

Given these difficulties, Dr. Ford uses an all-inclusive approach of examining royalty rates for different digital music markets: portable and non-portable interactive subscription webcasting, cellular ringtones/ringbacks, and digital downloads. *Id.* at 15–16, Table 1. According to Dr. Ford, most of the over 2,000 licensing agreements he examined across these markets calculate royalties based on a "greater of" *(sic.)* methodology that includes a per-play royalty fee, a per-subscriber fee, and a revenue-based fee. *Id.* at 13 n.21. Dr. Ford analyzed only the revenue-based fees. He contended that doing so makes his results conservative because either of the other two payment metrics could, under certain circumstances, result in a larger total royalty fee than the revenue-based calculation. 6/18/12 Tr. 2861:3–13 (Ford). According to Dr. Ford, his analysis of the agreements showed a percentage-of-revenue rate of 70% for digital downloads, 43% to 50% for ringtones/ringbacks, and 50% to 60% for portable and non-portable interactive subscription webcasting, respectively. Ford Second Corrected WDT at 15–16, Table 1, SX Trial Ex. 79. According to Dr. Ford, SoundExchange's rate

[11] "Threat point" is the amount a firm would earn in the absence of an agreement. Crawford Corrected WDT at 16, PSS Trial Ex. 4.

[12] To support its contention that PSS are promotional for record company artists, Music Choice offered the testimony of Damon Williams, who testified that record company executives consider Music Choice promotional because they provide artists with greater exposure. Williams WDT at 4–13, MC 28, MC 29, MC 32, PSS Trial Ex. 3. Mr. Williams argues that Music Choice has become more promotional since the *PSS–I* proceeding because it currently reaches more customers with more channels. *Id.* at 24.

[13] Dr. Crawford discounted the promotional value of Music Choice because he could not quantify it. Crawford Corrected WDT at 45, PSS Trial Ex. 4.

[14] Under this model, a firm's cost of capital is based on the expected return to induce investment. Crawford Corrected WDT at ¶ 167, PSS Trial Ex. 4.

proposal for PSS comports well with the range established by these agreements, in that it rises above the lowest average rate (43%) only in the last year of the licensing term. Therefore, according to Dr. Ford, SoundExchange's proposal can "be presumed to be a reasonable proxy for a market outcome." *Id.* at 16; *see also* 6/18/12 Tr. 2831:8–15 (Ford).

3. Analysis and Conclusions Regarding the Proposed Rate Guidance

Based upon the evidence put forward in this proceeding, the Judges conclude that neither Music Choice's nor SoundExchange's proffered rate guidance provides a satisfactory benchmark upon which they can rely to determine the sound recording performance royalty rates for the PSS for the upcoming license period. The parties' proposals are so far apart, and both so far from the current rate, that they cannot even be said to describe a "zone of reasonableness." The only remaining guidance the Judges have upon which to base the new rates is the current royalty rate of 7.5% of PSS *Gross Revenues*. This rate approximates the middle of the wide spectrum proposed by the parties. It is the rate against which the Judges will test the Section 801(b) policy factors.

a. Music Choice's Proposed Musical Works Guidance

Having rejected Music Choice's argument that the musical works benchmark utilized by the Librarian of Congress in *PSS–I* is binding precedent in this proceeding,[15] the Judges examine the proposed benchmark on its own merits and find it lacks comparability to the target market. Dr. Crawford, who advocates the appropriateness of the musical works rates as a benchmark for the PSS rates, acknowledges that a benchmark market should involve the same buyers and sellers for the same rights. Crawford Corrected WDT at 24, PSS Trial Ex. 4. However, the musical works market involves different sellers (performing rights societies versus record companies) selling different rights. *See SDARS–I*, 73 FR at 4089. The fact that a PSS needs performing rights to musical works and sound recordings to operate its service does not make the rights equivalent, nor does it say anything about the relative values of those rights.[16]

Music Choice's reliance on foreign rates to support its proffer of the musical works guidance is unpersuasive. The Judges have considered before the significance of foreign countries' treatment of the licensing of exclusive rights granted by copyright. In the proceeding to set rates and terms for the compulsory license to reproduce musical compositions under Section 115 of the Copyright Act, certain participants offered evidence of license rates in the U.K., Canada and Japan. *See Phonorecords I*, 74 FR 4510, 4521 (Jan. 26, 2009). In rejecting the foreign rates as comparable benchmarks, the Judges stated that "comparability is a much more complex undertaking in an international setting than in a domestic one. There are a myriad of potential structural and regulatory differences whose impact has to be addressed in order to produce a meaningful comparison." *Id.* at 4522. Neither Mr. Del Beccaro nor Dr. Crawford even attempts an analysis or discussion of the intricacies of Canadian and U.K. markets for performance rights for musical works and sound recordings, and Music Choice itself concedes that particular license rates in Canada and Europe "do not necessarily determine what the specific market rate in the United States should be for the sound recording right." *Music Choice PFF* ¶ 135.

Likewise, the Judges are not persuaded that Dr. Crawford's application of the Nash Framework provides corroboration. The Nash Framework is a theoretical concept whose goal is to evaluate how the surplus from a hypothetical transaction might be divided between negotiating parties. Even assuming that the Nash Framework has predictive value in some real-world contexts, Music Choice provided no data to support the theoretical approximations in the market for any intellectual property rights, much less those that the Judges are charged with evaluating. Therefore, the Judges find that the Nash Framework is not useful corroborating evidence.[17]

b. SoundExchange's Marketplace Agreements Guidance

The Judges do not endorse the music service benchmarks offered by SoundExchange and supported by Dr. Ford as persuasive benchmarks. Typically the volume (over 2,000) of marketplace agreements that Dr. Ford examined for music products and services would be a sufficiently deep sample set to provide a useful framework for a marketplace benchmark. The four markets Dr. Ford examined, however—portable and non-portable subscription interactive webcasting, ringtones/ringbacks, and digital downloads—involve the licensing of products and rights separate and apart from the right to publicly perform sound recordings in the context of this proceeding. The buyers are different from the target PSS market; thus, the key characteristic of a good benchmark—comparability—is not present.

The Judges agree with Dr. Ford's observations that Music Choice has several distinct features, such as its intermediary role between cable systems and subscribers and the bundling of Music Choice's services with multiple channels of video and other non-music programming, which significantly dim the possibility of market comparators. In the absence of some rational, reasoned adjustment to make the music agreements data more comparable to the PSS market, the Judges find its probative value in this proceeding of only marginal value.

c. The Prevailing Statutory Rate

The Judges are left, therefore, with a consideration of the existing 7.5% royalty rate which is the product of settlement negotiations that occurred in *SDARS–I* between Music Choice and SoundExchange but is a rate for which neither party advocates. Although it is a rate that was negotiated in the shadow of the statutory licensing system and cannot properly be said to be a market benchmark rate, nothing in the record persuades the Judges that 7.5% of *Gross Revenues*, as currently defined, is too high, too low or otherwise inappropriate. *Accord*, *Phonorecords I*, 74 FR at 4522.

1. Application of Section 801(b) Factors

Based on the record evidence in this proceeding, the Judges have determined that the benchmark evidence submitted by Music Choice and SoundExchange has failed to provide the means for determining a reasonable rate for the PSS, other than, perhaps to indicate the extreme ends of the range of reasonable rates. The testimony and argument of Music Choice demonstrates nothing more than to show that a reasonable rate cannot be as low as the rates (i.e., [REDACTED] of Music Choice's

[15] *See supra* at Section II.

[16] The fees paid to the performing rights societies for the performance right to musical works have been offered in non-PSS proceedings and have been rejected. *See Webcasting II*, 72 FR 24084, 24094–24095 (May 1, 2007); *SDARS–I*, 73 FR 4080, 4089–4090 (Jan. 24, 2008) and *Webcasting I*, 67 FR 45240, 45246–45247 (July 8, 2002) (Librarian of Congress's determination).

[17] The Judges understand that Judge Roberts in his dissent provides a more spirited rejection of the probative value of the Nash Framework as proffered in this context. The Judges concur with his assessment, but believe, as a threshold matter, that the Nash Framework, without real-world data to support its predictive capacity, is unworthy of further consideration.

revenues) paid by Music Choice to the three performing rights societies for the public performance of musical works. The benchmark testimony of SoundExchange is of even lesser value. The proposed rate of 15% for the PSS for the first year of the licensing period, deemed reasonable by Dr. Ford (at least in the beginning of the licensing period), stands as the upper bound of the range of reasonable rates. Within that range is the current 7.5% rate. On the record before us, the Judges are persuaded that the current rate is neither too high, too low, nor otherwise inappropriate, subject to consideration of the Section 801(b) factors discussed below.

a. Maximize Availability of Creative Works

To argue for an adjustment in its favor under the first Section 801(b) factor, Music Choice touts that it is a music service that is available in over 54 million homes, with 40 million customers using the service every month. 8/16/12 Tr. 3878:3 (Del Beccaro); 6/11/12 Tr. 1462:5–11, 1486:19–1487:2 (Del Beccaro). According to Music Choice, channel offerings have increased through the years, and they are curated by experts in a variety of music genres. Del Beccaro Corrected WDT at 3, 24, PSS Trial Ex. 1. Music Choice also highlights recent developments in technology that enable Music Choice to display original on-screen content identifying pertinent information regarding the songs and artists being performed. *Id.* at 24, MC 23; Williams WDT at 12, PSS Trial Ex. 3; 6/11/12 Tr. 1461:14–1462:1, 1491:2–12 (Del Beccaro). According to Music Choice, these elements, along with certain promotional efforts that Music Choice makes on behalf of artists, support a downward adjustment in the rates. In any event, an upward adjustment in the rates, argues Music Choice, would not affect the record companies' bottom-line because PSS royalties are not a material revenue source for record companies. *Music Choice PFF* ¶¶ 409–417.

SoundExchange submits that a market rate incorporates considerations under the first Section 801(b) factor, citing the decision in *SDARS–I,* and that if PSS rates turn out to be too high and drive Music Choice from the market, presumably consumers will shift to alternative providers of digital music where higher royalty payments are more likely for record companies. Ford Second Corrected WDT at 19–21, SX Trial Ex. 79.

The current PSS rate is not a market rate, so market forces cannot be presumed to determine the maximum amount of product availability consistent with the efficient use of resources. *See SDARS–I,* 73 FR 4094. However, the testimony demonstrates that Music Choice has not, under the current rate, reduced its music offerings or contemplated exiting the business; in fact, it will be expanding its channel offerings in the near term. Del Becarro Corrected WDT at 3, 24, PSS Trial Ex. 1; *see also* 6/11/12 Tr. 1460:21–1461:1 (Del Beccaro). The Judges find no creditable evidence in the record to suggest that the output of music from record labels has been impacted negatively as a result of the current rate. The record shows no persuasive evidence that a higher PSS royalty rate would necessarily result in increased output of music by the record companies, nor that a lower rate would necessarily further stimulate Music Choice's current and planned offerings. In sum, the policy goal of maximizing creative works to the public is reasonably reflected in the current rate and, therefore, no adjustment is necessary.

b. Afford Fair Return/Fair Income Under Existing Market Conditions

Music Choice submits that the Judges need not worry about the impact of a low royalty rate on the fair return to record companies and artists for use of their works because royalties from the PSS market are so small as to be virtually inconsequential to companies whose principal business is the sale of CDs and digital downloads. *Music Choice PFF* ¶¶ 420–430. With respect to Music Choice's ability to earn a fair income, however, Music Choice argues that it is not profitable under the current 7.5% rate. Mr. Del Beccaro testified that its average revenue per customer for its residential audio business has been on the decline since the early 1990s, down from $1.00 per customer/per month to [REDACTED] per customer/per month currently. Del Beccaro Corrected WDT at 40, PSS Trial Ex. 1. He further testified that after 15 years of paying a PSS statutory rate between 6.5% and 7.5% Music Choice has not become profitable on a cumulative basis and is not projected to become so within the foreseeable future. *Id.* at 42. Music Choice represents that it has a cumulative loss at the end of 2011 of [REDACTED], projected to grow to [REDACTED] in 2012 and continue to increase throughout the 2013–17 license period. Del Beccaro Corrected WRT at MC 69 at 1 and MC 70 at 1, PSS Trial Ex. 21. These losses lead Music Choice to conclude that it has not generated a reasonable return on capital under the existing rates. *Music Choice PFF* ¶¶ 442–43.

Music Choice's claims of unprofitability under the existing PSS rate come from the oblique presentation of its financial data and a combining of revenues and expenses from other aspects of its business. The appropriate business to analyze for purposes of this proceeding is the residential audio service offered by Music Choice, the subject of the Section 114 license. Music Choice, however, reports costs and revenues for its residential audio business with those of its commercial business, which is not subject to the statutory license. This aggregation of the data, which Music Choice acknowledges cannot be disaggregated, *see* 6/11/12 Tr. 1572:3–1576:2 (Del Beccaro), masks the financial performance of the PSS business. As a consolidated business, Music Choice has had significantly positive operating income between 2007 and 2011 and made profit distributions to its partners since 2009. Ford Amended/Corrected WRT at SX Ex. 362–RR, p. 3 (PSS_002739), SX Trial Ex. 244; SX Trial Ex. 64 at 3 (PSS_002715); SX Trial Ex. 233 at 3 (PSS_366020). Dr. Crawford's effort to extract costs and revenues from this data for the PSS service alone for use in his surplus analysis cannot be credited because of his lack of familiarity with the data's source. 6/13/12 Tr. 1890:15–1891:10 (Crawford).[18] The Judges find no persuasive evidence to suggest that Music Choice has not operated successfully and received a fair income under the existing statutory rate.[19]

With respect to fair return to the copyright owner, the Judges' examination is whether the existing statutory rate has produced a fair return with respect to the usage of sound recordings. During the current licensing period, Music Choice provided 46 channels of music programming. Music Choice plans to expand the number of music channels it provides dramatically in the coming licensing term, however, up to 300 channels by the first quarter of 2013. Del Beccaro Corrected WDT at 3–4, PSS Trial Ex. 1; 6/11/12 Tr. 1490:8–16 (Del Beccaro). This expansion will result in a substantial increase in the number of plays of music by Music Choice, even if the ultimate

[18] Much was made in the hearing and in closing arguments regarding Dr. Crawford's supposed use of audited financial data and Dr. Ford's use of unaudited financial data in an effort to examine costs and revenues of the PSS service vis-à-vis Music Choice's other non-PSS services. The Judges see no superiority to either data set as presented in this proceeding.

[19] It is improbable that Music Choice would continue to operate for over 15 years with the considerable losses that it claims.

listenership intensity of its licensees' subscribers cannot be measured. Music Choice provided no evidence, however, to suggest that the planned expansion in usage would result in increased revenues to which the statutory royalty rate is to be applied. Indeed, Music Choice has declared itself to be in a mature market with no expectation of increasing profits. 8/16/12 Tr. 3855:17–3856:7 (Del Beccaro).

Music Choice presented no evidence to suggest that copyright owners would be compensated for the increased usage of their works. Dramatically expanded usage without a corresponding expectation of increased compensation suggests an upward adjustment to the existing statutory rate is warranted. Measurement of the adjustment is not without difficulty because any downstream increases in listenership of subscribers as a result of additional music offerings by Music Choice cannot be readily predicted. It is possible that listenership overall may remain constant despite the availability of several additional music channels. It is more likely, however, that Music Choice would not make the expansion, and incur the additional expense of doing so, without reasonable expectation that subscribers or advertisers would be more attracted to the expanded offerings, although the Judges have no evidence to suggest that the net increase in listenership (or advertising revenue) would be anything more than modest.

SoundExchange refers to prior rate decisions and the application of the fair return/fair income factor by the Judges and their predecessors. SoundExchange asserts that the Judges are looking for a fair return/fair income result that is consistent with reasonable market incomes. SX *PFF* at ¶ 491, *citing SDARS–1*, 73 *F.R.* 4080, 4095 (Jan. 24, 2008). Referring to testimony by Messrs. Ciongoli and Van Arman, SoundExchange emphasizes how vital statutory royalty income is to copyright owners—both the record labels and the artists, whose share SoundExchange distributes directly. *See* 6/13/12 Tr. 2138:5–2142:9 (Ciongoli), Van Arman *WDT* at 4, SX Trial Ex. 77. Although the income from any one statutory license may not be great, SoundExchange cites the aggregate value of income from all of the statutory licenses as vital to the industry. With respect to fair income to the rights user, SoundExchange points to the profit on the consolidated financial statements of Music Choice over the past five years, 2007–2011.

The balance of fair return and fair income appears to have been maintained at the current PSS rates. This factor does not argue in favor of drastic cuts or increases in the current rate. Music Choice's planned increase in usage, however, argues in favor of an increase in the rates going forward to fairly compensate the licensors for the additional performances.

The Judges determine. therefore, that a 1% upward adjustment of the benchmark (from 7.5% to 8.5% of *Gross Revenues*). phased in during the early part of the licensing period, is appropriate to serve the policy of fair return/fair income.

c. Weigh the Relative Roles of Copyright Owners and Copyright Users

This policy factor requires that the rates the Judges adopt reflect the relative roles of the copyright owners and copyright users in the product made available with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of markets for creative expression and media for their communication. Music Choice argues that its creative and technological contributions, and capital investments, outweigh those of the record companies. First, Music Choice touts the graphic and informational improvements made to its on-screen channels, noting that what were once blank screens now display significant artist and music information. According to Music Choice, costs for these improvements have exceeded [REDACTED]. Del Beccaro Corrected WDT at 31–32, PSS Trial Ex. 1. Second, Music Choice offers increases in programming, staff size and facilities, along with enhancements to product development and infrastructure. Music Choice estimates that costs for these improvements have exceeded [REDACTED]. *Id.* Regarding costs and risks, Music Choice points to its lack of profitability and the exit of other PSS from the market as evidence of its continued risk and limited opportunity for profit. *Music Choice PFF* ¶¶ 512–520. Finally, with respect to opening new markets, Music Choice touts the PSS market itself for which it remains the standard-bearer in disseminating music to the public through cable television. *Id.* at ¶ 523.

SoundExchange offers little more on the third Section 801(b) factor beyond Dr. Ford's contention that he saw no evidence to support that Music Choice makes contributions to creativity or availability of music that are beyond those of the music services he included in his benchmarks, and therefore, according to Dr. Ford, the third factor is accounted for in the market. Ford Second Corrected WDT at 21, SX Trial Ex. 79; 6/18/12 Tr. 2849:10–16 (Ford).

In considering the third factor, the Judges' task is not to determine who individually bears the greater risk, incurs the higher cost or makes a greater contribution in the PSS market, and then make individual up or down adjustments to the selected rate based upon some unspecified quantification. Rather, the consideration is whether these elements, taken as a whole, require adjustment to the Judges' selected benchmark rate of 7.5%. Upon careful weighing of the evidence, the Judges determine that no adjustment is necessary. Music Choice's investments in programming offerings, staff, and facilities, and other related products and services are no doubt impressive, but they have been accomplished under the current rate. As discussed above, Music Choice has already begun to expand its channel offerings and has allocated greater financial resources to its residential audio business. All of these undertakings, plus the investments made and costs incurred to date have been made under the existing rate, and the Judges have no persuasive evidence to suggest that these contributions have not been accounted for in the current rate. On the other side of the ledger, SoundExchange has not offered any persuasive evidence that the existing rate has prevented the music industry from making significant contributions to or investments in the PSS market or that those contributions are not already accounted for in the current rate. Therefore, no adjustment is warranted under this factor.

d. Minimize Disruptive Impact

Of the four Section 801(b) factors, the parties devoted most of their attention to the last one: Minimizing disruption on the structure of the industries and on generally prevailing industry practices. This is perhaps not surprising, given the role this factor played in *SDARS–I* in adjusting the benchmark rates upon which the Judges relied to set the royalty fees. *See SDARS–I*, 73 FR at 4097–98. Because the Judges have identified as reasonable the rate for PSS currently in place, the Judges' analysis of the disruption factor is confined to that rate.

SoundExchange argues that the current rate is disruptive to the music industry. Dr. Ford testified that "the current practice of applying an exceedingly low rate to deflated revenues is disruptive of industry structure, especially where there are identical services already paying a higher rate." Ford Second Corrected WDT at 23, SX Trial Ex. 79. This results, according to Dr. Ford, in a tilting of the competitive field for music services in

favor of Music Choice, thereby disrupting the natural evolution of the music delivery industry. Dr. Ford, however, concedes that the PSS market has unique and distinctive features that distinguish it from other types of music services, thereby substantially reducing the likelihood that the PSS and other music services would be viewed as substitutes for one another. Further, Dr. Ford failed to present any empirical evidence demonstrating a likelihood of migration of customers from music services paying higher royalty fees to the PSS as a result of his perceived royalty imbalance. Dr. Ford's conclusion that the current rate paid by the PSS for the Section 114 license has caused a disruption to the music industry (or would likely do so in the upcoming license period) is mere conjecture.

Music Choice also contends that the current rate is disruptive. The Judges find its argument weak and unsubstantiated. The test for determining disruption to an industry, announced by the Judges in *SDARS–I*, is whether the selected rate directly produces an adverse impact that is substantial, immediate, and irreversible in the short-run. *SDARS–I*, 73 FR at 4097. The current rate has been in place for some time and, despite Music Choice's protestations that it has never been profitable, it continues to operate *and* continues to increase its expenditures by expanding and enhancing its services in the face of the supposedly disruptive current royalty rate. Music Choice's argument that DMX's bankruptcy and Muzak's decision to limit its participation in the PSS market are evidence of the onerous burden of the current rate are without support. Music Choice has failed to put forward any evidence demonstrating a causal relationship between the actions of those services and the current PSS royalty rate. In sum, the Judges are not persuaded by the record testimony or the arguments of the parties that the current PSS rate is disruptive to a degree that would warrant an adjustment, either up or down.

2. The Judges' Rate Determination for PSS

In light of the Judges' analysis of the Section 801(b) factors, the Judges set forth the following PSS rates: for 2013: 8.0%; for 2014: 8.5%; for 2015: 8.5%; for 2016: 8.5%; and for 2017: 8.5%.

The Judges have chosen to phase-in the increase over the first two years of the license period to moderate any potential negative impact the rate increase might have on the PSS. Should Music Choice alter its anticipated usage under the statutory license in the future, such evidence can be taken into account in a future rate proceeding; however, the Judges received no evidence that suggests that Music Choice's channel line-up, once expanded in 2013, will shrink considerably during the license period.

In addition to proposing rates, SoundExchange raises an additional matter. Though not technically a rate, nor strictly an amendment of the *Gross Revenues* definition as it applies to PSS, SoundExchange requests a means for capturing revenues from cable systems that are owners of equity or capital interests in Music Choice who do not engage in arm's length transactions with Music Choice for its product offerings. *Second Revised Proposed Rates and Terms of SoundExchange, Inc.*, at 6–7 (Sept. 26, 2012). Put another way, SoundExchange seeks to capture any price breaks that Music Choice offers its affiliates for the Music Choice service.

The proposed price adjustment for affiliated cable systems would be calculated by multiplying the total number of subscribers for the month for each affiliated cable system by the average per-subscriber royalty payment of the five largest paying unaffiliated cable systems that provide the Music Choice service. These adjustments would then be added to Music Choice's *Gross Revenues*. In support of its "Non Arm's Length Transaction" adjustment for affiliated cable systems, Dr. Ford testified that a straight percentage-of-revenue metric would not adequately account for the situation where Music Choice offers per-subscriber rate discounts to its cable partners. 8/20/12 Tr. 4216:21–4217:8 (Ford). According to Dr. Ford, over half of Music Choice's non-partner cable systems pay approximately [REDACTED] per subscriber per month in licensing fees to Music Choice, whereas the partner cable systems pay only [REDACTED] per subscriber per month. Ford Amended/Corrected WRT at 5, SX Trial Ex. 244.

The Judges are not persuaded that a "Non Arm's Length Transaction" adjustment is warranted. It is not surprising that the affiliated cable operators, which in most instances have more subscribers than the non-affiliated systems, would be able to negotiate lower per-subscriber licensing fees due to their ability to deliver more subscribers to the service. Therefore, the differences in subscriber fees between affiliates and non-affiliates could be unrelated to the operator's status vis-à-vis Music Choice. Further, the affiliated cable systems represent a third of Music Choice ownership whereas Music Choice's record company partners own one quarter of the company. 6/11/12 Tr. 1454:16–22 (Del Beccaro). Therefore, it is not unreasonable to assume that the record label owners would serve as a counterweight to the affiliated cable systems. Therefore, the Judges conclude that on the current record, any influence on subscriber rates from the competing stakeholders of Music Choice, if any, would be a wash.

B. Section 114 Royalty Rates for SDARS

SoundExchange proposes the following percentage of revenue rates for SDARS: 12% for 2013; 14% for 2014; 16% for 2015; 18% for 2016; and 20% for 2017. *Second Revised Rates and Terms of SoundExchange, Inc.*, at 2 (Sept. 26, 2012). Sirius XM counters with a proposed royalty rate in the range of 5% to 7% of Sirius XM's monthly U.S. gross revenues. *Proposed Rates and Terms of Sirius XM Radio, Inc.*, at 4 (Sept. 26, 2012).

1. Sirius XM's Proposal

a. Direct License Benchmark

Beginning in 2010, Sirius XM commenced a coordinated effort to negotiate sound recording performance rights directly with individual record labels. Sirius XM first attempted to engage the four major record companies in discussions but was unsuccessful. *Id.*; 6/7/12 Tr. 669:8–672:9, 713:3–11, 714:11–715:4 (Frear); 6/11/12 Tr. 1347:7–21, 1348:20–1349:4 (Karmazin). Sirius XM then enlisted Music Reports, Inc. ("MRI") to formulate and execute a direct licensing strategy with as many independent record labels as possible. Together, Sirius XM and MRI developed the terms and conditions of a template Direct License, key provisions of which include:

- A *pro rata* share of 5%, 6%, or 7% of gross revenues, defined by reference to 37 CFR 382.11;
- A grant of rights to Sirius XM to operate all of its various services (satellite radio plus other services such as webcasting);
- "Additional functionality" granted to Sirius XM, including elimination of the Section 114 license sound recording performance complement, which allows Sirius XM to play more music from a particular artist in a given period of time;
- Direct, quarterly payment of 100% of the royalties to the record label;
- Payment of advances to the 5 largest record labels; and
- The possibility, but not the promise, of increased play on Sirius XM's music services.

Gertz Corrected WDT at 8–11, SXM Dir. Trial Ex. 14; Gertz Revised WRT at 2, SXM Reb. Trial Ex. 8; 6/8/2012 Tr.

986:20–987:5 (Blatter). Sirius XM executed the first Direct Licenses in August of 2011 and by the time of the closing of testimony in this proceeding, Sirius XM had Direct Licenses with 95 independent record labels that set a royalty rate of between 5% and 7% of gross revenues, depending on the particular agreement. 8/13/12 Tr. 3015:16–20 (Frear); 8/15/12 Tr. 3679:22–3680:1 (Gertz).

b. The Noll Analysis

Sirius XM's expert economist, Dr. Roger Noll, contends that the 95 Direct Licenses are the best benchmark for SDARS rate setting in this proceeding because, unlike in *SDARS–I*, the Judges now have direct evidence of competitively negotiated marketplace rates for the exact service at issue in this proceeding. Noll Revised Amended WDT at 7, 11, 33–36, SXM Dir. Trial Ex. 1. Dr. Noll testified that the Direct Licenses are representative, for benchmarking purposes, of the types of sound recordings available across the industry, including those distributed by major record labels. *Id.* at 39–45; *see also* 6/5/12 Tr. 261:6–262:14 (Noll)(contending that the 95 Direct Licensors as a group offer a scope of sound recordings comparable to those not so licensed).

Dr. Michael Salinger, another Sirius XM expert economist, concludes that the fact that 95 record companies accepted the Direct License offer suggests that the current 8% statutory rate is, if anything, above the competitive rate for sound recordings. Salinger Corrected WRT at 13, SXM Reb. Trial Ex. 9. Further, Sirius XM argues that the number of Direct Licenses undoubtedly would have been higher but for the efforts of SoundExchange, the American Association of Independent Musicians and others to undermine and interfere with its Direct License Initiative.[20] *See, e.g., Sirius XM PFF*¶¶ 116–120.

Dr. Noll asserts that license agreements between major record labels and certain customized non-interactive webcasters provide marketplace evidence of rates that corroborate the 5%–7% rates achieved in the Direct Licenses. Noll Revised Amended WDT at 16, SXM Dir. Trial Ex. 1. Focusing principally on the sound recording rights agreements between the digital music service Last.fm and the four major record labels,[21] Dr. Noll determined that for its non-interactive subscription streaming service, Last.fm agreed to pay:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Id. at 76–79 (footnote omitted), Tables 2.1–2.1c and Appendices E–H.[22]

Using the rates gleaned from the Last.fm agreements for the non-interactive subscription streaming service, which he deemed to be the most similar to Sirius XM's satellite radio service in terms of functionality, Dr. Noll computed a hypothetical royalty rate by multiplying the Last.fm percentage-of-revenue rates [REDACTED] by the implicit per-subscriber price for Sirius XM's music channels ($3.00–$3.45). Dr. Noll then divided the resulting per subscriber monthly fee by Sirius XM's average revenue per user ($11.38) to express the hypothetical royalty rates as a percentage of revenue. *Id.* at 15; 6/5/12 Tr. 285:7–293:9 (Noll). This yielded an average royalty rate as a percentage of Sirius XM music channel revenue of 6.76%. *Id.* at 90; 6/5/12 Tr. 293:5–9 (Noll). Because this hypothetical rate fit squarely within the 5%–7% rate range of the Direct Licenses, Dr. Noll opines that the Last.fm agreement rates are corroborative of the rates contained in the Direct Licenses. He further concludes that the range of rates in the Direct Licenses represent the upper end of a reasonable royalty rate because the customized, non-interactive Last.fm services offer greater functionality and sound quality than the channels offered by Sirius XM. *Id.* at 14–16; 6/5/12 Tr. 292:2–14 (Noll).

2. SoundExchange Proposed Benchmarks

SoundExchange's expert economist, Dr. Janusz Ordover, offers a principal benchmark, and two alternatives, based upon his examination of seven market agreements for digital music between certain interactive subscription services that stream music over the Internet and each of the four major record labels. Dr. Ordover chose interactive subscription services because of his belief that they represent voluntary transactions in a competitive marketplace free of regulatory overhang. He also opined that such transactions provide sufficient information based on multiple buyer/seller interactions, are not distorted by the exercise of undue market power on either the buyer's or seller's side, and involve digital music services that are similar to Sirius XM. 6/14/12 Tr. 2359:11–2360:9, 2256:13–2261:3 (Ordover).

a. Ordover's Interactive Streaming Benchmark

Dr. Ordover derived his principal interactive streaming benchmark by determining the percentage of revenues that streaming services paid to the major record labels pursuant to their respective agreements. He then multiplied that percentage by an estimated retail price for a hypothetical music-only satellite radio service. *See generally* Ordover Third Corrected/Amended WDT at 18–25, SX Trial Ex. 74. Beginning with data from July 2010, he derived the effective percentage of revenue paid by each interactive service by taking the amount of royalty fees paid to the record companies and dividing it by each service's gross subscription revenues. 6/14/12 Tr. 2274:10–16 (Ordover). In other words, Dr. Ordover relied on royalty payments the labels reportedly received under the agreements rather than the percentage-of-revenue rates specified in the agreements which contained "greater of" royalty formulations.[23] 6/14/12 Tr. 2274:22–2275:1, 2363:14–2364:7 (Ordover). In calculating actual licensing fees paid, Dr. Ordover used gross subscription revenues of the interactive services without any deductions or carve-outs. Ordover Third Corrected/Amended WDT at 19, SX Trial Ex. 74. Examining the agreements, he determined that the annual payments as a percentage of gross subscription revenues of the services ranged from 50% to 70%, and tended to cluster in

[20] Sirius XM devoted considerable energy in this proceeding to discovery and presentation of evidence regarding actions by SoundExchange and its member record labels relating to the Direct Licensing initiative. Sirius XM contends that it would have been able to present a much greater number of Direct Licenses but for the interference of SoundExchange. In a rate determination proceeding, the Judges cannot adjudicate claims of tortious interference with contractual relations or business expectancies. Indeed, Sirius XM never presented such claims to the Judges for adjudication. Those claims can only be adjudicated in a court of competent jurisdiction. Had Sirius XM been able to make a sufficient showing that actions by SoundExchange were in fact interfering with the validity of this rate determination proceeding, then the Judges would have had to decide what effect, if any, such interference might have had on the validity of these rate proceedings. The Judges allowed evidence in this proceeding only to determine whether, and to what extent, any activity by either party might have skewed the evidence upon which the Judges must rely.

[21] Dr. Noll also examined similar agreements between major labels and the music services Slacker and Turntable.

[22] Examining these same agreements for Last.fm's interactive on-demand service—[REDACTED]—led Dr. Noll to conclude that sound recording rights owners charge [REDACTED] for non-interactive services than they do for interactive/on-demand services. Dr. Noll also found similar rate differentials in the [REDACTED]. Noll Revised Amended WDT at 76–79, Tables 2.2–2.2d and Appendices I–K, SXM Dir. Trial Ex. 1.

[23] The "greater of" metric is an amount per play, an amount per subscriber, or a percentage of the service's revenues. 6/14/12 Tr. 2261:7–2262:4 (Ordover).

a range of 60% to 65%. *Id.* at 19–21; 6/14/12 Tr. 2275:4–12 (Ordover).

Dr. Ordover then attempted to account for the fact that the Sirius XM satellite radio service, unlike interactive subscription services, transmits both music and non-music content by reducing the percentage-of-revenue rate from the interactive subscription agreements by half. He chose this reduction percentage principally based upon his observation of the identical $9.99 retail prices offered by Sirius XM for non-music and mostly music stand-alone subscriber packages. The result was a percentage-of-revenue rate range of between 30% and 32.5%. Dr. Ordover proposed this range as a benchmark for the SDARS rates for the 2013–17 statutory licensing period. Ordover Third Corrected/Amended WDT at 17, SX Trial Ex. 74.[24]

b. Ordover's Content Comparability Adjustment

Dr. Ordover offered an alternative approach that involved an examination of per-subscriber royalty rates from interactive music streaming subscription services in an effort to adjust for the differences in service attributes between satellite radio and interactive subscription services. He first determined an unweighted average monthly royalty of $5.95 per subscriber (monthly licensing fees paid divided by monthly subscriber counts) for interactive subscription services. He then adjusted this fee by the ratio of the retail price of a hypothetical music-only satellite radio service (50% of the $12.95 subscription price for the Sirius XM Select programming package[25]) to the retail price for interactive subscription services ($9.99). Ordover Third Corrected/Amended WDT at 30–31, SX Trial Ex. 74. This percentage, when applied to the average per-subscriber royalty paid by interactive services ($5.95), yields $3.86 for the hypothetical music-only satellite radio service. Dividing this number by the $12.95 Sirius XM subscription price provides a percentage-of-revenue rate of 29.81%. *Id.* at 32.

c. Ordover's Interactivity Adjustment

Dr. Ordover's second alternative approach attempts to adjust for the presence of interactivity alone in the rates yielded by his primary benchmark under the assumption that interactivity is the material difference between interactive subscription services and satellite radio. Ordover Third Corrected/Amended WDT at 33, SX. Trial Ex. 74, To derive the value of interactivity, he compared the retail prices for interactive music streaming services with the retail prices for non-interactive music streaming services. He determined that interactive music streaming services are uniformly priced at $9.99 per month, while non-interactive services prices averaged $4.86. *Id.* at 31–32, Table 4 and 33–34, Table 5.[26] Dr. Ordover then used the ratio to adjust the average per-subscriber royalty paid by interactive services ($5.95) to calculate an equivalent payment for satellite radio. This calculation yielded a percentage-of-revenue royalty rate of 22.32% for Sirius XM, which Dr. Ordover concludes represents the lower bound of a reasonable royalty rate. 6/14/12 Tr. 2282:12–2283:22, 2334:8–11 (Ordover).[27] Dr. Ordover offered no alternative that attempted to account for the combination of content and interactivity differences.

3. Analysis and Conclusions Regarding the Proposed Benchmarks

For the reasons stated herein, the Judges determine that an analysis of the benchmark evidence presented in this proceeding establishes that reasonable royalty rates for the use of sound recordings under the Section 114 statutory license cannot be lower than 7%, the upper bound of the range of rates of the Direct Licenses. The Judges find that Dr. Ordover's proposed benchmark rates of between 30%–32.5% are beyond the zone of reasonableness, given that they are four times greater than the rate of 8% that the Judges set four years ago in *SDARS–I* and are based on a limited data set of questionable comparability to the target market. As a result, the Judges are left with no acceptable benchmark by which to mark an upper bound for a zone of reasonableness. The Judges rely, therefore, on data points such as the lowest rate proposed by SoundExchange and the unadjusted upper bound in *SDARS–I* to guide the determination of what the upper bound should be in this proceeding.

a. Analysis of Sirius XM's Proposed Direct License Benchmark

The Direct Licenses that Sirius XM proposed as the foundation for a benchmark have the surface appeal of a comparable benchmark because they involve the same sellers and buyers as the target market. A closer examination, however, reveals the weaknesses of the Direct Licenses as a data set. First, the direct licensors represent a sliver of the universe of rights holders for sound recordings: 95 of over 20,100 rights holders to which SoundExchange distributes payments. *See* Bender WDT at 4, SX Trial Ex. 75; 8/13/12 Tr. 3015:16–20 (Frear). They also represent a subset of the 691 independent labels that Sirius XM approached in the first instance. Ordover Amended WRT at 4 n.8, SX Trial Ex. 218; SX Trial Ex. 301. Sirius XM opined that the number of Direct Licenses would likely have been substantially higher but for the alleged interference of SoundExchange and others who purportedly attempted to discourage record labels from negotiating with Sirius XM. The Judges are not persuaded by the evidence in the record that SoundExchange's alleged actions materially frustrated Sirius XM's efforts to execute Direct License agreements. Therefore, the Judges must evaluate the Direct Licenses for what they are, which is to say, a very small subset of the sound recording market.[28]

The Direct Licenses do not include any of the major record labels whom, by virtue of the depth and breadth of their music catalogues, make up a critical portion of the sound recording market. Dr. Noll's observation that the works licensed by the Direct Licensors represent the kinds of sound recordings performed on Sirius XM does not diminish the importance of the catalogues of the major labels. It would be difficult to imagine a successful SDARS service that did not have access to the types of recordings that the major

[24] Dr. Ordover's mathematical calculation is as follows: He took the $12.95 Sirius XM subscription price, and then multiplied that by 50% to obtain the music portion of the subscription price of $6.475. He then multiplied the music-only satellite radio subscription price by 60% to 65% (his effective percentage of royalty derived from the interactive subscription service agreements) to obtain the music royalty of $3.88 to $4.21. Finally, he divided those numbers by the Sirius XM subscription price for the Select programming package to obtain the 30% to 32.5% range. 8/16/12 Tr. 3794:13–3795:9 (Salinger).

[25] The current price for this service is $14.49. Ordover Third Corrected/Amended WDT at 31 n.33, SX Trial Ex. 74.

[26] Dr. Ordover did not provide a weighted average of the non-interactive service prices because he concluded that he did not have reliable data, nor did he include, at the Judges' invitation, ad-supported non-interactive services in his calculation, deciding that such services would add undue complexity to his methodology. Ordover Amended WRT at 38–39, SX Trial Ex. 218.

[27] This rate was calculated by multiplying the interactivity ratio of .4865 ($4.86/$9.99) by the average per-subscriber royalty payment of $5.95, yielding an equivalent satellite radio payment of $2.89. The $2.89 per-subscriber rate was then divided by the $12.95 monthly charge for the Sirius XM Select satellite radio package, resulting in the percentage of revenue rate of 22.32%.

[28] Dr. Ordover estimated that the works licensed under the Direct Licenses represent no more than 2%–4% of the total number of works performed by Sirius XM. Ordover Amended WRT at 4–5, SX Trial Ex. 218; 6/6/12 Tr. 308:3–5 (Noll).

labels possess. The "representativeness" of the sound recordings contained in the catalogues of the Direct Licensees does not equate to their popularity, an essential ingredient to Sirius XM's music offerings. 6/7/12 Tr. 836:17–22 (Gertz)("Sirius XM is very hits driven, and they want to have the most successful service they can, so they're going to use what's popular."). Nevertheless, the rates the Judges set must evaluate the universe of sound recordings available for licensing under the statute. The vast majority of those sound recordings would not currently be considered to be "popular," although many might have qualified as "hits" in their day or are viewed as popular in a particular genre.

Furthermore, the Judges note that the additional considerations and rights granted in the Direct Licenses that are beyond those contained in the Section 114 license weaken the Direct Licenses' comparability as a benchmark. For example, the Direct Licenses provide for payment of 100% of the royalties to the Direct Licensors, 6/6/12 Tr. 341:10–342:3 (Noll), thereby avoiding the statutory apportionment of 50% to record companies and 50% to artists and performers.[29] *See* 17 U.S.C. 114(g). Certain of the Direct Licenses, in particular those of the larger independent labels, provide for cash advances and accelerated royalty payments, considerations that also are not provided for under the statutory license. *See, e.g.*, Gertz Revised WRT at SXM Reb. Ex. 8, pp. 3–4 and SXM Reb. 23, pp. 3–4, SXM Reb. Trial Ex. 8. In addition, Sirius XM absorbs all of the administrative costs of the licensing process under the Direct Licenses, which, under the statutory license, are borne by the copyright owners, artists and performers. Eisenberg Amended/Corrected WRT at SX Ex. 313–RR, SX Trial Ex. 245. With respect to rights granted under the Direct Licenses, Sirius XM receives a waiver of the sound recording complement of the statutory license and the ability to perform the works of the Direct Licensors on other services not covered by the statutory license.

Dr. Noll's analysis does little to address the Judges' concerns regarding the Direct Licenses. Dr. Noll contends that the fact the Direct License rates are lower than the current 8% statutory rate is explained by a "demand diversion effect." In other words, Dr. Noll posits that record labels engage in price competition aimed at increasing their market share through increased plays on Sirius XM, thereby reducing the royalty rates demanded, which reflects what would happen in the market as a whole in the absence of a statutory rate. Noll Revised Amended WDT at 36–38, SXM Dir. Trial Ex. 1.

Dr. Noll's demand diversion theory, however, has limited explanatory power. It may well be that independent record labels took the Direct License offer because of the valuable non-statutory benefits discussed above, and there is testimony in the record to this effect. *See, e.g.*, SX Trial Ex. 317 at SXM–CRB_DIR_00079565; 8/20/12 Tr. 4156:5–4157:3 (Powers). Further, independent labels may have a greater incentive than majors to secure performances of their works on services such as Sirius XM, which would increase the attractiveness of a Direct License relationship. Powers WRT at 4, SX Trial Ex. 243; Eisenberg Amended/Corrected WRT at SX Ex. 329–RR at SXM_CRB_DIR_00042287, SX Trial Ex. 245 (email from MRI to independent label emphasizing that a Direct License offers the possibility of increased airplay). Although major labels also must compete with other majors and with independent labels for airplay, none was apparently so motivated by that concern to negotiate separately with Sirius XM. Therefore, the differing motivations of the "sellers" in the proposed Direct License benchmark suggest a weakness regarding comparability to the target market.

Dr. Noll's benchmark analysis, whether considered as corroboration of the rates in the Direct Licenses or standing alone, contains significant flaws. His reliance on the Last.fm agreements with the four major record labels, which provide the critical data to his calculations, is valid to the extent that the agreements are shown to be representative of non-interactive subscription webcasting services. *See SDARS–I*, 73 FR at 4090. Two of the agreements, however, have expired and are no longer in effect. Ordover Amended WRT at 25, SX Trial Ex. 218. Last.fm now pays those record companies at the statutory webcasting rate, which is not a market rate. 8/14/12 Tr. 3308:8–20, 3317:10–16 (Ordover). Even if the Last.fm agreements were the *most* representative of webcasting services—and Dr. Noll has not demonstrated that they are—the Judges would not be inclined to accept them as fully comparable to the SDARS business without a persuasive adjustment to account for the functional differences between webcasting and satellite radio. Dr. Noll offered none.

The Judges also have reservations about Dr. Noll's determination of $3.00–$3.45 as the implicit monthly market price for Sirius XM's music channels.[30] Dr. Noll identified three methods for determining the implicit price. The first is the average retail price of $3.15 taken from Last.fm's and Pandora's non-interactive subscription services. Noll Revised WRT at Table 1, SXM Reb. Trial Ex. 6. As with Last.fm, there is no adjustment to account for functional differences between the Pandora webcasting service and satellite radio, whose primary use is in the automobile.

Dr. Noll's second method is to derive a market price for Sirius XM using a survey conducted by Sirius XM's witness Professor John Hauser that attempts to measure the value of music to Sirius XM subscribers. Professor Hauser posited an anchor price for the Sirius XM service to his survey respondents, and then randomly removed features (such as lack of commercials, quality of sound, etc.) to determine how much the respondents would be willing to pay for the service after each feature is removed. Hauser Corrected WRT at 20–22, SXM Dir. Trial Ex. 24. After averaging the results, he determined that subscribers place an average value on Sirius XM's music channels of $3.24. *Id.* at Appendix G. Professor Hauser's survey is of limited value. By design, the higher number of features or attributes of the Sirius XM service included in the survey, the lower the estimated value of any given service. This feature of the survey produces anomalous outcomes, such as survey results showing that subscribers would pay a certain amount for ubiquitous station availability, premium sound quality and absence of commercials, all without any programming content. *See* Ordover Amended WRT at 35, SX Trial Ex. 218.

Third, Dr. Noll sought to calculate the cost of inputs necessary for delivery of Sirius XM's programming via satellite and its subsidization/installation of radio receivers in automobiles (described as "unique" costs to the satellite radio service), to then deduct those costs from gross revenues, and allocate the remaining revenue between music and non-music content. Noll Revised Amended WDT at 81–83, 85, SXM Dir. Trial Ex. 1. After making these calculations, Dr. Noll credited 55.1%, or $3 45, to music channels. *Id.* at 88 and

[29] The Judges recognize that direct payment to the Direct Licensors does not relieve them of their royalty obligations to their artists and performers; however, receipt of 100% of the royalties upfront is clearly attractive to certain record labels and was a selling point in negotiations with independent record labels. Powers WDT at 4–5, SX Trial Ex. 243.

[30] The implicit monthly price is applied to the effective percentage of revenue rate of [REDACTED] from the Last.fm agreements that serve as the numerator in Dr. Noll's calculation.

Table 3. Sirius XM contends that including the unique delivery costs and investments of its service is appropriate in Dr. Noll's calculation. Sirius XM cites to major record company agreements with Cricket and MetroPCS (mobile service providers that bundle telephone service and interactive music service into a single package) that reflect that a percentage royalty rate for music must be reduced by a commensurate proportion to reflect revenue collected for the non-music portion of the bundled service. *Sirius XM PFF* ¶¶169–173.

SoundExchange's expert economist, Dr. Thomas Lys, explained, however, that because most of the unique costs that Dr. Noll allocated are relatively fixed, the per-subscriber amounts vary inversely with the number of subscribers. Lys WRT at 57, SX Trial Ex. 240. Dr. Noll performed his calculation of costs using 2010 data, but had he used subscriber numbers for the years thereafter, which have continued to increase, and are anticipated to increase further in the coming licensing term, the analysis would show lower unique costs per subscriber and a higher value of music. *Id.* The dependency of Dr. Noll's methodology on timing and the number of subscribers undermines its reliability for quantifying what the unique costs are likely to be in the coming rate term. *Id.* at 58.

Sirius XM's analogy to the bundled services of Cricket and MetroPCS is inapposite. Unlike those services, the success of Sirius XM is dependent upon its access to music. 6/14/12 Tr. 2270:7–2271:15 (Ordover); *see also* 6/5/12 Tr. 235:6–10 (Noll)("It's a bundle of services, it's a distribution system, a bunch of nonmusic content and a bunch of music content, all of which are essential. And you pull the plug on any one of them, and the whole thing collapses."); 6/11/12 Tr. 1431:10–17 (Karmazin). The value of Sirius XM's satellite radio service is the bundling of music and non-music content with its delivery platform, and Sirius XM has failed to present convincing evidence that its delivery platform and non-music content, alone, present a viable business.[31]

In sum, these concerns, coupled with those surrounding the Direct Licenses themselves, show weaknesses in the proposed Direct License benchmark that diminish its usefulness. Therefore, the Judges find that the 7% rate, which represents the high end of the Direct License rates, represents the lower bound of a zone of reasonableness. The Judges believe that a rate any lower, given the prevailing statutory rate, would more than likely be overly influenced by the particular terms of the Direct License agreements, which are not part of the statutory license.[32]

b. Analysis of SoundExchange's Proposed Interactive Subscription Services Benchmark

The Judges have determined in the past that the interactive subscription service market has characteristics reasonably similar to those of the SDARS market. *SDARS–I,* 73 FR at 4093. Moreover, Dr. Ordover's proposed interactive subscription service benchmark in this proceeding analyzes certain useful data sets that make it difficult to dismiss the proposed benchmark outright. For example, the agreements Dr. Ordover examined represent a relevant data source from which to consider the outcomes of marketplace negotiations. That being said, the Judges do not find that the market for interactive subscription streaming services as characterized by Dr. Ordover in this proceeding offers a foundation to support a comparable benchmark from which to begin an analysis of reasonable rates for SDARS for the upcoming license period.

For example, the rights licensed by interactive subscription services are not the same as those by non-interactive services such as the SDARS, and the Judges did not find Dr. Ordover's efforts to adjust for the differences to be helpful. Dr. Ordover attempted to account for these differences by offering two alternative approaches, both of which seek to enhance the comparability of this proposed benchmark to the SDARS market. As discussed above, his first alternative approach attempts to adjust for service content between the two markets. The Judges doubt whether this approach adequately adjusts the interactive subscription service market to account for differences in attributes and functionality between that market and satellite radio. Dr. Ordover's second alternative approach attempts to adjust for interactivity. Ordover Third Corrected/Amended WDT at 33–34, SX Trial Ex. 74. The Judges found this effort to be somewhat more pertinent.

Nevertheless, the Judges find that the differences between Sirius XM and the "buyers" in the proposed benchmark severely constrain the usefulness of the proposed Ordover benchmark. Dr. Ordover's proposed interactive subscription streaming service benchmark was based on licensing fees paid to the four major record labels for 2011 by seven internet streaming services and for one-half of 2012 for some of those services. Ordover Third Corrected/Amended WDT at 19–21, SX Trial Ex. 74.

Dr. Ordover characterizes the streaming services as "well-established services like Microsoft Zune, Napster, and Rhapsody, and newer market entrants like Rdio and MOG." *Id.* Dr. Ordover concedes, however, that in October 2011, Rhapsody announced that it was acquiring Napster. *Id.* at 19, n.16. Notably, in 2012 Microsoft ceased offering Zune as a stand-alone service and rolled it into its XBOX service suite. *See http://www.xbox.com/en-S/Live/Partners/Zune.* In addition, one of the services upon which Dr. Ordover based his proposed benchmark, Slacker Premium, was not introduced until May 2011, so not even a full year's payment data was available for that service.

The royalty implications of these details are uncertain, but these details about the proposed benchmark market underscore the fluid nature of the subscription streaming market and the difficulty of generalizing the royalty obligations of a market based on a few quarters worth of payment data for a handful of services. In short, the interactive subscription service market upon which Dr. Ordover relied is in a constant state of flux. No single buyer or group of buyers in that market seems comparable to Sirius XM in terms of its name recognition and status as the sole provider of satellite radio service. Therefore, the Judges believe that Sirius XM likely would have been in a preferential bargaining position to the interactive subscription service providers and may have negotiated very different rates as a result. The Judges do not believe that Dr. Ordover accounted for this difference.

Whereas the Judges criticized the Direct License benchmark data set for lacking one or more major record labels,

[31] Likewise, Sirius XM has failed to demonstrate that it could successfully substitute away to other providers of music. If that were the case, Sirius XM could have operated its business under the Direct Licenses, for example, and avoided participation in this proceeding altogether.

[32] SoundExchange contends that the Judges should completely discount the Direct Licenses because they were negotiated under the shadow of the statutory rate which was sure to influence the rates the parties agreed to as well as their willingness to negotiate at all. *SX PFF* ¶ 371. Although the Judges considered that fact when determining the amount of weight that the Direct License benchmark received, the Judges question whether any agreements regarding sound recording rights could be purely market-based given the current statutory framework. With that understanding, the Judges do not have the luxury of ignoring record evidence of the contemporaneous results of arm's length negotiations between the same buyers and sellers and rights involved in the market for which the Judges are charged to determine a reasonable rate that will remain reasonable for the next five years, no matter how many weaknesses those results might exhibit.

the proposed Ordover benchmark also lacks the balance of representing a broader subset of record labels. Although Sirius XM's service may be "hit" driven, it features a broad range of music offerings that span several decades and several genres. Indeed, the Judges suspect that much of the value of the Sirius XM service as opposed to broadcast terrestrial radio and other competitors is that Sirius XM plays a greater range of music, much of which may be licensed by non-major labels. Therefore, by focusing on the catalogues that the major record labels possess, although a crucial component of Sirius XM's service, the proposed Ordover benchmark overlooked a subset of the entire universe of sound recordings for which the Judges must set a rate in this proceeding. The Judges believe that these comparability differences may help to explain why the rates in the subscription services market are so much higher than those in the Direct Licenses, although other factors are also at play.

The yawning gap between the current rate of 8% and the highest rates proposed by Dr. Ordover raises additional concerns about the proposed Ordover benchmark. Indeed, the Judges find that the rates Dr. Ordover calculated based on his proposed principal benchmark (30%–32.5%) and his first alternative adjustment (29.81%) are so much higher than the current statutory rate that they are outside the zone of reasonableness. The rate that Dr. Ordover derives from his second alternative adjustment (22.32%), while suggesting a more reasonable alternative, can be viewed as no more than the upper bound of the zone of reasonableness, although it is a bound that the Judges have little confidence in.

As a result, after analyzing the proposed benchmarks, both of which are flawed, the Judges are left with a zone of reasonableness with a floor of 7% and an upper bound that can be no more than 22.32%. The Judges are also informed by SoundExchange's proposed rates for SDARS, which start at 12% for 2013. Presumably, SoundExchange would not have proposed this entry rate if it did not believe it to be reasonable. Lastly, the Judges consider the prevailing statutory rate of 8%, which the Judges adjusted down from a 13% rate in *SDARS–I* based on the fourth Section 801(b) factor. *SDARS–I*, 73 FR at 4093–4098. With these guide posts in mind, the Judges analyze the Section 801(b) factors.

4. Application of Section 801(b) Factors

The Copyright Act requires that the Judges establish rates for the Section 114 license that are reasonable and calculated to achieve the four specific policy objectives set forth in Section 801(b) of the Copyright Act. In analyzing the Section 801(b) factors the Judges determine whether adjustments to the rate indicated by marketplace benchmarks, if any, are warranted and, if so, whether there is sufficient evidence in the record to support such adjustments. *SDARS–I*, 73 FR at 4094 (Jan. 24, 2008). The absence of solid empirical evidence that might suggest a difference between the benchmark and target markets cautions against the need for an adjustment. *Id.* at 4094–4095. In *SDARS–I*, the Judges determined that no adjustment was warranted for the first three factors but that a downward adjustment was warranted for the fourth factor—minimization of disruptive impact—for reasons discussed in section (d) below. SoundExchange argues that no adjustment is warranted in the current proceeding. *SX PFF* ¶ 497. Sirius XM contends, however, that an analysis of the Section 801(b) factors "counsels setting a royalty rate at the low end of the range of reasonable rates." *Sirius XM PFF* ¶ 227.

a. Maximize the Availability of Creative Works

Sirius XM contends that a downward adjustment from the benchmark rate is warranted with respect to the first Section 801(b) factor—maximizing the availability of creative works to the public.[33] *Sirius XM PFF* ¶ 227. To support its contention, Sirius XM argues that the term "availability" in this factor encompasses both the incentive to produce creative products and the delivery of those products to consumers. *Id.* at ¶ 228. Sirius XM states that its service enhances the delivery and availability of sound recordings by: "providing an uninterrupted nationwide broadcast of unparalleled breadth and depth; exposing listeners to music that is not played elsewhere; and creating original music programming to promote artists * * *." *Id.* at ¶ 230. Sirius XM also contends that, unlike its service, which it posits promotes phonorecord sales, internet subscription services, which formed the basis of the proposed Ordover benchmark, show no such promotional value, and in fact, may cannibalize phonorecord sales. *Id.* at ¶¶ 253–254 and 257–260.

Much of the evidence that Sirius XM presented to show the promotional effect of Sirius XM's service on phonorecord sales consists of testimony detailing record labels' efforts to get their artists airplay on Sirius XM and elsewhere. *See, e.g., id.* at ¶ 253 ("SoundExchange's witness Darius Van Arman, co-owner of several independent record labels, conceded that 'one of the goals of [his labels'] promotional activities [is] to get [his] artists airplay * * .* includ[ing] airplay on Sirius XM."). It is not surprising that record labels seek airplay for the artists they represent. Nor would it be surprising to learn that increased airplay on Sirius XM can enhance phonorecord sales. Those facts alone, even if assumed to be true, would not provide the type of substantial empirical evidence that might support a downward adjustment from the rates most strongly suggested by the evidence in the record.

As SoundExchange notes, "Sirius XM's case attempting to connect Sirius XM airplay with sales of sound recordings consists of less than ten pieces of anecdotal evidence over a *five-year period.*" *SX RFF* at ¶ 228 (emphasis in original). The Judges agree with SoundExchange that Sirius XM provides insufficient probative evidence upon which the Judges could make a meaningful assessment of the relative promotional value of Sirius XM's service vis á vis interactive internet subscription services. *See* 10/16/2012 Tr. 4874:16–18 (Sirius XM closing argument by Mr. Rich, noting the anecdotal nature of Sirius XM's promotional evidence).

The Judges are also unpersuaded by Sirius XM's assertion that the purported lack of promotional value of interactive internet services should warrant a downward adjustment from a marketplace benchmark rate upon which the Judges might rely. Evidence to support Sirius XM's contention that interactive internet services are substitutional and may cannibalize phonorecord sales is sparse. In this regard, the Judges place little credence on blanket statements such as that by Dr. Noll that "there's no question" that interactive subscription services have no promotional impact on record sales, because "[o]n demand services let customers play a specific recording on request, allowing the same control over play sequence that customers have in playing recordings from personal libraries." Sirius XM PFF at ¶ 257,

[33] SoundExchange notes that "[t]here are no sound economic reasons to adjust market-based rates because of this statutory objective." *SX PFF* ¶ 502. Other than its affirmation that the revenue from the SDARS is important to record labels, *SX PFF* ¶ 515, SoundExchange directs us to no evidence in the record that would warrant an upward adjustment in the rate that is most strongly indicated by the totality of the evidence in the proceeding based on the first Section 801(b) factor. Therefore, the Judges limit the discussion in this section to Sirius XM's arguments about why a downward adjustment is warranted under this factor.

quoting Noll Revised Amended WDT at 22 and 6/5/12 Tr. 227:16–228:16 (Noll).[34]

Dr. Noll's statement is more descriptive of the nature of interactive services than supportive of the claim that those services increase substitution. Even if the Judges were to take at face value Dr. Noll's implication that a subscriber's ability to play a particular track on demand discourages the subscriber from purchasing that track, that fact alone would not address the more general notion regarding the relative promotional value (or lack thereof) of interactive internet streaming services. Promotional value can extend far beyond a service's impact on a single track by a single artist; it may extend to an artist's entire catalogue as well as to related artists or genres.

With respect to the potential substitutional effect of interactive internet streaming services, Sirius XM references certain industry projections that assume a certain rate of cannibalization for such services. *Sirius XM PFF* ¶¶ 259–260. Even if these rates were assumed to be reasonable projections for this type of service, they are not supportive of a downward adjustment from a marketplace-influenced benchmark rate because they are already taken into account in determining the royalty rates that the services pay. *See, e.g., id.* at ¶ 260; PSS Ex. 8 at 3 (SX02 00027594); 6/13/12 Tr. 2061:16–2062:3 (Bryan) (Warner Music Group's estimate of potential substitution effect of Spotify's service). In sum, the Judges find no probative evidence to warrant an adjustment from a marketplace-derived benchmark rate under this factor.

b. Afford Fair Return/Fair Income Under Existing Market Conditions

With respect to the second Section 801(b) factor—affording a fair return to the copyright owner and fair income to the copyright user—the Judges find that little has changed since *SDARS–I*, in which the Judges determined that no adjustment from the benchmark rate was warranted.

1. The Parties' Contentions

SoundExchange argues that no adjustment to a marketplace-derived benchmark rate is warranted "unless there is a clear showing that the benchmark rates were elevated by the exercise of monopoly power." *SX PFF* ¶ 504. SoundExchange contends that no such monopoly power was shown with respect to the marketplace benchmark that SoundExchange proposes or with respect to "other non-statutory distribution channels." *Id.* SoundExchange contends that "any downward adjustment would amount to a 'subsidy' for Sirius XM, which would provide the company with an unwarranted competitive advantage relative to rival distributors of music content, and also dilute the incentives for the creation of new works and for the efficient transmission of music through new and emerging channels." *Id.*; Ordover Third Corrected/Amended WDT at 10, SX Trial Ex. 74. SoundExchange also stresses the growing importance to artists and record labels of digital income streams as sales of physical products decline. *SX PFF* ¶ 528.

For its part, Sirius XM contends that "the implementation of this factor requires assessing whether the royalty rate allows both the buyer (Sirius XM) and the sellers (the record labels) to recover their costs, including the financial cost of capital used to make investments." *Sirius XM PFF* ¶ 263. Sirius XM states that those costs must be measured cumulatively and not as a "snapshot of annual operating costs." *Id.* While Sirius XM concedes that the company has shown a "recent trend of profitability," it contends that "it will be years before Sirius XM recoups all of its losses from the last two decades; thus, any increase to those costs, such as an increase in the SoundExchange royalty rate, will only lengthen the time it takes to recoup these losses and directly interfere with Sirius XM's ability to achieve a fair return on its investments." *Id.* at ¶ 265.

2. The Judges' Analysis

In *SDARS–I*, the Judges stated:

> Affording copyright users a fair income is not the same thing as guaranteeing them a profit in excess of the fair expectations of a highly leveraged enterprise. Nor is a fair income one which allows the SDARS to utilize its other resources inefficiently. In both these senses, a fair income is more consistent with reasonable market outcomes.

73 FR 4095 (footnote omitted).

In the absence of substantial evidence in the record to the contrary, any marketplace benchmark rate that guides the selection of rates will encompass such a return because it represents the best evidence of reasonable market outcomes. In this proceeding, the Judges find the proposed Direct License benchmark provides useful guidance for setting the lower bound of a zone of reasonable rates. The Judges find no probative evidence, however, to suggest that that rate should be adjusted under this factor. Presumably, being marketplace-inspired, the rate already reflects a fair income and a fair return.

SoundExchange stresses the growing importance of digital revenue streams for copyright owners, a trend that was certainly in play during the *SDARS–I* proceeding. The Judges find no material change in that trend in the current record that would warrant an upward adjustment from a marketplace-derived benchmark rate. In turn, Sirius XM stresses the importance of the rate on the timing of Sirius XM's return to profitability. The SDARS made similar points in the *SDARS–I* proceeding. Sirius XM's current trend toward profitability and its ability to pass on at least a portion of the rate increase to its subscribers[35] suggests that the prevailing statutory rate—which was informed by a marketplace benchmark and which is within the zone of reasonableness the Judges establish in the current proceeding—did not hinder Sirius XM's ability to earn a fair income.

In this proceeding, the Judges set the lower bound of the zone of reasonableness at 7% based on marketplace outcomes. Therefore, the Judges are confident that fair income and returns are reflected by that rate. In *SDARS–I* the Judges found that the same was true with respect to the statutory rate of 8%, as well as the 13% rate to which the Judges applied the Section 801(b) factors to derive the 8% rate. The current record does not support a change in that conclusion. Therefore, the Judges find no justification in this proceeding for an adjustment either up or down pursuant to the second Section 801(b) factor for rates in a range of 7% to 13%.

c. Weigh Relative Roles of Copyright Owner and Copyright User

1. The Parties' Contentions

According to Sirius XM, "when using the royalty rate paid by an Internet-based music service as a benchmark for setting royalty rates for Sirius XM, one must first identify the contributions that are unique to Sirius XM * * * and then compare these contributions to those made by the Internet-based services that

[34] Dr. Noll concedes that "there's no published academic research on this issue, and, indeed, there's not enough data available for me to undertake such a research project." 6/5/12 Tr. 227:22–228:3 (Noll). Moreover, he concedes that even the industry studies that have been done are ambiguous in their conclusions. Some think there's a substitution effect, some think there isn't. On balance, it seems to be the case that issue is unresolved, but there's no—there's no question that you wouldn't say it's a promotional effect, like satellite radio or terrestrial radio. It's either nothing or it's a substitution effect.

Id. at 228:8–16.

[35] *See, e.g.*, 8/13/2012 Tr. 3049:8–16 (Frear).

are being proposed as a benchmark." *Sirius XM PFF* ¶ 277, referencing Noll Revised Amended WDT at 25–26, SXM Dir. Trial Ex. 1; 8/14/2012 Tr. 3463:13–3464 (Noll). In this regard, Sirius XM notes that it has spent over $10 billion in creating and supporting its service and that those costs have not yet been recovered. *Sirius XM PFF* ¶ 278. According to Sirius XM, these "massive contributions only continue to increase, and far outweigh those made by Internet-based services that serve as benchmarks for setting royalty rates for Sirius XM." *Id. See also id.* at ¶ 295 (*quoting* Professor Noll and Mr. Karmazin for the proposition that Sirius XM's costs in developing its system far exceed those of the internet streaming companies). Sirius XM also points to its payments to automakers to encourage them to include Sirius XM's service in the vehicles they make, payments which, according to Sirius XM, the internet-based streaming services do not make. *Sirius XM PFF* ¶¶ 294, 296.

Sirius XM also contends that the record industry does not incur any additional incremental cost in making digital sound recordings available to Sirius XM. *Id.* at ¶¶ 279, 303. Sirius XM contends that, as a result of its contributions to its service, it should receive a downward adjustment from the benchmark rate, to the extent that rate is based on an internet streaming benchmark. *Id.* at ¶ 297–298 ("simply applying the percentage-of-revenue rate paid by benchmark Internet-based music services to the full revenues of Sirius XM without adjustment [to either the rate or the revenue base] would fail to recognize Sirius XM's relative contribution and 'would effectively give record labels a share of revenues that have nothing to do with the sound recording rights they are licensing.'") *Id.* at ¶ 298, *quoting* Salinger Corrected WRT ¶ 18, SXM Reb. Trial Ex. 9.

For its part, SoundExchange stresses the risks and costs the record labels incur in making, promoting and distributing music. For the perspective of a major record label, SoundExchange's evidence consists largely of testimony from UMG's Mr. Ciongoli who detailed UMG's costs in finding, developing, and marketing artists. *SX PFF* ¶¶ 535–542. In addition, SoundExchange presented the testimony of Mr. Van Arman who discussed the costs and efforts that independent labels typically incur in finding and promoting artists. *Id.* at ¶ 544.

2. The Judges' Analysis

The Judges' task with respect to the Section 801(b) factors is to determine whether the record presents solid empirical evidence of a difference between the benchmark market, if any, and the target market that would warrant an adjustment in the rate most strongly suggested by the evidence.

In *SDARS–I*, the Judges found that

> [C]onsidering the record of relevant evidence as a whole, the various sub-factors identified in this policy objective may weigh in favor of a discount from the market rate because of the SDARS' demonstrated need to continue to make substantial new investments to support the satellite technology necessary to continue to provide this specific service during the relevant license period. However, inasmuch as we find this issue is intimately intertwined with evidence impacting our consideration of the fourth 801(b) policy objective (i.e., minimizing any disruptive impact on the structure of the industries involved), we will treat the effect of this particular matter as part of our consideration of the fourth policy objective.

73 FR 4096.

With this exception, we found no other rationale for an adjustment either up or down from the benchmark rates based on this factor. *Id.* at 4096–4097.

In the current proceeding, in setting the lower bound of the zone of reasonableness the Judges were guided by the Direct Licenses Sirius XM negotiated with certain independent records labels. Deriving the upper bound of the zone of reasonableness has proved to be more problematic. The Judges conclude that the upper bound cannot be above the 22.32% rate from Dr. Ordover's second alternative approach. Moreover, the Judges are confident that the current statutory rate of 8% is within the zone of reasonableness. The Judges also are informed by the presumed reasonableness of the 12% rate that SoundExchange proposed for 2013 and by the 13% benchmark rate that served as a benchmark in *SDARS–I*. Given the Judges' relative confidence in the reasonableness of the 7% to 13% range, consideration of the third Section 801(b) factor is directed at that range.

Since the Direct License benchmark involves the same buyer (Sirius XM) and the same sellers (record labels) as the buyers and sellers in this proceeding—and they negotiated over the same rights set—the Judges find that the buyers and sellers in the benchmark market sufficiently replicate those in the target market.[36] With respect to the rights for which Sirius XM and the independent labels negotiated, evidence in the record indicates that the Direct Licensors granted broader rights than just the public performance rights that are the subject of the Section 114 compulsory license and that Sirius XM offered incentives beyond those that would be available through the compulsory licensing scheme. *See, e.g., SX PFF* ¶¶ 386–400 (*citing* defrayed administrative costs, the ability of Sirius XM to play more of an artist's works over a given time, and direct payment of the artists' share to the independent labels, among others, as key differences between the Direct Licenses and the compulsory licenses that might warrant a lower effective royalty rate).

The Judges acknowledge the differences between the compulsory license and the Direct Licenses, but view many of those differences as more a matter of administrative convenience than of differences in the substantive rights of the parties with respect to the public performance right. For example, if an artist is entitled to a certain share of profits from the sale of his or her records, that right is not diminished by the fact that the share is paid by SoundExchange or by the label with which the artist has signed. As far as the non-administrative differences (e.g., waiver of the statutory restriction on the number of times an artist's works may be played over a given time), it may well be that the benefits inure equally to both Sirius XM and the artists represented by the independent labels, many of whom may value broader exposure in lieu of statutory restrictions on the amount their works may be played.[37] Therefore,

[36] The Judges acknowledge that the sellers in the Direct Licenses represent a small subset of independent labels and exclude major labels, which, according to Sirius XM, were unwilling to enter direct license negotiations with Sirius XM. *Sirius XM PFF* ¶ 47–48. Nevertheless, the depth and breadth of the labels that signed Direct Licenses with Sirius XM strongly suggest that the relative role of the independent labels that entered the Direct Licenses with Sirius XM is, for the limited purpose of analyzing the third Section 801(b) factor, sufficiently comparable to that of independent labels generally and to that of the major labels. *See, e.g., Sirius XM PFF* ¶¶ 91–103; Noll Revised Amended WDT at 39–44 (record labels that signed Direct Licenses included: One of Billboard's top five independent labels for eight of the past nine years; labels that represented Grammy Award-winning and Grammy Award-nominated artists in multiple categories; a label that amassed more than 20 number one albums on Billboard's kids' album chart; the world's largest independent classical music label with a repertoire of over 2500 titles; a label with three songs on the Contemporary Christian top 10 during a period in 2012 and eight of the 50 spots on the Christian songs chart in 2012; a label representing an artist with the number one Billboard Heatseeker album in 2011; a label representing an artist with three Gold records; and a label that released the comedy albums of five-time Grammy Award-winning comedian George Carlin), SXM Dir. Trial Ex. 1. That being said, the absence of a major record label in the Direct License agreements supports the Judges' earlier conclusion that rates below 7% are below the lower bound of the zone of reasonableness.

[37] To the extent that the rights between the Direct License benchmark and target market vary in

the rights that the parties negotiated for in the benchmark market are reasonably comparable to those in the target market and no upward adjustment from the lower bound benchmark rate is warranted based on the third Section 801(b) factor.

With respect to the upper bound of the zone of reasonableness, which is informed by licenses between major record labels and certain interactive streaming services, the sellers are acceptably comparable to the target market (i.e., record labels). Although evidence in the record addresses the costs UMG incurs generally as a major record label and the costs Mr. Van Arman's independent labels incur in developing the artists that they sign, no substantial empirical evidence addresses the unique costs and contributions that the record labels make with respect to providing their recordings to Sirius XM. Because the Judges conclude that the sellers in the proposed benchmark market that guided the upper bound of the zone of reasonable rates are comparable to those in the target market, their contributions, risks, and costs are presumed to already be incorporated into the rates that set the upper bound. Therefore, the sellers' contributions in the target market do not indicate that an adjustment from the bounds of the zone of reasonableness is warranted.

Determining the comparability between the buyers that yielded the upper bound requires a comparison between Sirius XM and the internet streaming services that are the buyers in the proposed Ordover benchmark market. As the Judges recognized in *SDARS–I,* Sirius XM has demonstrated the need to continue to make substantial new investments to support the satellite technology necessary to continue to provide its specific service during the relevant license period. The Judges have no substantial evidence in the record, however, that would lead to a conclusion that the internet-based streaming services have ongoing distribution system costs anywhere near those of Sirius XM. According to Mr. Karmazin, Sirius XM anticipates investing more than [REDACTED] to maintain, upgrade, and, where necessary, replace its technological infrastructure during the 2013–17 licensing period. Karmazin WDT at 4, SXM Dir. Trial Ex. 19. A large portion of the system's costs relate to Sirius XM's satellites. According to Sirius XM, over the past six years, the company has spent approximately $1.5 billion replenishing satellites. *Sirius XM PFF* ¶ 289; Meyer WDT at 23–24, SXM Dir. Trial Ex. 5. A satellite's useful life is between 12 and 15 years. Meyer WDT at 24, SXM Dir. Trial Ex. 5. Sirius XM expects that its newly replenished satellite networks will maintain its services through 2020. *Sirius XM PFF* ¶ 291; Meyer WDT at 24, SXM Dir. Trial Ex. 5.

Such substantial financial outlays are unique to Sirius XM, which has developed a proprietary music distribution system, rather than use the existing internet framework, as the services in the proposed Ordover benchmark market have done. Although the costs of developing and launching the current generation of satellites has already been sunk, it is not unreasonable for Sirius XM to expect to recoup a certain amount of those costs over the expected useful life of the satellites. Moreover, the costs of maintaining the current satellites and planning and developing the new generation of satellites will require additional, substantial costs over the license period. *See* Meyer WDT at 24, SXM Dir. Trial Ex. 5. In light of the substantial evidence in the record of the unique and substantial financial costs that Sirius XM has incurred and anticipates incurring over the license period to maintain and upgrade its distribution system, the Judges find that the most appropriate rate for the current license period will be somewhat below the 12%-13%, which the Judges are reasonably confident represents the top of the zone of reasonableness. Therefore, the rates that the Judges announce in this determination for the SDARS reflect a downward adjustment from the 12%-13% range based upon the third Section 801(b) factor.

d. Minimize Disruptive Impact

Although the rate the Judges set in this proceeding is just one component that will impact the future of Sirius XM and the copyright owners, the rate could be considered disruptive (and thereby warrant an adjustment) if the unadjusted rate "directly produce[d] an adverse impact that is substantial, immediate, and irreversible in the short-run because there is insufficient time for either the SDARS or the copyright owners to adequately adapt to the changed circumstances produced by the rate change and, as a consequence, such adverse impacts threaten the viability of the music delivery service currently offered to consumers under this license." 73 FR 4097. In *SDARS–I,* the Judges found that a downward adjustment from the upper boundary of the marketplace benchmark was justified on two grounds: (1) The SDARS' were not sufficiently profitable and did not have a sufficiently broad subscriber base to sustain an immediate rate increase from a range of 2.0%-2.5% to 13% of revenues and (2) a 13% rate would potentially constrain the SDARS' ability to undertake satellite investments planned for the license period, which, if delayed, could disrupt the SDARS' consumer service. *Id.*

1. The Parties' Contentions

In determining whether the fourth factor warrants an adjustment in the current proceeding, Sirius XM invites the Judges to consider Sirius XM's "tumultuous financial history" as well as the "increasing risks the Company is likely to face in the coming license term." *Sirius XM PFF* ¶ 304. When so considered, Sirius XM argues that it "faces a threat of disruption that is 'equal to or even greater than the one it faced at the time of the last rate proceeding.'" *Id.; quoting* Stowell WDT ¶ 41, SXM Dir. Trial Ex. 18. Sirius XM details its near-brush with bankruptcy in 2008 after Sirius and XM merged and its ultimate deal with Liberty Media Corporation to avert a bankruptcy filing. Frear WDT at 3–5, SXM Dir. Trial Ex. 12. It also notes its achievement of profitability in 2010. *Id.* at 7.[38] While acknowledging that its recent performance is "encouraging," Sirius XM points out that it has cumulative net operating losses of $8 billion, which it has incurred over the past two decades. Sirius XM notes that any increases in its costs will lengthen the time it takes to recoup these losses. *Id.* at 7–8. Nevertheless, Sirius XM anticipates that its adjusted earnings before depreciation and amortization ("EBITDA") for 2012 will be $860 million on revenues of $3.3 billion, which should allow Sirius XM to return capital to its investors. *Id.* at 14 and n.11.

Notwithstanding its anticipated profitability for 2012, Sirius XM notes that it is still in a financially tenuous position in the longer term. Threats that Sirius XM anticipates to its continued financial success include: its increasing dependence on the automobile industry; competitive threats from internet-based

material respect, the Judges reflected such variances in the decision to adopt the upper end (i.e., 7%) of the range of rates for the benchmark.

[38] Sirius XM attributes its current profitability largely to its one-time merger-related cost cuts. Frear WDT at 8, SXM Dir. Trial Ex. 12. It is also noteworthy that Sirius XM reduced its programming costs by renegotiating its agreements with several high-profile content providers. *Id.* at 8–9. Sirius XM expects, however, that its operating costs will increase over the licensing period. *Id.* at 20. According to Sirius XM, optimistic public statements made by Sirius XM's management should be discounted as "puffery." *Sirius XM PFF* ¶ 312 and n.66.

providers and "connected-car" technology; significant debt on Sirius XM's balance sheet; and the continuing risk that Sirius XM could lose access to the credit markets to refinance its debt. *Sirius XM PFF* ¶¶ 322–328; Frear WDT at 21–22, SXM Dir. Trial Ex. 12. Although Sirius XM has been able to offset a portion of recent rate increases by passing some of those costs on to customers, continuing to do so in the future, Sirius XM contends, will run the risk of en masse subscriber defections. *Id.* at n.17.

On the other hand, SoundExchange recommends that the Judges use a more circumspect approach to applying the fourth factor. SoundExchange proffers that "the fourth policy objective should be limited to a temporary facilitation of the ability of nascent and emerging services to gain consumer acceptance and potentially achieve an efficient scale of operation * * *. [O]nce a company achieves a material presence in the marketplace, as Sirius XM indubitably has, use of the fourth policy factor to reduce market-based rates should be considered only with extreme caution, and should never be used to shield the service at issue from the full rigors of vigorous marketplace competition." *SX PFF* ¶¶ 550–551, *citing* Ordover Third Corrected/Amended WDT at 5–6, SX Trial Ex. 74.[39]

SoundExchange points to Sirius XM's stronger financial position as evidence that no downward adjustment is warranted for this license period. To support its position SoundExchange relies in part on testimony from Professor Lys who noted,

> [S]ince the merger, Sirius XM has experienced steady growth in both the number of subscribers and subscriber revenues while at the same time experiencing cost reductions. As a result, the company has achieved sustainable and growing profitability. Further, in contrast to 2009, when the company restructured its debt, Sirius XM's credit ratings and the underlying financial metrics related to its debt have improved substantially.

Lys Corrected WDT at 8, SX Trial Ex. 80.

Professor Lys further represented that in the third quarter (Q3) of 2011, Sirius XM had adjusted EBITDA[40] of $197 million, up 16% year-over-year for the same quarter. *Id.* at 19, *citing* "Sirius XM Radio Inc., Q3 2011 Earnings Call," Capital IQ, November 1, 2011, p. 3.

Professor Lys also stressed Sirius XM's dramatic turn-around in free cash flow.[41] In 2008, Sirius XM had negative free cash flow of over $550 million. *Id.* at 20. By 2009, Sirius XM's free cash flow had turned to a positive $185 million. By 2010, that number had reached $210 million. Sirius XM projected that its free cash flow for 2011 would reach $400 million, a 90% increase over 2010, and would continue to grow in 2012. *Id., quoting* "Sirius XM Radio Inc., Q3 2011 Earnings Call," Capital IQ, November 1, 2011, p. 3.

2. The Judges' Analysis

In analyzing whether the fourth Section 801(b) factor warrants an adjustment (either up or down) to the rates delineating the zone of reasonableness, the Judges must examine the same set of circumstances that informed the Judges' analysis in *SDARS–I*. In *SDARS–I*, the Judges found that a downward adjustment from the upper boundary of the marketplace benchmark was justified because: (1) The SDARS were not sufficiently profitable and did not have a sufficiently broad subscriber base to sustain an immediate rate increase from a range of 2.0%–2.5% to 13% of revenues (a potential five-fold or six-fold increase) and (2) a 13% rate would potentially constrain the SDARS' ability to undertake satellite investments planned for the license period, which, if delayed, could disrupt the SDARS' consumer service. 73 FR at 4097. Neither of those justifications is present to the same degree in the current record.

Sirius XM is now in a far better financial position than either Sirius or XM was as a stand-alone company in 2007, the first year of the current licensing period. In 2007, Sirius and XM had combined revenues of $2.1 billion and combined adjusted EBITDA of *negative* $565 million. *SX PFF* ¶ 556; SX Trial Ex. 16 at SXM_CRB_DIR_00021681 (p.15). By year-end 2012, Sirius XM's revenues are expected to be $3.4 billion and its EBITDA is expected to be approximately $900 million. SX Trial Ex. 217 at 7. In 2007, the SDARS free cash flow was *negative* $505 million. In 2012, by contrast Sirius XM's free cash flow is expected to rise to $700 million. *SX PFF* ¶ 556, *citing* SX Trial Ex. 16 at SXM_CRB_DIR_00021682 (p.16); SX Trial Ex. 217 at 7; *see also* Lys Corrected WDT at 18–21, SX Trial Ex. 80.

Another key indicator of potential financial strength—net increase in subscribers—indicates that Sirius XM is much stronger than either of the SDARS were in 2007. In 2007, Sirius and XM had 17.3 million subscribers. By 2012, that number for Sirius XM had risen to 23.5 million. *SX PFF* ¶ 554. Sirius XM was able to increase its net subscribers notwithstanding a period of relatively weak car sales—a key driver of new subscribers—and despite passing on a portion of the royalty rate increase to its subscribers. *Id.* and Frear WDT at 21 n.17, SXM Dir. Trial Ex. 12.

In percentage terms, the gap between the prevailing rate of 8% and the 12%–13% range that guides the upper bound of the zone of reasonableness in the current proceeding is much narrower than the comparable gap presented in *SDARS–I*. Indeed, an increase to 12% or 13% would be less dramatic in percentage terms than was the increase the Judges adopted in *SDARS–I*, which Sirius XM has managed to sustain.[42]

The Judges also find that the second rationale found in *SDARS–I* for a downward adjustment, potential constraint on Sirius XM's ability to undertake satellite investments during the license period, is a less pressing issue than it was during the prior licensing period. As discussed above, Sirius XM expects that its newly replenished satellite networks will maintain its services through 2020. *Sirius XM PFF* ¶ 291; Meyer WDT at 24, SXM Dir. Trial Ex. 5. Although there will be ongoing costs of maintaining its existing satellites—costs that justified a downward adjustment under the third factor—no substantial evidence in the record supports a downward adjustment based on Sirius XM's need to replace its existing satellites during the current licensing period. Therefore, neither of the circumstances that justified a downward adjustment under the fourth factor in *SDARS–I* is currently present.

The Judges find no new circumstances that would warrant a downward adjustment under the fourth

[39] Although the Judges agree that the fourth factor should be applied with caution (as should all of the factors), Section 801(b)(1)(D) of the Copyright Act does not restrict its application to "nascent and emerging services" and the Judges are unwilling to read such limitations into it. Nevertheless, the Judges are cognizant of SoundExchange's concern that the fourth factor not be applied in a way that would shield service providers from a competitive marketplace.

[40] EBITDA stands for Earnings, Before Interest, Taxes, and Depreciation Allowance.

[41] Free cash flow measures cash generated by a company that is not needed to fund the current period's operations or to reinvest in the firm's future operations. Lys Corrected WDT at 18–19 n. 94, *citing* Brealey, Richard, Stewart Myers and Franklin Allen, *Principles of Corporate Finance*. 2006, p. 997.

[42] The Judges are much less confident that the same could be said for an increase to the 22%–32.5% that the proposed Dr. Ordover benchmark might suggest. As a result, the Judges draw additional comfort that the upper bound of the zone of reasonableness is closer to 12%–13% than it is to 22.32%, which the Judges conclude the upper bound of the zone of reasonableness can be no more than. *See infra* at Section V.B.3.b.

factor. Sirius XM's primary contention for a downward adjustment under the fourth factor centers largely on the competitive landscape, in particular, the threat of new technologies such as the connected car technology. *Sirius XM PFF* ¶¶ 325–328.[43] While emerging technologies can dramatically change the competitive landscape from one licensing period to the next, the Judges find insufficient evidence in the record to suggest that connected car technology or any of the other emerging competitive threats discussed during the proceeding warrants a downward adjustment under the fourth factor during the current licensing period.

SoundExchange has not alleged a disruption to the copyright owners as a result of the prevailing rate and the Judges are not inclined to lower that rate. Therefore, the Judges find no evidence that an increased rate, albeit one that is lower than that proposed by SoundExchange, would warrant an upward adjustment. Therefore, the Judges find no adjustment warranted under the fourth Section 801(b) factor.

5. Conclusions Regarding Section 114 Rates

After reviewing the Section 801(b) factors in light of the zone of reasonable rates that has 7% as its floor and 12%–13% as its most likely ceiling, the Judges find that the most appropriate rate for SDARS for the 2013 to 2017 licensing period is 11% of *Gross Revenues*. To minimize any potential disruptive impact of the rate increase, the Judges phase it in over the license period. Consequently, the Judges set forth the following SDARS rates: for 2013: 9.0%; for 2014: 9.5%; for 2015: 10.0%; for 2016: 10.5%; and for 2017: 11.0%.

VI. Definition of Gross Revenues and Deductions

A. Definition of Gross Revenues

1. SoundExchange's Proposal

The revenue base against which the adopted royalty rates would be applied is a matter of considerable disagreement between the parties. Sirius XM requests continuance of the current definition of *Gross Revenues* in 37 CFR 382.11, arguing that it properly identifies only those revenues that are related to the provision of statutorily licensed sound recordings. *See Sirius XM PFF* ¶ 416. SoundExchange favors a considerable expansion of the revenue base, stating that its proposed changes would conform the royalty base to the economics underlying the percentage-of-revenue royalty rates within the benchmarks offered in this proceeding, and would make the *Gross Revenues* definition easier to administer and less susceptible to interpretation and manipulation. Bender WDT at 12, SX Trial Ex. 75.

SoundExchange's proposed *Gross Revenues* definition[44] is based upon an interpretation of the Judges' use in *SDARS–I* of Dr. Ordover's adjusted interactive subscription service benchmark to establish the upper boundary of reasonable royalty rates for an SDARS service. *SDARS–I*, 73 FR at 4093–4094. The use of that benchmark, in SoundExchange's view, demonstrates an intention of the Judges to use total subscription revenue as the base against which the royalty rates should apply. Bender WDT at 6, SX Trial Ex. 75. Applying this assumption to the revenues reported by Sirius XM from 2007 through the third quarter of 2011, SoundExchange concludes that Sirius XM has paid roughly 16%–23% less in total royalty fees than intended. *Id.* at 6–7. SoundExchange contends that this purported revenue shortfall is due to revenue exclusions that Sirius XM makes under the current *Gross Revenues* definition which, SoundExchange argues, should not be allowed to continue in the new licensing period.

SoundExchange is particularly critical of a provision of the current definition that allows Sirius XM to deduct revenues received for "[c]hannels, programming products and/or services offered for a separate charge where such channels use only incidental performances of sound recordings." 37 CFR 382.11 (paragraph (3)(vi)(B) of *Gross Revenues* definition). According to SoundExchange, this deduction is unwarranted for the new licensing period, because the rates that Dr. Ordover proposed on behalf of SoundExchange *and* those that Dr. Noll proposed on behalf of Sirius XM reflect that roughly half of the value of Sirius XM's SDARS service is derived from its music programming and roughly half from its non-music programming. According to SoundExchange, the reduction for non-music programming permitted in the current *Gross Revenues* definition is already built into the proposed rates and should not be further reduced from revenue. *SX PFF* ¶¶ 839, 845–846.

Further, SoundExchange charges that exclusion of revenue derived from non-music channels encourages manipulation to reduce the royalty base in unprincipled ways. For example, Sirius XM theoretically could disaggregate its bundled subscription price of $14.49 per month into a music package valued at $3.00 and a non-music package valued at $11.49. According to SoundExchange, such a disaggregation would result in no additional Sirius XM revenues from the separate packages, but would enable Sirius XM to reduce substantially its royalty obligation. *SX PFF* ¶¶ 852–853. SoundExchange suggests that its proposed *Gross Revenues* definition would help prevent such accounting gimmicks.

SoundExchange also proposes to eliminate from the current *Gross Revenues* definition a provision that authorizes an exclusion from revenues received from channels and programming that are licensed outside the Sections 112 and 114 licenses, which includes pre-1972 recordings. 37 CFR 382.11 (paragraph (3)(vi)(D) of *Gross Revenues* definition). Dr. Lys testified that Sirius XM excludes between 10% and 15% of its subscription revenue from the royalty base for performances of pre-1972 recordings, thereby reducing its royalty obligation. Lys WRT at 54, SX Trial Ex. 240. Yet, SoundExchange contends that Sirius XM has not identified the process it uses to identify pre-1972 recordings, or how it calculates the deduction it takes.

SoundExchange's proposed *Gross Revenues* definition also would eliminate five other exclusions from revenues permissible under the current regulations. First, under the proposed definition, revenues Sirius XM receives from its webcasting service, which are currently linked to the SDARS satellite radio subscription, would be included in the proposed new *Gross Revenues* definition. Second, revenues attributable to data services, such as Sirius XM's weather and traffic services which can be purchased on a stand-alone basis but are more commonly offered to SDARS subscribers at a discount, would be included in the proposed new *Gross Revenues* definition. Third, revenue attributable to equipment sales or leases used to receive or play the SDARS service, would be included. Fourth, the current exclusions for credit card fees and bad

[43] Sirius XM's contentions that it faces risks of disruption due to its increasing reliance on the OEM distribution channels (i.e., the automobile market) (*Sirius XM PFF* ¶¶ 322–324), or potential risks from relying on a satellite infrastructure (*Sirius XM PFF* ¶¶ 316–317), or risks posed by macroeconomic conditions (*Sirius XM PFF* ¶¶ 318–320) are too speculative to suggest the type of substantial, immediate and irreversible adverse impact that would warrant a downward adjustment of the benchmark rate under the fourth factor.

[44] SoundExchange's proposed *Gross Revenues* definition is set forth at *Second Revised Proposed Rates and Terms of SoundExchange, Inc.*, at 2–3 (Sept. 26, 2012).

debt expense would be eliminated. Fifth, fees that Sirius XM collects for various activities related to customer account administration, such as activation fees, invoice fees, swap fees, and certain early termination fees, would be included in *Gross Revenues*. Bender WDT at 16–17, SX Trial Ex. 75. According to Sirius XM, the elimination of these exclusions could expand its annual revenue base, against which royalties are calculated, by over $300 million. Frear WRT at 7, SXM Reb. Trial Ex. 1.

2. Analysis and Conclusions

In *SDARS–I*, the parties were at loggerheads over the definition of *Gross Revenues*, with SoundExchange favoring an expansive reading to include "all revenue paid or payable to an SDARS service that arise from the operation of an SDARS service." *See* 73 FR at 4087 (citation omitted). The SDARS in turn argued for adoption of the existing *Gross Revenues* definition for PSS. *Id.* With one exception, the Judges adopted the SDARS proposal. *See id.* SoundExchange's new proposal is again a request for an expansive reading of gross revenues. In its effort to respond to the Judges' criticism of its *SDARS–I* proposal as possessing "scant evidentiary support," SoundExchange attempts to demonstrate how Sirius XM has under-reported revenues in the current licensing period. Alternatively, SoundExchange attempts to demonstrate how Sirius XM *might* manipulate its revenue base to lower its royalty obligation. With the exception of revenue deductions for privately licensed and pre-1972 sound recordings discussed, *infra*, both of SoundExchange's arguments lack merit.

SoundExchange's argument that Sirius XM has paid roughly 16%–23% less in royalties in the current license period than was intended under the current *Gross Revenues* definition depends on the assumption that there is a direct link between that definition and the adjusted interactive subscription service benchmark that SoundExchange's expert economist, Dr. Janusz Ordover, presented in *SDARS–I*. SoundExchange reasons that because the Ordover benchmark was fashioned from interactive service license agreements that generally provided for inclusion of mostly all of subscriber revenue, it must be the case that the Judges intended the *SDARS–I* rates to apply to total subscription revenues. *See* Bender WDT at 6–7, SX Trial Ex. 75.

The presumed linkage between the benchmark and the *Gross Revenues* definition is not supported by the *SDARS–I* decision for at least two reasons. First, the Ordover benchmark was only one factor the Judges used to establish a zone of reasonable royalty rates, marking the upper boundary. Second, the Judges never adopted the revenue definitions contained in the subscription service license agreements that Dr. Ordover proffered. The *Gross Revenues* definition the Judges adopted in *SDARS–I* was quite different from those contained in the Ordover benchmark license agreements.

In defining *Gross Revenues*, the Judges plainly stated that it was their intention to unambiguously relate the fee charged for a service that an SDARS provided to the value of the sound recording performance rights covered by the statutory licenses. *SDARS–I*, 73 FR at 4087. This relationship is especially important where, as here, the Judges adopt a percentage of revenue rather than a per-performance rate. The license agreements used in the *SDARS–I* Ordover benchmark do not provide for this connection between revenue and value under the statutory licenses. In sum, SoundExchange's perceived linkage between the current *Gross Revenues* definition and the *SDARS–I* Ordover benchmark favoring inclusion of total subscriber revenues is simply not there.

In the alternative, SoundExchange argues that an expansive revenue base is easier to administer and reduces the chances for manipulation. Dr. Lys testified that, from an accounting perspective, it is preferable to base contracts on a financial definition that is clear-cut to administer and easy to audit, and that a revenue definition that is all-inclusive satisfies this preference. Lys WRT at 53, SX Trial Ex. 240. While this may be true, the Judges are driven by the admonition in *SDARS–I* to include only those revenues related to the value of the sound recording performance rights at issue in this proceeding. *SDARS–I*, 73 FR at 4087. The Judges are satisfied that the exclusions permitted in the current *Gross Revenues* definition remain proper. However, if any party were to present evidence to demonstrate conclusively that one or more of the exclusions facilitates manipulation of fees for the sole purpose of reducing or avoiding Sirius XM's statutory royalty obligation, then an amendment or elimination of the exclusion might be warranted. SoundExchange has failed to meet this burden and has only offered speculation as to how Sirius XM *might* manipulate its revenue to reduce its royalty obligation. With the exception of the two deductions discussed below, SoundExchange has failed to present persuasive evidence that would warrant the changes it proposes to the calculation of gross revenues.[45]

B. Deductions for Directly Licensed and Pre-1972 Recordings

Separate from the issue of exclusions from the *Gross Revenues* definition, the Judges examine the impact on the royalty calculus of the performance by Sirius XM of sound recordings that it has directly licensed from record labels. To broadcast the music offered by the Direct Licensors, Sirius XM can rely on the agreed terms instead of paying under the compulsory statutory licenses. Sirius XM also performs other sound recordings that are exempt from the compulsory licenses in the Copyright Act (i.e., pre-1972 recordings).

1. Directly Licensed Recordings

Both the Section 112 and Section 114 licenses recognize and permit the licensing of sound recordings through private negotiation. 17 U.S.C. 112(e)(5), 114(f)(3). The parties concede that directly licensed recordings are outside and, therefore, not compensable under the statutory licenses. Sirius XM contends that an exclusion from the *Gross Revenues* definition is necessary for directly licensed recordings; otherwise, it contends, it would be paying twice for performing these works. *Sirius XM PFF* ¶ 425; *Proposed Rates and Terms of Sirius XM Radio, Inc.*, at 3 (Sept. 26, 2012).

SoundExchange acknowledges that directly licensed recordings must be accounted for, but resists a codified deduction from the *Gross Revenues* definition. Instead, it proposes that the payable statutory royalty amount be

[45] In *SDARS–I*, the Judges expressly recognized an exclusion from *Gross Revenues* for so-called non-music services, characterized as "channels, programming, products and/or other services offered for a separate charge where such channels use only incidental performances of sound recordings." *SDARS–I*, 73 FR 4102 (*citing* 37 CFR 382.11, definition of *Gross Revenues*). The Judges did so because this exclusion "unambiguously relat[ed] the fee to the value of the sound recording performance rights at issue * * *" *Id.* at 4088. SoundExchange argues that if the current exclusion is allowed to continue, it would result in a double deduction from Sirius XM's royalty obligation because Dr. Ordover's proposed marketplace benchmarks exclude the value of non-music services, and Dr. Noll's proffered benchmarks attempt to account for the fact that roughly half of Sirius XM's service is non-music. *SX PFF* ¶¶ 842–846. The Judges agree with Sirius XM's counter argument that Dr. Ordover's modeling allocated revenues for both the music and non-music programming for Sirius XM's standard "Select" package, "but that allocation in no way relates to the separately priced non-music packages offered by Sirius XM that are the subject of the exemption." *Sirius XM RFF* ¶ 167. The Judges stress, however, that the exclusion is available only to the extent that the channels, programming, products and/or other services are offered for a separate charge.

determined by reducing the product of the royalty rate and *Gross Revenues* by a percentage approximating the value of the directly licensed usage. *Second Revised Proposed Rates and Terms of SoundExchange, Inc.*, at 4 (Sept. 26, 2012). To determine the share of performances attributable to direct licenses, SoundExchange proposes using data from Sirius XM's Internet webcasting service for music. The following calculation would then be made:

- For each month, identify the Internet webcast channels offered by the Licensee that directly correspond to music channels offered on its SDARS that are capable of being received on all models of Sirius radio, all models of XM radio, or both (the "Reference Channels").[46]
- For each month, divide the Internet performances of directly licensed recordings on the Reference Channels by the total number of Internet performances of all recordings on the Reference Channels to determine the Direct Licensing Share.

Id. at 4–5 (footnote omitted).[47]

The Judges are persuaded that directly licensed recordings should not be a part of the calculus in determining the monthly statutory royalty obligation. To include those recordings, for which Sirius XM pays under a separate contract would effectively result in a double payment for the directly licensed recordings and would discourage, if not altogether eliminate, the incentive to enter into such direct licenses. Discouraging direct licensing would be inconsistent with Section 114 which recognizes, if not encourages, private licenses. *See* 17 U.S.C. 114(f)(1)(B). The Judges are not persuaded, however, by Sirius XM's position that the exclusion of directly licensed recordings should be from *Gross Revenues*, as opposed to a deduction from the total royalty obligation.

As SoundExchange correctly points out, there is no revenue recognition associated with directly licensed recordings. Those licenses represent a cost to Sirius XM. Bender WRT at 3, SX Trial Ex. 239. Sirius XM has not proposed a *revenue* allocation formula between directly licensed and statutorily licensed recordings that it performs on its SDARS service; it has presented a usage deduction that it seeks to apply to its revenue base. Excluding usage of sound recordings from *Gross Revenues* would not comport with the Judges' preference to relate royalty fees to the value of the sound recording performance rights that give rise to the royalty obligation.

The Judges are persuaded that the proposed methodology of SoundExchange to calculate the royalty deduction for directly licensed recordings (i.e. the "Direct License Share") is the superior approach because it would allow Sirius XM to determine the percentage reduction for directly licensed recordings based upon the number of plays of those recordings compared to total plays. Despite the Judges' requests, Sirius XM and its contractor, Music Reports, Inc., were incapable of providing the Judges with accurate data as to the identity and volume of directly licensed recordings on the SDARS service. *SX PFF* ¶¶ 883, 886–888. Reasonable accuracy and transparency are required for calculation of the Direct License Share, and SoundExchange has demonstrated that its proposed use of the Sirius XM webcasting service as a proxy satisfies these requirements. The Judges adopt SoundExchange's Direct License Share approach.[48]

2. Pre-1972 Recordings

The performance right granted by the copyright laws for sound recordings applies only to those recordings created on or after February 15, 1972. *Sound Recording Amendment*, Public Law 92–140, 85 Stat. 391 (1971). Sirius XM broadcasts pre-1972 recordings on its SDARS service and, in the present license period, excludes a portion of revenues from its *Gross Revenues* calculation for such use. The current *Gross Revenues* definition does not expressly recognize such an exclusion, which is not surprising given that there is no revenue recognition for the performance of pre-1972 works. In taking the exclusion, Sirius XM apparently relies upon the provision of the current *Gross Revenues* definition that permits an exclusion for programming that is exempt from any license requirement. *See* 37 CFR 382.11 (paragraph (3)(vi)(D) of *Gross Revenues* definition).

Dr. Lys testified that the deduction is between 10% and 15% of subscription revenue, a figure that Sirius XM did not dispute. Lys WRT at 54, SX Trial Ex. 240. Sirius XM requests that the Judges amend the current *Gross Revenues* definition to provide that its "monthly royalty fee shall be calculated by reducing the payment otherwise due by the percentage of Licensee's total transmission of sound recordings during the month that are exempt from any license requirement or separately licensed." *Proposed Rates and Terms of Sirius XM Radio Inc.* at 3 (Sept. 26, 2012).[49]

As with directly licensed works, pre-1972 recordings are not licensed under the statutory royalty regime and should not factor into determining the statutory royalty obligation. But, for the same reasons discussed in relation to the Direct Licenses, revenue exclusion is not the proper means for addressing pre-1972 recordings. Rather, the proper approach is to calculate a deduction from the total royalty obligation to account for performances of pre-1972 recordings. The question then becomes how to calculate the correct deduction. Sirius XM did not offer any evidence as to how it calculated its current deduction, or how it identified what recordings performed were pre-1972, other than the obtuse assertion of Mr. Frear that the lawyers talked to the finance team to assure a proper deduction. 8/13/12 Tr. 3125:3–3126:3 (Frear). To be allowable, a deduction for pre-1972 recordings must be precise and the methodology transparent. The Judges, therefore, adopt the same methodology applied to determining the Direct License Share, utilizing as a proxy the Sirius XM webcasting data with the accompanying restriction, to pre-1972 recordings. To be eligible for deduction of the Pre-1972 Recording Share, Sirius XM must, on a monthly basis, identify to SoundExchange by title and recording artist those recordings for which it is claiming the deduction.

VII. Terms

The Judges now turn to the terms necessary to effectuate payment and distribution. The Judges' mandate is this regard is to adopt terms that are practical and efficient. *See SDARS–I*, 73 FR at 4098. In general, the Judges seek, where possible, consistency across licenses to promote efficiency and

[46] SoundExchange conditions the availability of its approach on the presumption that the music channels on the Internet service remain representative of the music channels offered on the SDARS service.

[47] SoundExchange requests that, if its approach is adopted, Sirius XM be required to notify SoundExchange monthly of each copyright owner from which Sirius XM claims to have a direct license and each sound recording Sirius XM claims to be excludable. SoundExchange would then be permitted to disclose this information to confirm whether the direct license exists and the claimed sound recordings are properly excludable.

[48] In doing so, the Judges also accept SoundExchange's request that the Direct License Share deduction only be available if the music channels available on Sirius XM's Internet webcast service remain representative of the music channels offered on the SDARS services.

[49] This language is the same that Sirius XM proposes be applicable to directly licensed sound recordings.

minimize costs in administering the licenses. However, this goal is not overriding. *See Webcasting III,* 76 FR 13026, 13042 (Mar. 9, 2011).

A. Collective

SoundExchange requests to be retained as the sole collective for the collection and distribution of royalties paid by the PSS and SDARS under the Sections 112 and 114 licenses for the license period 2013–17. The PSS and SDARS do not oppose SoundExchange's request. Therefore, SoundExchange will serve as the collective for the 2013–17 license period.

B. Terms Relating to PSS

SoundExchange proposes a number of substantive and nonsubstantive changes to the current regulations dealing with PSS. Music Choice opposes the changes, some in general terms and some specifically.

1. Reorganizing Definitions

SoundExchange proposes collecting applicable PSS definitions in one place for the convenience of the users of the definitions. *SX PFF* ¶ 906. We believe this proposal, which is nonsubstantive and which Music Choice does not appear to oppose specifically, will enhance the utility of the rules and therefore is adopted.

2. Relocating the Statement of Account Requirement

SoundExchange proposes relocating the statement of account requirement in current § 382.4(b) and to adapt it to include the enumerated data elements from the SDARS regulations. *SX PFF* ¶ 908; Bender WDT at 22, SX Trial Ex. 75. Music Choice appears not to specifically oppose this change. This change would promote clarity of what information is required in a statement of account and is consistent with the SDARS license. Therefore, the Judges adopt it to enhance the utility and uniformity of the rules across licenses.

3. Applying Late Fee to Late Statement of Account

SoundExchange proposes applying a late fee to a late statement of account, to make the PSS rules consistent with the SDARS and webcasting regulations. *SX PFF* ¶ 907. Music Choice opposes this proposed change, contending that SoundExchange has not provided any evidence suggesting that Music Choice or Muzak has ever failed to submit a statement of account in a timely manner. *Music Choice PFF* ¶ 603. The Judges previously imposed a late fee for late statements of account despite the service's record of timely submitted statements of account, reiterating the importance of the timely submission of statements of account to the quick and efficient distribution of royalties. *SDARS–I,* 73 FR at 4100; *see also, Webcasting II,* 72 FR at 24107. The Judges adopt the proposed late fee under the same reasoning. The late fee adopted today is consistent with the one imposed on webcasters and the SDARS. *See SDARS–I,* 73 FR at 4100.

4. Clarifying Unclaimed Funds Provisions

SoundExchange proposes to conform and cross-reference regulations dealing with the use of funds where the Collective is unable to locate a copyright owner or performer who may be entitled to those funds. *SX PFF* ¶ 909. Because this proposal is unopposed and would enhance the clarity of the rules the Judges adopt it. On a related matter, the Judges encourage SoundExchange to provide greater clarity on what date it uses as the "date of distribution" for unclaimed funds. *See, e.g.,* Proposed 37 CFR 382.8.

5. Changing Confidentiality Provisions

SoundExchange proposes changes to the confidentiality provisions in § 382.5 to make the PSS regulations consistent with those for Business Establishments. *SX PFF* ¶ 910. Music Choice specifically opposes this proposal because it believes it could cause Music Choice's confidential information to be provided to its competitors. *Music Choice PFF* ¶ 609. In light of Music Choice's specific opposition and SoundExchange's inadequate justification for adopting the rule the Judges refrain from adopting this proposed change.

6. Conforming Audit Processes

SoundExchange proposes conforming the PSS audit provisions in current §§ 382.5(f) (Verification of statements of account) and 382.6(f) (Verification of royalty payments) with those applicable to SDARS and webcasters. *SX PFF* ¶ 911. SoundExchange does not support, however, maintaining consistency across licenses with respect to the cost shifting provisions (currently 5% variance for PSS and 10% variance for SDARS and webcasters) and would prefer no change to one that would include cost shifting conformity to the higher variance standard. Music Choice specifically opposes the proposed changes, arguing, among other things, that it would permit SoundExchange to use auditors that are employees or officers of a sound recording owner or performing artists, the objectivity of which might be suspect. *Music Choice PFF* ¶ 611–613. Given Music Choice's concerns, which SoundExchange has not adequately addressed, and SoundExchange's own reluctance to adopt conforming provisions unless the provisions maintain differences in cost shifting (or the lower variance standard), the Judges refrain from adopting the proposed changes to the auditing provisions. To the extent that one or more of the parties have specific or general concerns about the auditing process with respect to this or other licenses that the Judges administer, the Judges would welcome guidance that might serve to enhance the fairness and efficiency of the process.

7. Technical and Conforming Changes

SoundExchange also proposes a number of technical and conforming changes, which the Judges adopt as proposed with one exception. *SX PFF* ¶ 912. In particular, the Judges adopt SoundExchange's proposal to relocate the provision regarding retention of records from its current location in § 382.4(f) relating to confidential information to newly renumbered § 382.4(e), which now houses the terms of the license. However, the Judges decline to adopt the proposed language because it would be a substantive change for which SoundExchange provides no justification. Therefore, the language in new § 382.4(e) remains the same as that currently found in § 382.4(f).

C. Terms Relating to SDARS

SoundExchange proposes a number of substantive and nonsubstantive changes to the current regulations dealing with SDARS.[50] Sirius XM opposes the changes, some in general terms and some specifically.

1. Deleting Residential Subscriber Concept

SoundExchange proposes deleting the concept of "residential" SDARS subscriber in §§ 382.11 and 382.12 of the current regulations. The concept appears in the definitions of "Gross Revenues" and "Residential."

[50] Sirius XM proposes to amend current § 382.13(c) in a manner that would ensure that Sirius XM would not have to report either actual total performances of sound recordings or Aggregate Tuning Hours as required under the applicable notice and recordkeeping requirements in Part 370. *Sirius XM PFF* ¶ 413; *Proposed Rates and Terms of Sirius XM Radio Inc.,* at 5 (Sept. 26, 2012). SoundExchange's proposed reply findings do not address this suggested change. The Judges decline to adopt this proposal because it appears for the first time in Sirius XM's Proposed Findings of Fact "without any citation to the record or any substantive explanation as to why such a change is needed or what benefits would result from its adoption." *Webcasting III,* 76 FR at 13043 (Mar. 9, 2011).

SoundExchange contends that the concept is a "confusing artifact of" a comparable term used in the PSS regulations. *SX PFF* ¶ 900. SoundExchange argues that the SDARS service is not primarily residential in terms of being delivered to homes and the term "residential subscriber" simply means a subscriber and, therefore, the term "residential" adds no value to the definition and creates the possibility for confusion. *Id., citing* Bender WDT at 20, SX Trial Ex. 75. Although Sirius XM broadly opposes adopting the changes to terms SoundExchange proposes, it does not expressly state its reasons for opposing this particular change. Given the broad analysis of the definition of "Gross Revenues" the Judges have undertaken in this determination, we are mindful of SoundExchange's concern that potentially modifying that definition with the preceding term "residential" in current § 382.12 could cause unnecessary confusion. Therefore, the Judges adopt SoundExchange's proposal to delete the definition of "residential" from current § 382.11 and the reference to "residential" in current § 382.12(a).

2. Eliminating the Handwritten Signature Requirement for Statements of Account

SoundExchange proposes that the Judges eliminate a requirement in current § 382.13(e)(3) that the signature on a statement of account be handwritten. *SX PFF* ¶ 901. SoundExchange contends that the current requirement hinders SoundExchange in its ability to automate the process of "ingesting statements of account and reports of use," which would help reduce transaction costs. *Id.* Sirius XM does not appear to oppose the request. Although the Judges rejected such a request in *Webcasting III* due largely to the proposal's inconsistency with certain agreements we adopted in connection with the *Webcasting III* determination,[51] the Judges find no such inconsistency here. *See* Bender WDT at 20–21, SX Trial Ex. 75. In light of desirability of managing administrative costs and the apparent lack of opposition to the proposal, the term is adopted as proposed.[52]

[51] 76 FR at 13045.

[52] SoundExchange also proposes a number of minor technical and conforming changes, which, it represents, are unopposed. *SX PFF* ¶¶ 902–903. Because these proposed changes promote efficiency, the Judges adopt them.

3. Applying Late Fee to Late Statement of Account

SoundExchange proposes to amend the current late fee requirements for statements of account, 37 CFR 382.13(d), by conforming the language to that adopted by the Judges in *Webcasting III*, which SoundExchange contends would eliminate confusion that could result from the current language. *See SX RFF* ¶¶ 360–363. Sirius XM objects to this proposed change arguing that the Judges' justification for adoption of a late fee in *SDARS–I*—to "aid the efficient distribution of royalties"—no longer exists now that Sirius XM is the only SDAR and its statement of account provides no "additional information that would impact SoundExchange's ability to distribute Sirius XM royalties." *Sirius XM PFF* ¶ 449. In addition, Sirius XM proposes that the regulations be amended to "ensure that a single late fee is to be charged in a given reporting period only in the case of a late payment." *Id.*

In adopting a late fee for late statements of accounts in *SDARS–I*, the Judges explained that assessment of an additional late fee for a late statement of account would occur only when the royalty payment and statement of account were submitted separately and both were late; otherwise, a single late fee of 1.5% would cover both the late payment and statement of account when they were submitted together. *See SDARS–I*, 73 FR at 4100. The Judges find nothing in the record before us that would justify a change to this position; therefore, the Judges decline to adopt Sirius XM's proposal. The Judges adopt SoundExchange's proposed language because it eliminates any inconsistency in the current language. The proposed language provides consistency in the late fee provisions applicable to webcasters and the PSS.

VIII. Final Determination

This Final Determination sets rates and terms for Section 112 and Section 114 royalties to be paid by PSS and SDARS for the compulsory ephemeral license and digital performance license, respectively. The Register of Copyrights may review the Judges' final determination for legal error in resolving a material issue of substantive copyright law. The Librarian shall cause the Judges' final determination for the two subject licenses for the period January 1, 2013, through December 31, 2017, and any correction therefor by the Register, to be published in the **Federal Register** no later than the conclusion of the 60-day review period.

So ordered.

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

Richard C. Strasser,
Copyright Royalty Judge.

Dated: February 14, 2013.

Dissenting Opinion of Copyright Royalty Judge Roberts

Judge Roberts, *concurring* with respect to the terms of payment for the PSS and SDARS, and *dissenting* with respect to the analysis and determination of the royalty rates.

I concur with the analysis and determination of the terms for making royalty payments under the statutory licenses at issue in this proceeding, but not the definition of *Gross Revenues* to be applied to SDARS in determining the royalty fee, which I do not consider to be a term of payment.[53] I dissent, however, from the majority's evaluation and analysis of the evidence, and determination of rates for the PSS and SDARS. Rather than engage in a point-by-point discussion and disagreement with the majority's opinion, I set forth below—complete and original to me—what I believe is the proper analysis of the marketplace evidence submitted by the parties for the PSS and SDARS rates, the application of the Section 801(b) factors, and the determination of the rates, including the *Gross Revenues* definition for SDARS.

I. Introduction

A. Subject of the Proceeding

This is a rate determination proceeding convened by the Copyright Royalty Judges under 17 U.S.C. 803(b) *et seq.*, and 37 CFR part 351 *et seq.*, to establish rates and terms for the digital performance of sound recordings by preexisting subscription services ("PSS") and preexisting satellite digital audio radio services ("SDARS") for the license period 2013 through 2017. The Digital Performance Right in Sound Recordings Act of 1995, as amended by the Digital Millennium Copyright Act of 1998, grants to sound recording copyright owners an exclusive right to publicly perform sound recordings by digital audio transmission, subject to the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f)(1) of the Copyright Act. The rates and terms set forth in this Determination are for these statutory licenses.

B. Parties to the Proceeding

The parties to this proceeding are: (1) SoundExchange, Inc. ("SoundExchange"); (2) Music Choice, Inc. ("Music Choice"); and (3) Sirius XM, Inc. ("Sirius XM"). SoundExchange is a Section 501(c)(6) nonprofit

[53] I do concur with the decision to maintain the current definition of *Gross Revenues* for the PSS for the upcoming licensing term.

performance rights organization that collects and distributes royalties payable to performers and sound recording copyright owners for the use of sound recordings over satellite radio, the Internet, wireless networks, and cable and satellite television networks via digital audio transmissions. Bender WDT at 2, SX Trial Ex. 75. Music Choice (formerly Digital Cable Radio Associates) provides residential music service to subscribers of cable television. Del Beccaro Corrected WDT at 3, PSS Trial Ex. 1. Sirius XM provides satellite radio service broadcasts of music and non-music content on a subscription-fee basis throughout the continental United States. Meyer WDT at 4, SXM Dir. Trial Ex. 5.

C. Procedural History

On January 5, 2011, the Copyright Royalty Judges issued a Notice announcing commencement of this proceeding and requesting the submission of Petitions to Participate. 75 FR 455. Petitions to Participate were received and accepted from the above-described parties. When the negotiation period provided by 17 U.S.C. 803(b)(3) failed to yield any agreements, the Judges called for the submission of written direct statements, which were received by the November 29, 2011 deadline. Hearings on the written direct testimony were conducted from June 5, 2012 through June 18, 2012. Eight witnesses presented testimony on behalf of SoundExchange, three on behalf of Music Choice, and nine on behalf of Sirius XM.

On July 2, 2012, the participants filed their written rebuttal statements. Witness testimony in the rebuttal phase began on August 13, 2012, and concluded on August 23, 2012. Nine witnesses presented testimony on behalf of SoundExchange, two on behalf of Music Choice, and five on behalf of Sirius XM. After close of the rebuttal phase, the parties filed their proposed findings of fact and conclusions of law on September 26, 2012, and their reply findings and conclusions on October 12, 2012.

On October 16, 2012, the Judges heard closing arguments, wherein the record to this proceeding was closed. The record contains several thousands of pages of testimony, exhibits, pleadings, motions and orders.

II. The Standard for Determining Royalty Rates

Section 801(b)(1) of the Copyright Act, 17 U.S.C., provides that the Copyright Royalty Judges shall "make determinations and adjustments of reasonable terms and rates of royalty payments" for the statutory licenses set forth in Sections 114(f)(1) and 112(e). The Section 114(f)(1) digital performance license for the PSS and SDARS, and the Section 112(e) ephemeral license, contain similarities and important differences in their standards for setting royalty rates. Both require the determination of reasonable rates and terms; however, the digital performance license, in Section 801(b)(1), requires that the rates (but not the terms) be calculated to achieve the following objectives:

- To maximize the availability of creative works to the public.
- To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.
- To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.
- To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 801(b)(1). The Section 112(e) ephemeral license requires the Judges to "establish rates that most clearly represent the fees that would have been negotiated between a willing buyer and a willing seller." and further directs that:

- [T]he Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—
  - whether use of the service may substitute for or may promote the sale of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue; and
  - the relative roles of the copyright owner and the transmitting organization in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

17 U.S.C. 112(e)(4). The ephemeral license requires adoption of a minimum fee for each type of service offered by a transmitting organization, while the digital performance license does not. 17 U.S.C. 112(e)(3). Both licenses provide that the Judges *may* consider the rates and terms of voluntary license agreements negotiated under the licenses. 17 U.S.C. 112(e)(4), 114(f)(1).

It is evident from the presentations of the parties that it is the Section 114(f)(1) license that is of the greater value and concern to their interests, as it was when the Judges last considered the two licenses in 2007. In that Determination, the Judges set forth in great detail the historical treatment of these factors by the Copyright Royalty Tribunal and the Librarian of Congress in his administration of the Copyright Arbitration Royalty Panel system, and I will not repeat them here. *See, SDARS–I*, 73 FR 4080, 4082–84 (Jan. 24, 2008). Consideration of this history produced the following approach:

> [T]he path for the Copyright Royalty Judges is well laid out. We shall adopt reasonable royalty rates that satisfy all of the objectives set forth in Section 801(b)(1)(A)–(D). In doing so, we begin with a consideration and analysis of the benchmarks and testimony submitted by the parties, and then measure the rate or rates yielded by that process against the statutory objectives to reach our decision * * *.
>
> We reject the notion, however, that Section 801(b)(1) is a beauty pageant where each factor is a stage of competition to be evaluated individually to determine the stage winner and the results aggregated to determine an overall winner. Neither the Copyright Royalty Tribunal nor the Librarian of Congress adopted such an approach. Rather, the issue at hand is whether these policy objectives weigh in favor of divergence from the results indicated by the benchmark marketplace evidence.

Id. at 4084, 4094 (citations omitted). The same approach was used by the Judges in determining royalty rates for the Section 115 mechanical license, the only proceeding involving the Section 801(b)(1) factors decided since *SDARS–I. See, Phonorecords I*, 74 FR 4510 (Jan. 26, 2009). None of the parties in this proceeding contend that this approach is erroneous or must be abandoned.

Music Choice, however, argues that there is an additional factor that must be considered by the Judges, applicable only to the PSS rate, that operates as a limitation on the Judges' consideration of the benchmark evidence. After a lengthy discussion of the Librarian of Congress's *PSS–I* determination, and citation to the 17 U.S.C. 803(a)(1) proscription that the Judges must act on the basis of prior determinations of the Librarian of Congress, Music Choice contends that the Librarian's use of the musical works benchmark (i.e., the royalty rates paid by Music Choice to the performing rights societies—ASCAP, BMI and SESAC) in 1998 operates as legal precedent in this proceeding and must "be used in the absence of any better comparable benchmark." *Music Choice PCL* ¶ 53. Thus, under Music Choice's formulation, the Judges' benchmark analysis must begin with the current royalty fees paid by Music

Choice to the performing rights societies musical works and, in the absence of a superior benchmark, employ this benchmark for framing the applicable PSS royalty fee.

I reject Music Choice's argument for several reasons. First, Music Choice does not, and cannot, point to a single statutory license rate proceeding where a court, the Librarian or the Copyright Royalty Tribunal has ruled that a set of factual marketplace observations used by the decisionmaker in formulating a royalty fee for a particular proceeding must be given *a priori* consideration in a future proceeding. Second, a plain reading of *PSS–I* makes it clear that the Librarian did not rely solely upon the musical works benchmark, but instead relied upon some unspecified combination of that benchmark and the performance royalty rate contained in a partnership agreement between Music Choice and certain cable television operators and record companies that created Music Choice. *PSS–I*, 63 FR at 25410. Even if I were inclined to accord some precedential value to the musical works benchmark in this proceeding—and I am not—I could not discern the degree to which that benchmark was influenced or altered by the Librarian's inclusion of the partnership license. *Id.* at 25404 ("The question, however, is whether this reference point [the musical works fees paid by Music Choice] is determinative of the marketplace value of the performance right in sound recordings; and, as the Panel determined, the answer is no."). And, third, Music Choice's argument fails to place the *PSS–I* decision in its historical context. All that was available to the Librarian were the musical works fees paid to the performing rights societies and the partnership license agreement, an unsurprising circumstance given the newness of the statutory license, and the digital music marketplace in general. Concluding that selection of a factual market model from 1998 somehow limits the decisionmakers' consideration of the evidence in 2012 defies logic. I consider the musical works benchmark evidence offered by Music Choice in its normal course, discussed below, but it will not be given preference as a starting point, default position, or other limitation to my evaluation of the benchmark evidence.

III. Determination of the Royalty Rates

A. Application of Section 114 and Section 112

Based upon the applicable law and relevant evidence received in this proceeding, the Copyright Royalty Judges must determine rates for the Section 114(f)(1) digital performance license for the only existing SDARS, Sirius XM, and the PSS.[54] The Judges also must determine rates for the Section 112(e) ephemeral license for the PSS and SDARS.

With respect to the Section 112(e) license, the Judges received a joint stipulation from the parties. SoundExchange and Music Choice ask for continued application of the language of 37 CFR 382.2(c), which requires a minimum fee advance payment of $100,000 per year, payable no later than January 20 of each year, with royalties paid during the year recoupable against the advance. *Joint Stipulation* at 2 (May 25, 2012). SoundExchange and Sirius XM ask that the same minimum fee proposal apply to Sirius XM. *Id.* For the Section 112(e) license fee, all parties request that 5% of the total royalties paid by the PSS and Sirius XM be attributable to the license, consistent with the current regulations applicable to webcasters, broadcasters, SDARS and new subscription services. 37 CFR 380.3, 380.12, 380.22; 382.12; and 383.3.

I accept the stipulations of the parties regarding the Section 112(e) rates, but not for the reason set forth by the majority (i.e., nothing else in the record). The stipulations in this proceeding and, for that matter, in prior proceedings involving the Section 112(e) license, reflect the lack of marketplace evidence as to the value of the license in isolation from that of Section 114. This does not mean, however, that the Section 112(e) license is of no value because marketplace agreements package the rights conferred by the licenses together. The parties' stipulations represent a reasonable attempt to identify the value of the Section 112(e) license if it were marketed separately to copyright users, and for that reason I find the stipulations acceptable.

I now turn to what I view should be the appropriate rate structures for the Section 114(f)(1) license for the PSS and SDARS.

B. The Rate Proposals of the Parties for the Section 114 License for the PSS

Since 1998 when the decision in *PSS–I* established the initial royalty rates, Music Choice has paid a fee on a percentage basis of its *Gross Revenues*, as defined by regulation.[55] Neither Music Choice nor SoundExchange propose altering this rate structure for the 2013–2017 license period,[56] nor do they propose changes to the revenue definition. SoundExchange requests the following percentage rates for the PSS: for 2013: 15%; for 2014: 20%; for 2015: 25%; for 2016: 35%; and for 2017: 45%. *Second Revised Proposed Rates and Terms*, at 6 (Sept. 26, 2012). SoundExchange also requests an additional aspect to the percentage of revenue metric to address what it perceives as a deliberate reduction in revenues paid to Music Choice for its residential audio service by certain cable operators that are co-owners (partners) of Music Choice. For transmissions through such a partner, SoundExchange asks that the total royalty fee not be less than the product of multiplying such partner's total number of subscribers to Music Choice's programming by the average per-subscriber royalty payment that Music Choice makes for the top five highest-paying customers of Music Choice that are not its partners. *Id.* at 7.

Music Choice requests a percentage of *Gross Revenues* of 2.6%, applicable to each of the years in the licensing period.[57] Both SoundExchange and Music Choice ask that the definition of *Gross Revenues*, currently set forth in 37 CFR 382.2(e), apply to the new licensing period.

C. The Rate Proposals of the Parties for the Section 114 License for SDARS

1. Proposed Rates and Structure

While SoundExchange and Music Choice are content to operate mostly the same as in prior licensing periods (with the exception of royalty rates), there is not a similar level of harmony as to the specifics of the rate structure for SDARS. SoundExchange does recommend retention of the percentage

[54] The PSS are Music Choice and Muzak. Muzak's PSS service is, apparently, only a small part of its business, and it did not participate in this proceeding. Digital Music Express, Inc., which was a PSS in *PSS–I*, ceased operation in 2000.

[55] The current regulation defining *Gross Revenues* for PSS is set forth in 37 CFR 382.2(e).

[56] The Judges have stated a decided preference for per-performance royalty rates for statutory licenses, rather than rates as a percentage of revenue, because that metric most unambiguously relates the fee to the value of the right licensed. 73 FR at 4087. We adopted percentage-of-revenue royalty rates in *SDARS–I*, however, because of intractable problems associated with measuring usage and listenership to performances of sound recordings. *Id.* at 4088. These problems continue to exist with respect to the PSS and SDARS, and the parties agree to a percentage-of-revenue royalty fee for both Section 114 licenses. Given their agreement, and lack of evidence as to an alternative, I adopt that metric.

[57] I note that these percentage rates are quite similar to the maximum rates proposed by the services and record company copyright owners in *PSS–I*. *See PSS–I*, 63 FR 25394, 25395 (May 8, 1998)(2.0% by the services and 41.5% by the record companies).

of revenue metric, but seeks expansion of the revenue base, and proposes a methodology for exclusion of the value of privately negotiated digital performance licenses from the total statutory royalty fee. *Second Revised Proposed Rates and Terms* at 3–5 (Sept. 26, 2012). Sirius XM favors maintenance of the current revenue definition and payment scheme. *Sirius XM PFF* at 203–204.

As with the PSS, SoundExchange argues for an accelerating royalty rate during the five-year license period as follows: for 2013: 12%; for 2014: 14%; for 2015: 16%; for 2016: 18%; and for 2017: 20%. *Second Revised Proposed Rates and Terms*, at 2 (Sept. 26, 2012). Sirius XM counters with a royalty rate in the range of 5% to 7% of Sirius XM's monthly *Gross Revenues*, as currently defined in 37 CFR 382.11, applicable to each month of the upcoming licensing period.

2. Proposed Definition of *Gross Revenues*

The revenue base against which the adopted royalty rates shall be applied is a matter of considerable disagreement between the parties. Sirius XM requests continuance of the current definition of *Gross Revenues* found in 37 CFR 382.11, while SoundExchange favors a considerable expansion of the revenue base. SoundExchange would like to see *Gross Revenues* redefined as follows:

1. *Gross Revenues* shall mean revenues recognized by the Licensee in accordance with GAAP from the operation of an SDARS in the U.S., and shall be comprised of the following:

i. All subscription, activation, subscription-related and other revenues recognized by Licensee from fees paid or payable by or for U.S. subscribers to Licensee's SDARS with respect to any and all services provided by the Licensee to such subscribers, unless excluded by paragraph 3 below;

ii. Licensee's advertising revenues, or other revenues from sponsors, if any, attributable to advertising on channels of Licensee's SDARS in the U.S. other than those that use only incidental performances of sound recordings, less advertising agency and sales commissions attributable to advertising revenues included in *Gross Revenues;* and

iii. Revenues attributable to the sale, lease or other distribution of equipment and/or other technology for use by U.S. subscribers to receive or play the SDARS service, including any shipping and handling fees therefor.

2. Gross revenues shall include such payments as set forth in paragraphs 1.i through iii of the definition of "Gross Revenues" to which Licensee is entitled but which are paid to a parent, subsidiary or division of Licensee.

3. To the extent otherwise included by paragraph 1, *Gross Revenues* shall exclude:

i. Royalties paid to Licensee by persons other than subscribers, advertisers and sponsors for intellectual property rights;

ii. Revenues from the sale of phonorecords and digital phonorecord deliveries sold by Licensee (but not any affiliate fees or other payments by a third party for advertising of downloads sold by a third party);

iii. Sales and use taxes;

iv. Revenues recognized by Licensee for the provision of—

A. Data services (e.g. weather, traffic, destination information, messaging, sports scores, stock ticker information, extended program associated data, video and photographic images, and such other telematics and/or data services as may exist from time to time, but not transmission of sound recording data), when such services are provided on a standalone basis (i.e. priced separately from Licensee's SDARS, and offered at the same price both to subscribers to Licensee's SDARS and persons who are not subscribers to Licensee's SDARS);

B. Channels, programming, products and/or other services provided outside of the United States; and

C. Separately licensed services, including webcasting, interactive services, transmissions to business establishments, and audio services bundled with television programming and subject to the rates provided in part 383, when such services are provided on a standalone basis (i.e. priced separately from Licensee's SDARS; and offered at the same price both to subscribers to Licensee's SDARS and persons who are not subscribers to Licensee's SDARS).

Id. at 2–3.

Jonathan Bender, CEO of SoundExchange, testified that the proposed definition will correct the inequities of the current definition and, at the same time, allow for greater ease of administration. His premise is based upon an interpretation of the Judges' use in *SDARS–I* of Dr. Ordover's adjusted interactive subscription service benchmark to establish the upper boundary of reasonable royalty rates for an SDARS service. *SDARS–I*, 73 FR at 4093. The use of that benchmark, in Mr. Bender's view, demonstrates an intention of the Judges to use total subscription revenue as the base against which the royalty rates should apply. Bender WDT at 6, SX Trial Ex. 75. Applying this assumption to the revenues reported by Sirius XM from 2007 through the third quarter of –2011, Mr. Bender concludes that Sirius XM has paid roughly 16%–23% less in total royalty fees than intended. Bender WDT at 6–7, SX Trial Ex. 75.

SoundExchange targets for elimination several exclusions from *Gross Revenues* permitted under the current regulations. The first is paragraph (3)(vi)(B) of the current definition, which allows Sirius XM to deduct revenues received for "channels, programming products and/or services offered for a separate charge where such channels use only incidental performances of sound recordings." 37 CFR 382.11. This exclusion does not make sense for the new licensing period, according to SoundExchange, because the rates proposed by Dr. Ordover on behalf of SoundExchange *and* Dr. Noll on behalf of Sirius XM reflect that roughly half of the value of SiriusXM's SDARS service is derived from its music programming and roughly half from its non-music programming. The exclusion for non-music programming is, therefore, built into the rates and should not be double counted in revenue. *SX PFF* at 383 (¶ 838). Further, SoundExchange charges that exclusion from revenue of non-music channels encourages manipulation to reduce the royalty base in unprincipled ways. For example, Sirius XM could disaggregate its bundled subscription price of $14.49 per month into a music package valued at $3.00 and a non-music package valued at $11.49. Sirius XM would not recognize any additional revenues from the separate packages, but could realize substantial reductions in royalty obligation. *SX PFF* at 387 (¶ 854). SoundExchange urges the Judges to prevent such arbitrary actions from occurring.

SoundExchange also submits that paragraph (3)(vi)(D) of the current definition should be eliminated. That paragraph allows for deduction of revenues received from channels and programming that are licensed outside the Sections 112 and 114 licenses. 37 CFR.382.11. Dr. Lys testified that Sirius XM excludes roughly between 10% and 15% of its subscription revenue from the royalty base for performances of pre-1972 recordings to its subscribers, thereby reducing its royalty obligation. Lys WRT at 54 (¶ 119), SX Trial Ex. 240. Yet, Sirius XM has not disclosed the process it uses to identify pre-1972 recordings, or how it calculates the deduction it takes.

SoundExchange's proposed *Gross Revenues* definition also eliminates five other exclusions permissible under the current regulations. First, under its proposed definition, revenues received from Sirius XM's webcasting service, which are currently linked to the SDARS satellite radio subscription, would come into the SDARS revenue base. Second, data services, such as Sirius XM's weather and traffic services which can be purchased on a stand-alone basis but are more commonly offered to SDARS subscribers at a discount, would be included in the revenue base. Third, revenue

attributable to equipment sales or leases used to receive or play the SDARS service, would be included. Fourth, the current exclusions for credit card fees and bad debt expense would be eliminated. And, fifth, fees collected by Sirius XM for various activities related to customer account administration, such as activation fees, invoice fees, swap fees, and in certain cases early termination fees, would be included in the revenue base. According to Sirius XM, the elimination of these deductions would, in total and based upon 2012 estimates, expand its annual revenue base, against which royalties are calculated, by over $300 million. Frear Revised WRT at ¶ 16, SX Reb. Trial Ex. 1.

3. Analysis and Conclusions

In *SDARS–I*, the parties were at loggerheads over the definition of revenue, with SoundExchange favoring an expansive reading to include "all revenue paid or payable to an SDARS service that arise from the operation of an SDARS service," SoundExchange Third Amended Rate Proposal (Aug. 6, 2007) at section 38_.2(g), and the SDARS arguing for adoption of the existing *Gross Revenues* definition for PSS. XM Rate Proposal (Jan. 17, 2007) at section 26_.2(d); Sirius Rate Proposal (Jan. 17, 2007) at section 26_.2(d). With one exception, the Judges adopted the SDARS proposal. *See SDARS–I*, 73 FR 4080, 4087 (Jan. 24, 2008). SoundExchange's new proposal is again a request for an expansive reading of revenue. Its effort to respond to the Judges' criticism of its *SDARS–I* proposal as possessing "scant evidentiary support," is an attempt to demonstrate how Sirius XM has under-reported revenue in the current licensing period by applying a slanted interpretation of the *SDARS–I* decision. Alternatively, it is an attempt to demonstrate how Sirius XM might manipulate its revenue base to lower its royalty obligation. With the exception of revenue exclusions for privately licensed and pre-1972 sound recordings discussed, *infra*, both of SoundExchange's arguments lack merit.[58]

Mr. Bender's argument that Sirius XM has paid roughly 16%–23% less in royalties in the current license period than was intended by the Judges in *SDARS–I* is dependent upon the assumption that there is a direct link between the revenue definition and the adjusted interactive subscription service benchmark presented by SoundExchange's expert economist, Dr. Janusz Ordover. His reasoning is that because the Ordover benchmark was fashioned from interactive service license agreements that generally provided for inclusion of mostly all of subscriber revenue, it must be the case that the Judges intended the *SDARS–I* rates to apply to total subscription revenues. Bender WDT at 6–7, SX Trial Ex. 75. This presumed linkage between the benchmark and the revenue definition is not supported by the *SDARS–I* decision. The Judges never expressed an intention to adopt the revenue definitions contained in the subscription service license agreements used by Dr. Ordover; to the contrary, the *Gross Revenues* definition adopted in *SDARS–I* was quite different from those contained in the license agreements on the whole. Rather, in defining revenue, the Judges plainly stated that it was their intention to unambiguously relate the fee charged for a service provided by an SDARS to the value of the sound recording performance rights covered by the statutory licenses. *SDARS–I*, 73 FR at 4087. This is especially important where, as here, a proxy for use of sound recordings must be adopted because technological impediments do not permit implementation of a per-performance fee. The license agreements used in the Ordover benchmark do not provide for this connection between revenue and value under the statutory licenses, which is not surprising given that the interactive service license agreements conveyed rights beyond those granted by the Section 114 license. In sum, Mr. Bender's perceived linkage between the revenue definition and the Ordover benchmark favoring inclusion of total subscriber revenues is simply not there.

In the alternative, SoundExchange argues that an expansive revenue base is easier to administer and reduces the chances for manipulation. Dr. Lys testified that, from an accounting perspective, it is preferable to base contracts on a financial definition that is clear-cut to administer and easy to audit, and that a revenue definition that is all-inclusive satisfies this preference. Lys WRT at 54 (¶ 117), SX Trial Ex. 240. While this may be true, *SDARS–I* included only those revenues related to the value of the sound recording performance rights at issue in the proceeding. *SDARS–I*, 73 FR at 4087. I am satisfied that the exclusions permitted in the current definition of *Gross Revenues* remain proper. However, if evidence were presented to conclusively demonstrate that one or more of the exclusions produces or results in a manipulation of fees for the sole purpose of reducing or avoiding Sirius XM's statutory royalty obligation, then an amendment or elimination of the exclusion might be appropriate. SoundExchange has failed to meet this burden and has only offered speculation as to how Sirius XM *might* engage in revenue allocation to reduce its royalty obligation. With the exception of the exclusions for directly licensed and noncompensable sound recordings discussed *infra*, SoundExchange has failed to present persuasive evidence that any of the remaining exclusions it has targeted for elimination (fees received for non-music services,[59] webcasting, data services, equipment sales, credit card fees and bad debt expenses, and customer account fees) have, in fact, been abused or otherwise manipulated for the sole purpose of improperly reducing Sirius XM's statutory royalty obligations.

4. Deductions for Directly Licensed and Pre-1972 Recordings

Separate from the issue of exclusions from the *Gross Revenues* definition addressed above, I consider the impact to the royalty calculus of the performance by Sirius XM of sound recordings that it has directly licensed from record labels (and, therefore, does not rely upon the licenses offered by Sections 112 and 114), and the performance of sound recordings not compensable under the Copyright Act (i.e. pre-1972 recordings).

[58] Curiously, SoundExchange does not argue for expansion of the *Gross Revenues* definition for PSS, a definition which has existed since the first royalty term for the PSS digital performance license. If SoundExchange's broadened revenue definition for SDARS were acceptable, it would result in the two types of services licensed under Section 114(f)(1) calculating their royalties against radically different revenue bases.

[59] In *SDARS–I*, the Judges expressly recognized an exclusion from *Gross Revenues* for so-called non-music services, characterized as "channels, programming, products and/or other services offered for a separate charge where such channels use only incidental performances of sound recordings." *SDARS–I*, 73 FR 4102 (*citing* 37 CFR 382.11, definition of *Gross Revenues*). The Judges did this because the exclusion "unambiguously relat[ed] the fee to the value of the sound recording performance rights at issue * * *." *Id.* at 4088. SoundExchange argues that if the exclusion is allowed to continue, it will amount to a double deduction from Sirius XM's royalty obligation because Dr. Ordover's marketplace benchmarks exclude the value of non-music services, and Dr. Noll adjusted his proferred benchmarks to account for the fact that roughly half of Sirius XM's service is non-music. *SX PFF* ¶¶ 842–846. I agree with Sirius XM's counter argument that Dr. Ordover's modeling allocated revenues for both the music and non-music programming for Sirius XM's standard "Select" package, "but that allocation in no way relates to the separately priced non-music packages offered by Sirius XM that are the subject of the exemption." *Sirius XM RFF* ¶ 167. The exemption, however, should be available only to the extent that the channels, programming, products and/or other services are offered for a separate charge.

a. Directly Licensed Recordings

Both the Section 112 and Section 114 licenses recognize and permit the licensing of sound recordings through private negotiation. 17 U.S.C. 112(e)(5), 114(f)(3). The parties concede, as they must, that directly licensed recordings are separate from those covered by the statutory licenses. At the outset, the parties did not address the treatment of such recordings in the context of this proceeding, presumably because they comprised only a small percentage of the total recordings performed by Sirius XM in a given period. However, due to the increasing instances of directly licensed recordings as a result of Sirius XM's Direct Licensing Initiative, discussed *infra*, proposals were submitted and amended up until the closing of the record. Sirius XM contends that a deduction from *Gross Revenues* is necessary for directly licensed recordings; otherwise, a double payment would occur for performances of these works. *Sirius XM PFF* ¶ 425; *Proposed Rates and Terms of Sirius XM Radio, Inc.* at 3 (Sept. 26, 2012). SoundExchange acknowledges that directly licensed recordings must be accounted for, but resists a deduction from *Gross Revenues*. Instead, it proposes that the payable statutory royalty amount be determined by reducing the product of the royalty rate times Gross Revenues by a percentage approximating the value of the directly licensed usage. *Second Revised Proposed Rates and Terms*, at 4 (Sept. 26, 2012). To determine the share of performances attributable to direct licenses, SoundExchange recommends using data from Sirius XM's Internet webcasting service for music. The following calculation would then be made:

- For each month, identify the Internet webcast channels offered by the Licensee that directly correspond to music channels offered on its SDARS that are capable of being received on all models of Sirius radio, all models of XM radio, or both (the "Reference Channels").[60]
- For each month, divide the Internet performances of directly licensed recordings on the Reference Channels by the total number of Internet performances of all recordings on the Reference Channels to determine the Direct Licensing Share.

Id. at 4–5. SoundExchange requests that, if its approach is adopted, Sirius XM be required to notify SoundExchange monthly of each copyright owner from which Sirius XM claims to have a direct license and each sound recording Sirius XM claims to be excludable. SoundExchange would then be permitted to disclose this information to confirm whether the direct license exists and the claimed sound recordings are properly excludable.

Directly licensed recordings should not be a part of the calculus in determining the monthly statutory royalty obligation. To do otherwise would effectively result in a double payment for the directly licensed recordings and would discourage, if not altogether eliminate, the incentive to enter into such private licenses, contrary to Section 114 which recognizes, if not encourages, private licenses. 17 U.S.C. 114(f)(1)(B). I am not persuaded, however, by Sirius XM's position that the exclusion of directly licensed recordings should be from *Gross Revenues*, as opposed to a deduction from the total royalty obligation. As Mr. Bender correctly points out, there is no revenue recognition associated with directly licensed recordings; it is a cost to Sirius XM. Bender WRT at 3, SX Trial Ex. 239. Sirius XM has not presented a *revenue* allocation between directly licensed and statutory licensed recordings that it performs on its SDARS service; it has presented a *usage* deduction that it seeks to apply to its revenue base. Excluding usage of sound recordings from *Gross Revenues* would not comport with the Judges' approach in *SDARS–I* of unambiguously relating fees received by Sirius XM to the value of the sound recording performance rights at issue in this proceeding.

I am persuaded that the proposed methodology of SoundExchange to calculate the royalty deduction for directly licensed recordings (i.e., the "Direct License Share") is the superior approach to allowing Sirius XM to determine the percentage reduction based upon the number of plays of directly licensed recordings to total plays. Despite my request, Sirius XM and its contractor, Music Reports, Inc., were incapable of providing accurate data as to the identity and volume of directly licensed recordings on the SDARS service. *See, SX PFF* at 399–400. Reasonable accuracy and transparency are required for calculation of the Direct License Share, and SoundExchange has demonstrated that its proposed use of the Sirius XM webcasting service better satisfies these requirements. Use of the webcasting service also better ties the value of the sound recordings used, by measuring the listenership for each performance, than Sirius XM's proposal for measuring only individual plays.

b. Pre-1972 Recordings

The performance right granted by the copyright laws for sound recordings applies only to those recordings created on or after February 15, 1972. *Sound Recording Amendment*, Public Law 92–140, 85 Stat. 391 (1971). Sirius XM makes performances of pre-1972 recordings on its SDARS service and, in the present license period, excludes a percentage of revenues from its Gross Revenues calculation for such use. The current *Gross Revenues* definition does not expressly recognize such an exclusion, which is not surprising given that there is no revenue recognition for the performance of pre-1972 works. In taking the exclusion, Sirius XM apparently relies upon paragraph (3)(vi)(D) of the *Gross Revenues* definition which permits exclusion of revenue for programming exempt from any license requirement. Dr. Lys testified that the deduction is between 10% and 15% of subscription revenue, a figure that was not disputed by Sirius XM. Lys WRT at 54, SX Trial Ex. 240. Sirius XM requests that the Judges amend paragraph (3)(vi)(D) to provide that its "monthly royalty fee shall be calculated by reducing the payment otherwise due by the percentage of Licensee's total transmission of sound recordings during the month that are exempt from any license requirement or separately licensed." *Proposed Rates and Terms of Sirius XM Radio Inc.* at 3 (Sept. 26, 2012).[61]

As with directly licensed works, pre-1972 recordings are not licensed under the statutory royalty regime and should not factor into determining the statutory royalty obligation. But, for the same reasons described above, revenue exclusion is not the proper means for addressing pre-1972 recordings. Rather, the proper approach is deduction from the total royalty obligation to account for performances of pre-1972 recordings. The question then remains as to how the correct deduction should be calculated. Sirius XM did not offer any testimony as to how it calculated its current deduction, or how it identified what recordings performed were pre-1972, other than the obtuse assertion of Mr. Frear that the lawyers talked to the finance team to assure a proper deduction. 8/13/12 Tr. 3125:3–3126:3 (Frear). To be allowable, a deduction for pre-1972 recordings must be relatively precise and the methodology transparent. The same methodology applied to determining the Direct License Share—utilizing the Sirius XM

[60] SoundExchange conditions the availability of its approach on the presumption that the music channels on the Internet service remain representative of the music channels offered on the SDARS service.

[61] This is the same language that Sirius XM proposes also be applicable to directly licensed sound recordings.

webcasting—is appropriate to identify pre-1972 recordings.

D. The Section 114 Royalty Rates for PSS

Chapter 8 and Section 114(f)(1) of the Copyright Act require the Judges to determine reasonable rates and terms of royalty payments for the digital performance of sound recordings. The rates the Judges establish under Section 114(f)(1) must be calculated to achieve the objectives set forth in Section 801(b)(1)(A) through (D) of the Act. Moreover, in establishing rates and terms the Judges may consider voluntary license agreements described in Section 114(f)(1)(B).

As the Judges have done in prior rate proceedings where the determination standard is reasonable rates calculated to achieve the Section 801(b)(1) factors, consideration of marketplace benchmarks is a useful starting point. *SDARS–I*, 73 FR 4080, 4088 (Jan. 24, 2008); *Phonorecords I*, 74 FR 4510, 4517 (Jan. 26, 2009). As discussed below, the parties disagree about what constitutes the most appropriate benchmark to guide the Judges in determining a reasonable rate. Unfortunately, there are no voluntary license agreements negotiated under Section 114(f)(1)(B) for the Judges to consider, which is not surprising considering that Music Choice is the primary PSS service that continues to operate under the statutory license. Moreover, the benchmarks offered by the parties are not for similar products drawn from a marketplace in which buyers and sellers are similarly situated. I describe and discuss them below.

1. PSS Proposed Benchmarks

a. Proposed Musical Works Benchmark

As previously discussed, Music Choice argues that the annual royalties it pays to the three performing rights societies (ASCAP, BMI, and SESAC) for the right to perform musical works to subscribers of its residential audio service is, by virtue of the Librarian's determination in *PSS–I*, a precedential benchmark that establishes the upper boundary of reasonable rates in this proceeding. Although this contention has been rejected, *supra*, Music Choice offers the testimony of Mr. Del Beccaro and Dr. Crawford as corroborative of its position that the market for licensing the performance right in musical works is the most appropriate benchmark for establishing rates in this proceeding.

Music Choice pays 2.5% of revenue each to ASCAP and BMI and pays an annual flat fee to SESAC that amounts to approximately [REDACTED] of net revenue. Del Beccaro Corrected WDT at 21–22, MC 17, MC 18 and MC 19, PSS Trial Ex. 1. The sum of those licenses amounts to [REDACTED], which Music Choice submits should represent the upper bound of a reasonable royalty rate. Two pieces of evidence, in Music Choice's view, corroborate the use of musical works licensing as a benchmark. First, Music Choice observes an equivalence between the fees for the performance of sound recordings and musical works in Canada and Europe. Music Choice cites four decisions of the Canadian Copyright Board, involving licensing fees for commercial radio, cable television, satellite music services and radio services of the Canadian Broadcasting Corporation, wherein the Board found that royalty rates for sound recordings and musical compositions have equivalent value. Del Beccaro Corrected WDT at MC 6 at 30–33 (commercial radio), MC 7 at 14 (cable television), MC 8 at 50, 58 (satellite music services), MC 9 at 4, 6, 15, 17, 30 (CBC radio services), PSS Trial Ex. 1. SoundExchange's expert economist, Dr. George Ford, who recently submitted testimony before the Canadian Copyright Board, acknowledges that in Canada the musical composition and sound recording performance royalties are equal. 8/21/12 Tr. 4304:5–22 (Ford). In the United Kingdom, the sound recording performance royalty rates for commercial broadcasting services are less than those for the musical composition performance rights. Del Beccaro Corrected WDT at MC 11, PSS Trial Ex. 1. If Music Choice's service were transmitted through cable in the U.K., Music Choice would pay 5.25% of 85% of gross revenues for the musical works performance right, but would pay only 5% of 85% of gross revenues for the sound recording performance right. *Id.*

The second piece of evidence to corroborate use of the musical works rate as a benchmark is an economic model called the Asymmetric Nash Bargaining Framework (referred to as the "Nash Framework") offered by Dr. Crawford. Acknowledging that a perfect benchmark does not exist to determine the PSS sound recording performance rate, Dr. Crawford uses the Nash Framework to fashion solutions to bargaining problems between bilateral monopolists, in this case record labels on the one hand and PSS providers on the other. Crawford Corrected WDT at 12, PSS Trial Ex. 4. As a non-cooperative bargaining model, the Nash Framework is designed to yield predictions about how outcomes are determined when firms negotiate; that is, how two firms would split the surplus of their interaction (i.e., revenues over costs) in a hypothetical negotiation. *Id.* at 16. Three factors (the Nash factors) are analyzed to determine the split: (1) the combined agreement surplus; (2) each firm's threat point; and (3) each firm's bargaining power. *Id.* According to Dr. Crawford, the Nash factors determine sound recording performance royalties in the following way: "The royalty received by each firm in a bargain equals its threat point plus its bargaining power times the incremental surplus." *Id.* at 17. In other words, the combined agreement surplus and threat points determine the "size of the pie," while the bargaining power determines the "split of the pie."

Dr. Crawford's stated goal in applying the Nash Framework is to first establish the Nash factors for the hypothetical market (the sale of rights between one record company and one PSS provider) and compare them to the Nash factors in the actual musical works market (the sale of rights between the three performing rights societies and one PSS provider). *Id.* at 18. In the hypothetical market, Dr. Crawford determined that the threat point for the PSS provider is zero because in the absence of an agreement, it cannot offer music and therefore cannot earn a surplus. *Id.* at 19. He determines, however, that the threat point for a record company is negative because the failure to reach an agreement has additional implications for the record company in other, non-PSS markets. Specifically, the failure to reach an agreement with the PSS provider would have substantial adverse impacts on the record company, such as on sales of compact disks, because there is a significant promotional benefit to the record company from the PSS provider. *Id.* To support this contention, Music Choice offers the testimony of Damon Williams, who testified that record company executives consider Music Choice promotional and provide artists with greater exposure. Williams WDT at 4–11, MC 28, 29, 32, PSS Trial Ex. 3. Mr. Williams offers examples of how Music Choice conducts custom promotions for artists, *id.* at 13–20, and points to a 2005 Arbitron survey in particular that he argues confirms that Music Choice's residential audio service sells records. *Id.* at 13.[62] And Mr. Williams argues that Music Choice has become more promotional since the *PSS–I* proceeding by virtue of the fact

[62] He also cites a 2008 survey by OTX, a 2012 survey by Experian Simmons, a 2004 Arbitron survey, a 2011 Ipsos OTX MediaCT survey, and a 2006 Sony BMG MusicLab survey.

that it currently reaches more customers with more channels. *Id.* at 24.

With respect to the last Nash factor, bargaining power, Dr. Crawford assumes it to be neutral, based upon Music Choice's existing technology platform and contract, which cannot be easily replaced or replicated, and his observations of Music Choice's bargaining efforts for sound recording performance rights with respect to music videos. Crawford Corrected WDT at 15–16, PSS Trial Ex. 4.

Applying the Nash factors to the existing market for the PSS musical works performance right, Dr. Crawford determines that the threat point for a PSS provider is again zero, and is again negative for the performing rights society (ASCAP, BMI or SESAC) because the loss of promotional value from the PSS provider produces loss of profits from other markets. *Id.* at 28. Dr. Crawford again assumes equal bargaining power between the PSS provider and the performing rights society, based largely upon his observations that the two possess equal patience in their negotiations. *Id.* at 29. This results in a 50/50 split of the surplus, the same conclusion he reached with respect to the hypothetical market. Because of the similarities between the Nash factors in the hypothetical market and the market for musical works, Dr. Crawford concludes that the musical works market makes for a good benchmark for the hypothetical sound recording performance right market at issue in this proceeding. *Id.* at 30.[63]

b. Proposed Alternative Surplus Splitting Analysis

As an alternative, Dr. Crawford provided a surplus splitting analysis to corroborate the reasonableness of Music Choice's rate proposal by using financial results to construct an estimate of the profits that would be shared in a royalty payment. Crawford Corrected WDT at 43, PSS Trial Ex. 4. Dr. Crawford adjusted Music Choice's 2006–2010 operating profit to remove the actual royalty paid by Music Choice for sound recording performance rights, and then applied a capital asset pricing model [64] to derive an expected rate of return on assets of 8.33%. Crawford Corrected WDT at Appendix B.4, PSS Trial Ex. 4. He then multiplied the 8.33% rate by Music Choice's average operating assets to determine cost of capital, and then subtracted cost of capital from the royalty-adjusted operating profits to derive the residual profits for each year. *Id.* at 47. This showed that Music Choice's cumulative returns in excess of its cost of capital, but before payment of sound recording royalties, amounts to 3.05% of Music Choice's 2006–2010 royalties. *Id.* A 50/50 split of this surplus results in a royalty payment of 1.52% of residential audio revenues. *Id.* at 48. He then applied a range of 20% to 80% of the expected surplus to determine a range of reasonable royalties from 0.61% to 2.43%, not to exceed the 3.05% expected surplus. *Id.*

2. SoundExchange Proposed Benchmarks

SoundExchange does not offer a single market benchmark to set the royalty rates to be paid by Music Choice for the sound recording performance right, and instead offers rates from over 2,000 marketplace agreements, representing a variety of rights licensed, in an effort to frame a zone of reasonable rates. Dr. Ford observes that PSS like Music Choice have certain distinctive features that make it difficult to identify a suitable benchmark market. Ford Second Corrected WDT at 12, SX Trial Ex. 79. First, Music Choice does not sell its service directly to subscribers, but rather to cable television operators who then bundle the Music Choice programming with a package of video programming for ultimate sale to subscribers. Music Choice is, therefore, an intermediary between cable operators and their subscribers, unlike any of the digital music services the Judges have previously dealt with. Ford Second Corrected WDT at 12, SX Trial Ex. 79; 6/18/12 Tr. 2810:20–2811:3 (Ford). Second, Music Choice's service is almost always bundled with a hundred or more channels of video and is almost never sold on a stand-alone basis. Ford Second Corrected WDT at 13, SX Trial Ex. 79. This makes it difficult to determine the specific consumer value for Music Choice's programming alone. *Id.*

Given these difficulties, Dr. Ford uses an all-inclusive approach of examining royalty rates for different digital music markets: portable and non-portable interactive subscription webcasting, cellular ringtones/ringbacks, and digital downloads. *Id.* at 15–16, Table 1. Most of the over 2,000 licensing agreements he examined across these markets calculate royalties based on a "greater of" methodology that includes a per-play royalty fee, a per-subscriber fee, and a revenue-based fee. For convenience, Dr. Ford analyzed only the revenue-based fees, judging his results to be conservative because the other two payment metrics might produce a larger total royalty fee than the revenue-based calculation. 6/18/12 Tr. 2861:3–13 (Ford). His results reveal a percentage of revenue rate of 70% for digital downloads, 43% to 50% for ringtones/ringbacks, and 50% to 60% for portable and non-portable interactive subscription webcasting, respectively. Ford Second Corrected WDT at 15–16, Table 1, SX Trial Ex. 79. According to Dr. Ford, the rate proposal of SoundExchange for PSS comports well with the range established by these agreements, in that it rises above the lowest average rate (43%) only in the last year of the licensing term, and therefore can "be presumed to be a reasonable proxy for a market outcome." Ford Second Corrected WDT at 16, SX Trial Ex. 79; 6/18/12 Tr. 2831:8–15 (Ford).

3. Analysis and Conclusions Regarding the Proposed Benchmarks

Based upon the evidence put forward in this proceeding, none of the proposed benchmarks provide a satisfactory means for determining the sound recording performance royalty to be paid by Music Choice.

Turning first to Music Choice's arguments in favor of the musical works benchmark, I find them severely wanting. The fees paid to the three performing rights societies for the performance right to musical works have been offered in several other proceedings before the Judges and have been rejected consistently. *Webcasting II*, 72 FR 24084 (May 1, 2007); *SDARS–I*, 73 FR 4080 (Jan. 24, 2008); *see, also Webcasting I*, 67 FR 45240 (July 8, 2002)(Librarian of Congress's determination). The primary reason for the benchmark's rejection is the lack of comparability to the target market for sound recording performance rights. Dr. Crawford, who advocates the appropriateness of the musical works market, acknowledges that a benchmark market should involve the same buyers and sellers for the same rights. Crawford Corrected WDT at 24, PSS Trial Ex. 4. However, the musical works market involves different sellers (performing rights societies versus record companies) selling different rights. *See SDARS–I*, 73 FR at 4089. The fact that a PSS needs performance rights to musical works and sound recordings to operate its service does not make the rights equivalent, nor does it say anything about their values individually. Further, as in previous proceedings, the evidence establishes

[63] Dr. Crawford also concludes that the marketplace for musical works royalties might be greater than the sound recording marketplace because the performing rights society loses less than a record company in the absence of an agreement. Crawford Corrected WDT at 18, 29, PSS Trial Ex. 4.

[64] Under this model, a firm's cost of capital is based on the expected return to induce investment. Crawford Corrected WDT at ¶ 167, PSS Trial Ex. 4.

that the market commands higher royalty fees for the licensing of sound recordings than musical works. Aaron Harrison presented a chart demonstrating the different average royalty fees that Universal Music Group, one of the major record labels, receives for digital downloads, ringtones, on-demand music videos and portable subscription services, all of which are considerably higher than the fees received by the performing rights societies.[65] Harrison Corrected WRT at 13–14, PSS Trial Ex. 32. Dr. Ford made similar observations. Ford Amended/Corrected WRT at 7, SX Trial Ex. 244. I am once again led to the conclusion that use of the musical works market as a benchmark is fraught with flaws and only indicates that a reasonable rate for sound recordings cannot be as low as the musical works rate. *See, SDARS–I,* 73 FR at 4090.

Music Choice's efforts to corroborate the sufficiency of the musical works benchmark with a comparison to foreign rates also are unavailing. The Judges have considered before the significance of foreign countries' treatment of the licensing of exclusive rights granted by copyright. In the proceeding to set rates and terms for the reproduction of musical compositions under the Section 115 license of the Copyright Act, certain licensees offered evidence of license rates in the U.K., Canada and Japan. *See Phonorecords I,* 74 FR 4510, 4521 (Jan. 26, 2009). In rejecting the foreign rate benchmarks, the Judges stated that attempts at comparison of U.S. rights with foreign rights "underline the greater concern that comparability is a much more complex undertaking in an international setting than in a domestic one. There are a myriad of potential structural and regulatory differences whose impact has to be addressed in order to produce a meaningful comparison." *Id.* at 4522. Neither Mr. Del Beccaro nor Dr. Crawford even attempt an analysis or discussion of the intricacies of Canadian and U.K. markets for performance rights for musical works and sound recordings, and Music Choice itself concedes that particular license rates in Canada and Europe "do not necessarily determine what the specific market rate in the United States should be for the sound recording right." *Music Choice PFF* ¶ 135.

[65] Music Choice's criticisms of the Harrison chart—that it omits synchronization and master use licenses, encompasses wholesale payments rather than specific rates, and involves some agreements that convey additional rights—do not detract from the conclusion that overall the royalty *fees* paid for sound recordings are typically significantly higher than those paid for musical works.

Likewise, I am not persuaded that Dr. Crawford's application of the Nash Framework provides corroboration. The Nash Framework is a highly theoretical concept whose goal is to evaluate how the surplus from a transaction might be divided among participants. As Dr. Ford points out, a problem with applying the Nash Framework to a determination of a royalty rate is that a royalty does not split surplus, it splits revenues. Ford Amended/Corrected WRT at 8, SX Trial Ex. 244. An even split of surplus, as Dr. Crawford presumes from the model, does not imply an even split of revenues. *Id.* Further, Dr. Crawford's efforts to apply the Nash Framework to royalties to be paid by Music Choice only contemplates a two-party transaction between record labels and Music Choice, even though Music Choice is the intermediary between cable operators that actually perform the sound recordings in the output market. The presence of an intermediary disrupts and complicates the Nash analysis because it introduces an additional bargain in the output market and requires that all three bargains be considered jointly. *Id.* at 15. Dr. Crawford did not take this complicating factor into consideration.

I also have serious reservations concerning Dr. Crawford's assumption that the Nash factor of bargaining power is assumed to be neutral. Mr. Del Beccaro testified that Music Choice has a number of competitors in the marketplace, meaning that record companies have other alternatives for licensing their works. Del Beccaro Corrected WDT at 36–37, PSS Trial Ex. 1. This undermines Dr. Crawford's determination of the Nash Factor threat point to the surplus received by record companies in the event no agreement is reached. If record companies have other options, then the assumed zero sum effect of the bargaining agreement under the Nash Framework is violated.

Finally, Dr. Crawford places undue reliance on the perceived promotional value of Music Choice, which is central to his application of the Nash Framework. For his conclusion to be correct—that failure to reach a bargaining agreement will result in a substantial loss of record sales due to the absence of promotional value from Music Choice—he must demonstrate a causal relationship between Music Choice's promotion of sound recordings and the sale of those recordings. His evidence on this point, however, is mostly anecdotal and weak. The surveys relied upon by Mr. Williams do *not* confirm a causal link between listenership to Music Choice and subsequent record sales; at best, the 2005 Arbitron survey (already more than seven years old) demonstrates that there is some correlation between listenership and sales. There could be many reasons for the correlation, including the possibility that cable subscribers who listen to Music Choice are already inclined to purchase more music. For example, the 2010 Experian Simmons survey, cited by Mr. Williams, shows that Music Choice listeners are more likely than the average person to attend concerts, know what songs are in the top 10, read *Rolling Stone* magazine, and consume electronic and video goods at a higher rate. Williams WDT at MC 36, PSS Trial Ex. 3. Furthermore, none of the surveys cited by Dr. Crawford, including the antiquated 2006 Sony BMG Music Lab survey, offer reliable evidence as to whether Music Choice's residential audio service creates a net promotional or substitutional effect on the purchase of CDs or other music services. Without reliable data that quantifies the net effect of Music Choice, Dr. Crawford's conclusion regarding Music Choice's promotional effect is not sustainable.

I am not persuaded that Dr. Crawford's Nash Framework analysis confirms acceptance of the musical works benchmark for PSS, nor that royalty rates in the market for sound recordings is less than that for musical works. Likewise, I do not agree that Dr. Crawford's alternative surplus splitting analysis is probative. The Judges have previously found theoretical surplus splitting models to be of limited value, and Dr. Crawford's analysis is no different. *See, Webcaster II,* 72 FR 24084, 24092–93 (May 1, 2007); *SDARS–I,* 73 FR at 4092. Although Dr. Crawford claims that his 20% to 80% range of a split of 3.05% of Music Choice's 2006–2010 revenues reflects arm's length negotiations between Music Choice and record companies, he provides no market evidence to support this contention. Crawford Corrected WDT at 49–50, PSS Trial Ex. 4. There are also methodological difficulties in the manner in which Dr. Crawford examined Music Choice's historical financial data. Specifically, he included in his cost analysis those costs associated with Music Choice's music video business in addition to the costs for the residential audio business, presumably because he was told by Music Choice personnel that it was not possible to allocate expenses between the video and audio components of the company's business. 6/12/12 Tr. 1859:21–1860:21 (Crawford). The net effect of including the music video business, which has substantial costs

and not much revenue, is to drive down the surplus he proposes to be split between Music Choice and record companies. Even if I were persuaded in theory by Dr. Crawford's surplus splitting analysis—and I am not—his failure to confine his cost and revenue analysis solely to the residential audio business, which is the subject of the statutory licenses in this proceeding, prohibits its usefulness.

Turning to the music service benchmarks offered by SoundExchange and supported by Dr. Ford, one is confronted with severe theoretical and structural difficulties. Although the volume (over 2,000) of marketplace agreements examined by Dr. Ford for music products and services might suggest real usefulness in a benchmark analysis, the four markets examined—portable and non-portable subscription interactive webcasting, ringtones/ringbacks, and digital downloads—involve the licensing of products and rights separate and apart from the right to publicly perform sound recordings in the context of this proceeding. Thus, the key characteristic of a good benchmark—comparability—is not present. *SDARS–I*, 73 FR at 4092. The buyers are different, there are different music products included (ringtones and ringbacks, digital downloads) and there are different rights licensed in the output market. Further, I do not accept Dr. Ford's contention that, as a matter of economics, it is irrelevant that different legal rights are conveyed by the benchmark agreements he examined. 6/18/12 Tr. 2819:5–10 (Ford). The agreements examined by Dr. Ford themselves suggest that the rights licensed, and the context in which they are licensed, make a great deal of importance in determining their value.

I do agree with Dr. Ford's observations that Music Choice has several distinct features, such as its intermediary role between cable systems and subscribers and the bundling of Music Choice's services with multiple channels of video and other non-music programming, that significantly dim the possibility of market comparators. This is not to say that the value of the sound recording right in the PSS market is exceedingly low, as Music Choice would have it, nor exceedingly high, as SoundExchange would have it. SoundExchange's rate proposal begins with a rate of 15% of *Gross Revenues* in the first year of the licensing term, which is endorsed by Dr. Ford as being within the range of reasonable rates for the PSS even though it is far lower than the average rates he determined in his benchmark analysis. For this reason, the 15% rate represents nothing more than the uppermost bound of the range of reasonable royalty rates for the PSS.

Based upon the above analysis, I am left with a consideration of the existing 7.5% royalty rate which is the product of settlement negotiations that occurred in *SDARS–I* between Music Choice and SoundExchange, and is a rate for which neither party advocates. Although it is a rate that was negotiated in the shadow of the statutory licensing system and cannot properly be said to be a market benchmark, nothing in the record persuades me that 7.5% of *Gross Revenues*, as currently defined, is either too high, too low or otherwise inappropriate. *Accord*, *Phonorecords I*, 74 FR at 4522. I now turn to the Section 801(b) policy factors.

4. The Section 801(b) Factors

Section 801(b)(1) of the Copyright Act states, among other things, that the rates that the Judges establish under Section 114(f)(1) shall be calculated to achieve the following objectives: (A) To maximize the availability of creative works to the public; (B) to afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing conditions; (C) to reflect the relative roles of the copyright owner and the copyright user in the product being made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of markets for creative expression and media for their communication; and (D) to minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practice. 17 U.S.C. 801(b)(1). Based on the record evidence in this proceeding, the benchmark evidence submitted by Music Choice and SoundExchange has failed to provide the means for determining a reasonable rate for the PSS, other than to indicate the extreme ends of the range of rates. The testimony and argument of Music Choice demonstrates nothing more than to show that a reasonable rate cannot be as low as the rates paid by Music Choice to the three performing rights societies for the public performance of musical works. The benchmark testimony of SoundExchange is of even lesser value. The proposed rate of 15% for the PSS for the first year of the licensing period, deemed reasonable by Dr. Ford (at least in the beginning of the licensing period), stands as the absolute upper bound of the range of reasonable rates. At the middle of the range is the current 7.5% rate and, based upon the record, I am are persuaded that it is neither too high, too low, or otherwise inappropriate, subject to consideration and necessary adjustment under the Section 801(b) factors discussed below.

a. Maximize Availability of Creative Works

Both SoundExchange and Music Choice presented arguments as to how their proposed benchmark rates satisfy this factor, which are not relevant given that the musical works benchmark and the Ford music service benchmarks only serve the purpose of framing the absolute lower and upper bounds of reasonable rates. Rather, it is the current 7.5% rate to which the evidence presented under this factor must be applied.

Music Choice touts that it is a music service that is available in over 54 million homes, with 40 million customers using the service every month. 8/16/12 Tr. 3878:3 (Del Beccaro); Del Beccaro Corrected WDT at 4, 26, PSS Trial Ex. 1; 6/11/12 Tr. 1462:5–11, 1486:19–1487:2 (Del Beccaro). Channel offerings have increased through the years, curated by experts in a variety of music genres. Del Beccaro Corrected WDT at 3, 24, PSS Trial Ex. 1. Recent developments in technology permit Music Choice to display original on-screen content identifying useful information regarding the songs and artists being performed at any one time. *Id.* at 24; Williams WDT at 12, MC 23, PSS Trial Ex. 3; 6/11/12 Tr. 1461:14–1462: 1, 1491:1–12 (Del Beccaro). According to Music Choice, these elements, along with the promotional efforts detailed above in the context of Dr. Crawford's Nash Framework analysis, support a downward adjustment in the rates. In any event, an upward adjustment in the rates, argues Music Choice, would not affect the record companies' bottom-line because PSS royalties are not a material revenue source for record companies. *Music Choice PFF* ¶¶ 409–417.

SoundExchange submits that a market rate incorporates considerations under the first Section 801(b) factor, citing the Judges decision in *SDARS–I*, and that if PSS rates turn out to be too high and drive Music Choice from the market, presumably consumers will shift to alternative providers of digital music where higher royalty payments are more likely for record companies. Ford Second Corrected WDT at 19–20, SX Trial Ex. 79.

The current PSS rate is not a market rate so that market forces cannot be presumed to determine the maximum amount of product availability consistent with the efficient use of resources. *See SDARS–I*, 73 FR 4094. However, the testimony demonstrates

that Music Choice has not, under the current rate, reduced its music offerings or contemplated exiting the business; in fact, it will be expanding its channel offerings in the near term. There is also no evidence that suggests that the output of music from record labels has been impacted negatively as a result of the current rate. There is no persuasive evidence that a higher PSS royalty rate will necessarily result in increased output of music by the record companies (major or independent), nor that a lower rate will necessarily further stimulate Music Choice's current and planned offerings. In sum, the policy goal of maximizing creative works to the public is reasonably reflected in the current rate and, therefore, no adjustment is necessary.

b. Afford Fair Return/Fair Income Under Existing Market Conditions

Music Choice submits that the Judges need not worry about the impact of a low royalty rate on the fair return to record companies and artists for use of their works because royalties from the PSS market are so small as to be virtually inconsequential to companies whose principal business is the sale of CDs and digital downloads. *Music Choice PFF* ¶¶ 420–430. With respect to Music Choice's ability to earn a fair income, however, Music Choice argues that it is not profitable under the current 7.5% rate. Mr. Del Beccaro testified that its average revenue per customer for its residential audio business has been on the decline since the early 1990's, down from $1.00 per customer/per month to [REDACTED] per customer/per month currently. Del Beccaro Corrected WDT at 40, PSS Trial Ex. 1. He further testified that after 15 years of paying a PSS statutory rate between 6.5% and 7.5% Music Choice has not become profitable on a cumulative basis and is not projected to become so within the foreseeable future. *Id.* at 42. Cumulative loss at the end of 2011 is [REDACTED], projected to grow to [REDACTED] in 2012 and continue to increase throughout the 2013–2017 license period. *Id.* at 33–34; Del Beccaro Corrected WRT at MC 69 at 1, MC 70 at 1, PSS Trial Ex. 21. These losses lead Music Choice to conclude that it has not generated a reasonable return on capital under the existing rates, which it submits should be 15% in the music industry. *Music Choice PFF* ¶¶ 442–43.

Music Choice's claims of unprofitability under the existing PSS rate come from the oblique presentation of its financial data and a combining of revenues and expenses from other aspects of its business. The appropriate business to analyze for purposes of this proceeding is the residential audio service offered by Music Choice, the subject of the Section 114 license. Music Choice, however, reports costs and revenues for its residential audio business with those of its commercial business, which is not subject to the statutory license. This conflation of the data, which Music Choice acknowledges cannot be separated, *see SX PFF* at 221–222, distorts its views regarding losses. As a consolidated business, Music Choice has had significantly positive operating income during the past five years between 2007 and 2011 and has made profit distributions to its partners since 2009. Ford Amended/Corrected WRT at SX Ex. 362, p. 3, SX Trial Ex. 244; SX Trial Ex. 64 at 3; SX Trial Ex. 233 at 3. Dr. Crawford's effort to extract costs and revenues from this data for the PSS service alone for use in his surplus analysis cannot be credited because of his lack of familiarity with the data's source. 6/13/12 Tr. 1890:15–1891:10 (Crawford).[66] Music Choice has operated successfully and received a fair income under the existing statutory rate.[67]

With respect to fair return to the copyright owner, the examination is whether the existing statutory rate has produced a fair return with respect to the usage of sound recordings. During the period of the current rate and before, Music Choice provided 46 channels of music programming to the subscribers of its licensees. However, Music Choice is expanding the number of music channels dramatically in the coming licensing term, up to 300 channels by the first quarter of 2013. Del Beccaro Corrected WDT at 3–4, PSS Trial Ex. 1; 8/16/12 Tr. 3878:3 (Del Beccaro). This will result in a substantial increase in the number of plays of music by Music Choice, even if the ultimate listenership intensity of its licensees' subscribers cannot be measured. The expansion in usage will not be reflected in increased revenues to which the statutory royalty rate is to be applied, as Music Choice has declared itself to be a mature business with no expectation of increased future revenues for its business. As a result, copyright owners will not be compensated for the increased usage of their works, underscoring the Judges' preference for a per-performance metric for royalty determinations—which is not available here—as opposed to a percentage-of-revenue metric. Dramatically expanded usage without a corresponding expectation of increased compensation suggests an upward adjustment to the existing statutory rate. Measurement of the adjustment is not without difficulty because any downstream increases in listenership of subscribers as a result of additional music offerings by Music Choice cannot be readily determined nor predicted. It is possible that listenership overall may remain constant despite the availability of 300 music channels as opposed to only 46. However, it is more reasonable to conclude that Music Choice would not make the expansion, and incur the additional expense of doing so, without reasonable expectation that subscribers will be more attracted to and will consume more of the music offerings of Music Choice. A 2% upward adjustment, phased-in during the course of the license period as described below, is sufficient to provide copyright owners with a fair return for the increased use of sound recordings by Music Choice.

c. Relative Roles of Copyright Owners and Copyright Users

This policy factor requires that the rates adopted by the Judges reflect the relative roles of the copyright owners and copyright users in the product made available with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of markets for creative expression and media for their communication. For its part, Music Choice's arguments that its creative and technological contributions, and capital investments, outweigh those of the record companies center on the same aspects of its business. First, Music Choice touts the graphic and informational improvements made to its on-screen channels, noting that what were once blank screens now display significant artist and music information. Costs for these improvements have exceeded [REDACTED]. Del Beccaro Corrected WDT at 31–32, PSS Trial Ex. 1. Second, Music Choice offers increases in programming, staff size and facilities, along with enhancements to product development and infrastructure. Costs for these improvements have exceeded [REDACTED]. *Id.* Regarding costs and risks, Music Choice points to its lack of profitability and the exit of other PSS

[66] Much was made at trial and in closing arguments regarding Dr. Crawford's supposed use of audited financial data and Dr. Ford's use of unaudited financial data in an effort to examine costs and revenues of the PSS service vis-à-vis Music Choice's other non-statutory offerings. I see no superiority to either data set, as both contain their own difficulties.

[67] It would be surprising, if not improbable, that Music Choice would be able to operate a PSS service for over 15 years with a statutory royalty between 6.5% and 7.5%, with the considerable losses that it claims, and nonetheless continue to operate, let alone intend to expand its current operation.

from the market as evidence of its continued risk and limited opportunity for profit. *Music Choice PFF* ¶¶ 512–520. Finally, with respect to opening new markets, Music Choice touts the PSS market itself for which it remains the standard-bearer in disseminating music to the public through cable television. *Id.* at ¶ 523.

SoundExchange offers little more on the third Section 801(b) factor beyond Dr. Ford's contention that he saw no evidence to support that Music Choice makes contributions to creativity or availability of music that are beyond those of the music services he included in his benchmarks, and therefore the third factor is accounted for in the market. Ford Second Corrected WDT at 21, SX Trial Ex. 79; 6/18/12 Tr. 2849:10–16 (Ford).

In considering the third factor, the Judges' task is not to determine who individually bears the greater risk, incurs the higher cost or makes a greater contribution in the PSS market, and then make individual up or down adjustments to the selected rate based upon some unspecified quantification of these differences. Rather, the consideration is whether these elements, taken as a whole, require adjustment to the existing rate of 7.5%. Upon careful weighing of the evidence, I determine that no adjustment is necessary. Music Choice's investments in programming offerings, staff and facilities, and other related products and services are no doubt impressive, but they have been accomplished under the current rate and previous rates that are only slightly lower (the low being 6.5%). As discussed above, Music Choice has already begun to expand its channel offerings by several multiples and has allocated greater financial resources to its residential audio business. All of these undertakings, plus the investments made and costs incurred to date have been made in the shadow of the existing rate, and have not been prevented as a result of that rate. Likewise, on the other side of the ledger, SoundExchange has not offered any persuasive evidence that the existing rate has prevented the music industry from making significant contributions to or investments in the PSS market.

d. Minimize Disruptive Impact

Of the four Section 801(b) factors, the parties devoted most of their attention to the last one: minimizing disruption on the structure of the industries and on generally prevailing industry practices. This is perhaps not surprising, given the role this factor played in *SDARS–I* in adjusting the benchmark rates utilized by the Judges to set the royalty fees. *See SDARS–I,* 73 FR at 4097–98. Music Choice presents a considerable volume of testimony and argument as to why the SoundExchange proposed rates would be disruptive, if not debilitating, to its business; and SoundExchange presents testimony and argument as to why Music Choice's proposed rates would disrupt the music industry. These contentions, however, are inapposite as neither the SoundExchange nor the Music Choice benchmark analyses serve the purpose of determining a reasonable rate other than to mark the extreme ends of the boundary within which a reasonable rate can be located. Because I have identified as reasonable the rate for PSS currently in place, my analysis of the disruption factor is confined to that rate.

SoundExchange argues that the current rate is disruptive to the music industry. Dr. Ford testified that "the current practice of applying an exceedingly low rate to deflated revenues is disruptive of industry structure, especially where there are identical services already paying a higher rate." Ford Second Corrected WDT at 23, SX Trial Ex. 79. This results, according to Dr. Ford, in a tilting of the competitive field for music services in favor of Music Choice, thereby disrupting the natural evolution of the music delivery industry. Dr. Ford, however, appears to ignore his own earlier assertions that the PSS market has unique and distinctive features that distinguish it from other types of music services, thereby substantially reducing the likelihood that the PSS and other music services are substitutes for one another. Further, Dr. Ford failed to present any empirical evidence demonstrating a likelihood of migration of customers from music services paying higher royalty fees to the PSS as a result of his perceived royalty imbalance.[68] Dr. Ford's conclusion that the current rate paid by the PSS for the Section 114 license has caused a disruption to the music industry is mere speculation.

Music Choice also contends that the current rate is disruptive, and I likewise find its argument weak and unsubstantiated. The test for determining disruption to an industry, announced by the Judges in *SDARS–I,* is whether the selected rate directly produces an adverse impact that is substantial, immediate, and irreversible in the short-run. *SDARS–I,* 73 FR at 4097. The current rate has been in place for some time and, despite Music Choice's protestations that it has never been profitable, it continues to operate and continues to increase its expenditures by expanding and enhancing its services in the face of the supposedly disruptive current royalty rate. Music Choice's argument that DMX's bankruptcy and Muzak's decision to limit its participation in the PSS market are evidence of the onerous burden of the current rate are without support because Music Choice has failed to put forward any evidence demonstrating a causal relationship between the actions of those services and the PSS royalty rate.

In sum, I am not persuaded by the record testimony or the arguments of the parties that the current PSS rate is disruptive to a degree that necessitates an adjustment.

5. Conclusions Regarding Section 114 Rates

Upon a careful weighing of the evidence submitted by the parties, I believe that the application of the Section 801(b) factors to the rate of 7.5% of Gross Revenues requires an upward adjustment to account for the coming expanded use of music by Music Choice in the 2013–2017 licensing term. If the Judges preferred per-usage royalty metric could be applied to the PSS—which it cannot—the value of the increased usage would be captured in the metric through the measurement of listenership to the sound recordings received by Music Choice consumers through their respective cable systems. The percentage-of-revenue metric, however, will not account for the expanded use in the short term, as cable operators will continue to pay fees for the Music Choice service in approximately the same amounts, and will only increase in the long term, presumably, if the volume of cable subscribers (or per-subscriber license rates) increases significantly. The testimony, however, suggests this possibility to be unlikely, as Music Choice itself declares the PSS market mature. 8/16/12 Tr. 3855:17–3856:7 (Del Beccaro); 8/23/12 4707:8–19 (Crawford).

The following are the rates that I believe are appropriate and supported by the evidence in this proceeding: for 2013: 8.5%; for 2014: 9.0%; for 2015: 9.5%; for 2016: 9.5%; and for 2017: 9.5%.

SoundExchange raises an additional matter with respect to the total royalty obligation of the PSS. Though not technically a rate, nor strictly an amendment of *Gross Revenues,* SoundExchange requests a means for capturing revenues from cable systems

[68] I note that DMX's exit from the PSS market in 2000 offers an opportunity to examine how the departure of a PSS impacts consumer choices and their consumption of music, but no such analyses were presented in this proceeding.

that are owners of equity or capital interests in Music Choice who do not engage in arm's length transactions with Music Choice for its product offerings. *Second Revised Proposed Rates and Terms,* at 6–7 (Sept. 26, 2012). Put another way, SoundExchange seeks to capture any price break that Music Choice offers its ownership partners for the Music Choice service. The price break to a specific partner cable system would be calculated by multiplying the total number of subscribers for the month for that system by the average per-subscriber royalty payment of the five largest paying cable systems providing Music Choice that are not its partners. This reconciling for each partner cable system would then be added to Music Choice's *Gross Revenues* overall calculation. In support of its "Non Arm's Length Transaction" adjustment for cable partners, Dr. Ford testified that a straight percentage of revenue metric is problematic where Music Choice offers per-subscriber rate discounts to it cable partners. "I believe that, if we are going to properly compensate someone for the use of their property, we ought to be compensating them for use and not have the compensation affected by peculiar ownership structure of the entities that easily arise." 8/20/12 Tr. 4216:21–4217:8 (Ford). Over half of Music Choice's non-partner cable systems pay approximately [REDACTED] per subscriber per month in licensing fees to Music Choice, whereas the partner cable systems pay only [REDACTED] per subscriber per month. Ford Second Corrected WDT at 5, SX Trial Ex. 244.

I am not persuaded that a "Non Arm's Length Transaction" adjustment is warranted. Implicit in Dr. Ford's observation of Music Choice's licensing of its service to its cable partners is the assumption that the partners have the ability to exert downward pressure on Music Choice revenues so as to avoid payment of music royalties and thereby boost their own bottom-lines. Such presumed use of Music Choice as a loss leader is not borne out by the evidence in this proceeding. The partnership agreements between Music Choice and its cable operators are lengthy and complicated and vary from partner to partner. It is not surprising that the partner cable operators, which are in most instances of greater size with respect to numbers of subscribers than the non-partner licensors of Music Choice's service, would be able to negotiate lower per-subscriber licensing fees due to their ability to deliver more subscribers to the service. Further, the cable partners represent only a third of Music Choice ownership, and do not appear to be able to influence rates any more than Music Choice's record company partners, who own one quarter of the company. 6/11/12 Tr. 1454:16–22 (Del Beccaro). SoundExchange's "Non Arm's Length Transaction" adjustment is founded upon inference and speculation and is not supported by the record evidence.

E. The Section 114 Royalty Rates for SDARS

As with the consideration of reasonable rates for the PSS, I begin my analysis for SDARS with the proffered benchmarks of Sirius XM and SoundExchange, respectively.

1. SDARS Proposed Benchmarks

a. The Direct Licenses

Beginning in the summer of 2010, Sirius XM commenced a coordinated effort to negotiate sound recording performance rights directly with individual record labels. 6/7/12 Tr. 669:8–672:9, 713:3–11, 714:11–715:4 (Frear). Dubbed the Direct License Initiative, Sirius XM first attempted to engage the four major record companies in discussions but was unsuccessful. *Id.;* 6/11/12 Tr. 1347:7–21, 1348:20–1349:4 (Karmazin). Sirius XM then enlisted the services of Music Reports, Inc. ("MRI") to formulate and execute a direct licensing strategy with as many independent record labels as possible. Together, Sirius XM and MRI developed the terms and conditions of a Direct License, the highlights of which include:

- A *pro rata* share of 5%, 6%, or 7% of gross revenues, defined by reference to 37 CFR 382.11;
- A grant of rights to Sirius XM to operate all of its various services (satellite radio plus other services such as webcasting);
- "Additional functionality" granted to Sirius XM, including elimination of the Section 114 license sound recording performance complement;
- Direct, quarterly payment of 100% of the royalties to the record label;
- Payment of advances to the 5 largest record labels;
- The possibility, but not the promise, of increased play on Sirius XM's music services.

Gertz Corrected WDT ¶ 14(a), (b), SXM Dir. Trial Ex. 5. The first Direct Licenses were executed in August of 2011 and by the time of the closing of testimony in this proceeding, Sirius XM had Direct Licenses with 95 independent record labels. 8/13/12 Tr. 3015–16–20 (Frear); 8/15/12 Tr. 3679:22–3680:1 (Gertz).

Sirius XM's expert economist, Dr. Roger Noll, advises that the 95 Direct Licenses are the best benchmark for rate setting in this proceeding because, unlike in *SDARS–I,* the Judges now have direct evidence of competitively negotiated marketplace rates for the exact service at issue in this proceeding. Noll Revised Amended WDT at 7, 11, 33–36, SXM Dir. Trial Ex. 1. Dr. Noll testified that the Direct Licenses are representative, for benchmarking purposes, of the types of sound recordings available across the industry, including those distributed by major labels. *Id.* at 39–44; *see also* 6/5/12 Tr. 261:6–262:14 (Noll)(the 95 Direct Licensors as a group offer a scope of sound recordings comparable to those not so licensed). The fact that the Direct Licenses represent only a small percentage of market share of music available does not alter the incentive to create demand diversion, Dr. Noll opines, because the major record labels and the independent labels signed to the Direct Licenses both seek to maximize their number of plays on Sirius XM's music services. A Direct Licensor would find a 7% license rate more attractive than the current 8% statutory rate if the lower rate would cause an increase in the number of plays. Noll Revised Amended WDT at 40–41, SXM Dir. Trial Ex. 1. Dr. Michael Salinger, another Sirius XM expert economist, concludes that the fact that 95 record companies accepted the Direct License offer suggests that the current 8% statutory rate is, if anything, above the competitive rate for sound recordings. Salinger Corrected WRT at ¶ 28, SXM Reb. Trial Ex. 9. Further, Sirius XM argues that the number of Direct Licenses undoubtedly would have been higher but for the efforts of SoundExchange, the American Association of Independent Musicians and others to undermine and interfere with its Direct License Initiative. Sirius XM devoted considerable time and testimony in an effort to support this contention. *See, e.g., Sirius XM PFF* at 61–63.

b. The Noll Benchmark

Dr. Noll asserts that license agreements between major record labels and certain customized non-interactive webcasters provide marketplace evidence of rates that corroborate the 5%–7% rates achieved in the Direct Licenses. Noll Revised Amended WDT at 16, 72, SXM Dir. Trial Ex. 1. Focusing principally on the agreements between the digital music service Last.fm and the four major record companies,[69] Dr. Noll

[69] Dr. Noll also examined agreements involving the music services Slacker and Turntable.

determined that for its non-interactive subscription streaming service, Last.fm agreed to pay:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Noll Revised Amended WDT at 76–79 (footnote omitted), Tables 2.1–2.1c and Appendices E–H, SXM Dir. Trial Ex. 1. Examining these same agreements for Last.fm's interactive on demand service—[REDACTED]—led Dr. Noll to conclude that sound recording rights owners charge [REDACTED] for non-interactive services than they do for interactive/on-demand services. *Id.*[70]

Using the rates gleaned from the Last.fm agreements for the non-interactive subscription streaming service, which he deemed to be the most similar to Sirius XM's satellite radio service in terms of functionality, Dr. Noll computed his reasonable royalty fee by multiplying the Last.fm revenue rate [REDACTED] against the implicit per-subscriber price of Sirius XM's music channels ($3.00–$3.45), and then divided the resulting per-subscriber monthly fee into Sirius XM's average revenue per user ($11.38) in order to express the fee as a percentage of revenue. *Id.* at 15; 6/5/12 Tr. 285:7–293:9 (Noll). This yielded an average royalty rate as a percentage of Sirius XM revenue of 6.76%. *Id.* at 90; 6/5/12 Tr. 293:5–9 (Noll). Because this average rate fit squarely between the 5%–7% range of the Direct Licenses, Dr. Noll opines that his calculation is corroborative of the rates contained in Direct Licenses and further concludes that it represents the upper end of a reasonable royalty rate because the customized. non-interactive services he examined offer greater functionality and sound quality than the channels offered by Sirius XM. *Id.* at ¶¶ 14–16; 6/5/12 Tr. 292:2–14 (Noll).

2. SoundExchange Proposed Benchmarks

SoundExchange's expert economist, Dr. Janusz Ordover, offers a principal benchmark, and two alternatives, based upon his examination of market agreements for digital music between interactive subscription services streaming music and the four major record companies. Dr. Ordover chose interactive subscription services because of his belief that they represent voluntary transactions in a competitive marketplace free of regulatory overhang, provide sufficient information based on multiple buyer/seller interactions, are not distorted by the exercise of undue market power on either the buyer's or seller's side, and involve digital music services that are similar to Sirius XM. 6/14/12 Tr. 2359:11–2360:9, 2257:5–11, 2257:12–20, 2257:21–2258:2 (Ordover).

Dr. Ordover's principal benchmark is to calculate the percentage of total revenues represented by royalty payments made by interactive services to record companies, and then apply that percentage of revenue to the amount that he determined to be the retail price of a music-only satellite service in order to calculate the corresponding percentage-of-revenue for the Sirius XM service. *See generally* Ordover Third Corrected/Amended WDT at 18–25, SX Trial Ex. 74. Beginning with data from July 2010, he derived the effective percentage-of-revenue paid by each interactive service by taking the amount of royalty fees paid to the major record labels and dividing it by each service's gross subscription revenues. In other words, he relied on royalty payments made, rather than the percentage-of-revenue rates specified in the agreements which contained "greater of" royalty formulations.[71] In calculating actual licensing fees paid, Dr. Ordover used gross subscription revenues of the interactive services without any deductions or carve-outs. Ordover Third Corrected/Amended WDT at 19, SX Trial Ex. 74. Examining the agreements, he determined that the annual payments as a percentage of gross revenues of the services ranged from 50% to 70%, and tended to cluster in a narrower range of 60% to 65%. 6/14/12 Tr. 2275:4–12 (Ordover); Ordover Third Corrected/Amended WDT at 19–21, SX Trial Ex. 74. Dr. Ordover then adjusted the benchmark to account for the fact that the Sirius XM satellite radio service, unlike interactive subscription services, transmits both music and non-music content. Reducing the percentage-of-revenue by half, principally based upon his observation of the identical $9.99 retail prices offered by Sirius XM for non-music and mostly music stand-alone subscriber packages, yielded rates for Sirius XM between 30% and 32.5% for the 2013–2017 statutory licensing period. Ordover Third Corrected/Amended WDT at 17, SX Trial Ex. 74.[72]

As his first alternative benchmark, Dr. Ordover examines per-subscriber royalty rates from interactive subscription services in an effort to account for the differences in service attributes between satellite radio and interactive subscription services. He first determined an unweighted average monthly royalty of $5.95 per subscriber (monthly licensing fees paid divided by monthly subscriber counts) for interactive services, and then adjusted this fee by the ratio of the retail price of a hypothetical music-only satellite radio service (50% of the $12.95 subscription price for the Sirius XM Select programming package[73]) to the retail price for interactive subscription services ($9.99). Ordover Third Corrected/Amended WDT at 30–31, SX Trial Ex. 74. This percentage, when applied to the average per-subscriber royalty paid by interactive services ($5.95), yields $3.86 for the hypothetical music-only satellite radio service. Dividing this number by the $12.95 Sirius XM subscription price provides a percentage-of-revenue rate of 29.81%. *Id.* at 32.

Dr. Ordover's second alternative benchmark approach attempts to adjust for the presence of interactivity alone in the rates yielded by his primary benchmark under the assumption that interactivity is the material difference between interactive subscription services and satellite radio. Ordover Third Corrected/Amended WDT at 34, SX. Trial Ex. 74. To derive the value of interactivity, he compared the retail prices for interactive music streaming services with the retail prices for non-interactive music streaming services in order to obtain a ratio. He determined that interactive music streaming services are uniformly priced at $9.99 per month, while non-interactive services prices averaged $4.86. Ordover Third Corrected/Amended WDT at 31–32 Table 4, SX Trial Ex. 74; *Id.* at 33 Table 5.[74] Dr. Ordover then used the ratio to adjust the average per-subscriber royalty paid by interactive services

[70] Dr. Noll also found similar splits in [REDACTED] agreements. *Id.* at Tables 2.2–2.2d and Appendices I–L.

[71] The "greater of" metric is an amount per play, an amount per-subscriber, and a percentage of the service's revenues. 6/14/12 Tr. 2261:7–2262:4 (Ordover).

[72] Dr. Ordover's mathematical calculation is as follows: He took the $12.95 Sirius XM subscription price, and then multiplied that by 50% to obtain the music portion of the subscription price of $6.475. He then multiplied the music-only satellite radio subscription price by 60% to 65% (his effective percentage-of-royalty derived from the interactive subscription service agreements) to obtain the music royalty of $3.88 to $4.21. Finally, he divided those numbers into the Sirius XM subscription price for the Select programming package to obtain 30% to 32.5%. 8/16/12 Tr. at 3794:13–3795:9 (Salinger).

[73] The current price for this service is $14.49. Ordover Third Corrected/Amended WDT at 31 n.33, SX Trial Ex. 74.

[74] Dr. Ordover did not provide a weighted average of the non-interactive service prices because he concluded that he did not have reliable data, nor did he include, at my invitation, ad-supported non-interactive services in his calculation, deciding that such services would add undue complexity to his methodology. Ordover Amended WRT at 33, SX Trial Ex. 218.

($5.95) to calculate an equivalent payment for satellite radio. This yielded a percentage-of-revenue royalty rate of 22.32% for Sirius XM, which Dr. Ordover concludes represents the lower bound of a reasonable royalty rate. 6/14/12 Tr. 2282:12–16 (Ordover).[75]

3. Analysis and Conclusions Regarding the Proposed Benchmarks

The Direct Licenses offered by Sirius XM have the surface appeal of a good benchmark in that they involve the same sellers and buyers in the target market; however, a closer examination reveals that they are fraught with problems. First, they represent a sliver of the universe of rights holders for sound recordings: 95 of over 20,100 rights holders to which SoundExchange distributes payments, Bender WDT at 4, SX Trial Ex. 75, and a subset of the 691 independent labels that Sirius XM approached in the first instance. Ordover Amended WRT at 4 n.8, and 6, SX Trial Ex. 218; SX Trial Ex. 301 at 53. Much was made by Sirius XM in this proceeding that the number of Direct Licenses would have been substantially higher but for the interference of SoundExchange. It is not within the Judges' jurisdiction to determine that SoundExchange's actions amounted to legal interference with contractual relations or otherwise frustrated Sirius XM's efforts to execute more Direct License agreements. The Direct Licenses are evaluated for what they are, not for what they might have been, and what they are is a very small percentage of the sound recording market.[76]

Second, the Direct Licenses do not include any of the major record labels whom, by virtue of their size of the music market and the popularity of their recordings, Sirius XM cannot do without. Dr. Noll's observation that the works licensed by the Direct Licensors are representative of the kinds of sound recordings available to Sirius XM in the market is beside the point, for the Judges have concluded before that sound recordings, particularly those of the major record labels, are not readily substitutional for one another, let alone with those of independent record labels. *Phonorecords I,* 74 FR 4510, 4519 (Jan. 26, 2009); *see, generally Webcaster I,* 72 FR 24084 (May 1, 2007). The "representativeness" of the sound recordings contained in the catalogs of the Direct Licensors do not equate to their popularity,[77] an essential ingredient to Sirius XM's music offerings. 6/7/12 Tr. 836:17–22 (Gertz)("Sirius XM is very hits driven, and they want to have the most successful service they can, so they're going to use what's popular.").

Third, I am troubled by the additional considerations and rights granted in the Direct Licenses that are beyond those contained in the Section 114 license, thereby weakening their comparability as a benchmark. The Direct Licenses provide for payment of 100% of the royalties to the Direct Licensors, 6/6/12 Tr. 341:10–342:3 (Noll), thereby avoiding the statutory apportionment of 50% to record companies and 50% to artists and performers.[78] 17 U.S.C. 114(g)(2). Certain of the Direct Licenses, in particular those of the largest independent labels, provide for cash advances and accelerated royalty payments, also not available under the statutory license. *See, e.g.,* Gertz Revised WRT at SXM Reb. Ex. 23, pp. 3–4, SXM Reb. Trial Ex. 8; Gertz Revised WRT at SXM Reb. Ex. 8, pp. 3–4, SXM Reb. Trial Ex. 8. Sirius XM absorbs all of the administrative costs of the licensing process under the Direct Licenses, which under the statutory license are borne by the copyright owners, artists and performers. Eisenberg Amended/Corrected WRT at SX Ex. 313–RR, SX Trial Ex. 245. And with respect to rights granted under the Direct Licenses, Sirius XM receives a waiver of the sound recording complement of the statutory license, and the ability to perform the works of the Direct Licensors on other services not covered by the statutory license.

My concerns regarding the Direct Licenses are not cured by Dr. Noll's analyses. Dr. Noll contends that the fact the Direct License rates are lower than the current 8% statutory rate is explained by a demand diversion effect—record labels engaging in price competition aimed at increasing their market share through increased plays on Sirius XM, thereby reducing the royalty rates demanded—and represents what would happen in the market as a whole in the absence of a statutory rate. Noll Revised Amended WDT at 36–38, SXM Dir. Trial Ex. 1.[79] His demand diversion theory, however, has limited explanatory power. It may well be that independent record labels took the Direct License offer because of the valuable non-statutory benefits discussed above, and there is testimony in the record to this effect. *See, e.g.,* SX Trial Ex. 317 at SXM–CRB_DIR_00079565; 8/20/12 Tr. 4156:5–4157:3 (Powers). Further, independent labels have greater concerns than majors in securing performances of their works on services such as Sirius XM, increasing the attractiveness of a Direct License relationship. Powers WRT at 4, SX Trial Ex. 243; Eisenberg Amended/Corrected WRT at SX Ex. 329–RR, p. SXM_CRB_DIR_00042287, SX Trial Ex. 245 (email from MRI to independent label emphasizing that a Direct License offers the possibility of increased airplay). The incentive of increased airplay does not necessarily exist for major record labels, whose works are already performed in large numbers by Sirius XM's hits-driven programming. Harrison Corrected WRT at 9–10, PSS Trial Ex. 32.

Dr. Noll's benchmark analysis, whether considered as corroboration of the Direct Licenses or stand-alone, contains significant flaws. His reliance on the Last.fm agreements with the four major record labels, which provide the critical data to his calculations, is valid to the extent that it is representative of non-interactive subscription webcasting services. *See SDARS–I,* 73 FR at 4090. Two of the agreements, however, have expired and are no longer in effect. Ordover Amended WRT at 25, SX Trial Ex. 218. Last.fm now pays those record companies at the statutory webcasting rate, which is not a *per se* market rate. 8/14/12 Tr. 3308:8–20, 3317:10–16 (Ordover). Even if the Last.fm agreements were the *most* representative of webcasting services—and Dr. Noll has not demonstrated that they are—I would not be inclined to accept them as fully comparable to the SDARS business without some adjustment for the functional differences between webcasting and satellite radio. No persuasive adjustment was offered.

I also have reservations about Dr. Noll's determination of $3.00–$3.45 as

[75] This was calculated by multiplying the interactivity ratio of .4865 ($4.86/$9.99) to the average per-subscriber royalty payment of $5.95, yielding an equivalent satellite radio payment of $2.89. The $2.89 per-subscriber rate was then divided by the $12.95 monthly charge for the Sirius XM Select satellite radio package, resulting in the percentage-of-revenue rate of 22.32%.

[76] I note, further, that the works licensed under the Direct Licenses represent no more than 2%–4% of the total number of works performed by Sirius XM. Ordover Amended WRT at 4–5, SX Trial Ex. 218; 6/6/12 Tr. 308:3–5 (Noll).

[77] Dr. Noll's citation to Direct Licensors' catalogues containing Broadway recordings, three former hit singles, and the recordings of George Carlin, as confirmation of the popularity of the works of the Direct Licensors overall, is not persuasive.

[78] I recognize that direct payment to the Direct Licensors does not relieve them of their royalty obligations to their artists and performers; however, receipt of 100% of the royalties upfront is clearly attractive to certain record labels and was a selling point in negotiations with independent record labels. Powers WDT at 4–5, SX Trial Ex. 243.

[79] Dr. Noll also offers his demand diversion theory as an explanation as to why SoundExchange allegedly attempted to interfere with Sirius XM's Direct License Initiative.

the implicit monthly market price for Sirius XM's music channels.[80] Dr. Noll identified three methods for determining the implicit price. The first is the average retail price of $3.15 taken from Last.fm's and Pandora's non-interactive subscription services. Noll Revised WRT Table 1, SXM Reb. Trial Ex. 6. As with Last.fm, there is no adjustment to account for functional differences between the Pandora webcasting service and satellite radio, whose primary use is in the automobile. The second is to derive a market price for Sirius XM using a survey conducted by Sirius XM's witness Professor John Hauser that attempts to measure the value of music to Sirius XM subscribers. Professor Hauser posited an anchor price for the Sirius XM service to his survey respondents, and then randomly removed features (such as lack of commercials, quality of sound, etc.) to determine how much the respondents would be willing to pay for the service after each feature is removed. After averaging the results, he determined that subscribers place an average value on Sirius XM's music channels of $3.24. Hauser Corrected WDT at Appendix G, SXM Dir. Trial Ex. 24. Professor Hauser's survey is of limited value. By design, the higher number of features or attributes of the Sirius XM service included in the survey, the lower the estimated value of any given service. This produces anomalous results, such as his survey showing that subscribers would pay a certain amount for ubiquitous station availability, premium sound quality and absence of commercials all without any programming content whatsoever. Ordover Amended WRT at 35, SX Trial Ex. 218.

Third, Dr. Noll sought to calculate the cost of inputs necessary for delivery of Sirius XM's programming via satellite and its subsidization/installation of radio receivers in automobiles (described as "unique" costs to the satellite radio service), to then deduct those costs from gross revenues, and allocate the remaining revenue between music and non-music content. Noll Revised Amended WDT at 81–83, 85, SXM Dir. Trial Ex. 1. After making these calculations, Dr. Noll credited 55.1%, or $3.45, to music channels. *Id.* at 88 and Table 3. Sirius XM contends that including the unique delivery costs and investments of its service is appropriate in Dr. Noll's calculation, and cites to major record company agreements with Cricket and MetroPCS (mobile service providers that bundle telephone service and interactive music service into a single package) that reflect that a percentage royalty rate for music must be reduced by a commensurate proportion to reflect revenue collected for the non-music portion of the bundled service. *Sirius XM PFF* ¶¶ 169–173. However, SoundExchange's expert economist, Dr. Thomas Lys, explained that because most of the unique costs that Dr. Noll allocated are relatively fixed, the per-subscriber amounts vary inversely with the number of subscribers. Lys WRT at 57, SX Trial Ex. 240. Dr. Noll performed his calculation of costs using 2010 data, but had he used subscriber numbers for the years thereafter which have continued to increase and are anticipated to increase further in the coming licensing term, the analysis would show lower unique costs per subscriber and a higher value of music. Lys WRT at 57, SX Trial Ex. 240. The dependency of Dr. Noll's methodology on timing and the number of subscribers undermines its reliability for quantifying what the unique costs are likely to be in the coming rate term. *Id.* at 58. Moreover, Sirius XM's analogy to the bundled services of Cricket and MetroPCS is inapposite. Unlike those services, the success of Sirius XM is dependent upon its access to music. 6/14/12 Tr. 2270:7–2271:15 (Ordover); *see also* 6/5/12 Tr. 235:6–10 (Noll)("It's a bundle of services, it's a distribution system, a bunch of nonmusic content and a bunch of music content, all of which are essential. And you pull the plug on any one of them, and the whole thing collapses."); 6/11/12 Tr. 1431:10–17 (Karmazin). The value of Sirius XM's satellite radio service is the bundling of music and non-music content with its delivery platform, and Sirius XM has failed to present convincing evidence that its delivery platform and non-music content, alone, present a viable business.[81]

In sum, these concerns, coupled with those surrounding the Direct Licenses themselves, do not inspire confidence that the Direct Licenses are the best benchmark for rate setting in this proceeding. Rather, I believe that the rates between 5% and 7% contained in the Direct Licenses mark the lower boundary of the range of reasonable rates to be determined in this proceeding. The evidence presented establishes that reasonable rates cannot be lower. I now examine the benchmarks offered by SoundExchange and Dr. Ordover.

As an initial matter, the Judges have determined in the past that the interactive subscription service market is a benchmark with characteristics reasonably comparable with non-interactive SDARS. *SDARS–I*, 73 FR at 4093. Sirius XM, however, charges that Dr. Ordover began his analysis in the wrong place by examining rates for interactive services instead of non-interactive services. I do not agree. In saying this, I do not suggest that the market for interactive services, in and of itself, offers the best benchmark from which to begin an analysis of reasonable rates for Sirius XM's satellite radio service. Adjustments, as discussed below, are necessary for the benchmark to be at all useful. However, as a starting point, the interactive subscription service market is more illustrative of a competitive marketplace (willing buyer/willing seller) than the non-interactive subscription service market, where negotiated rates are likely influenced by the availability of the statutory licensing regime for webcasting. *See Webcasting III*, 76 FR 13026 (Mar. 9, 2011)(*citing Noncommercial Educational Broadcasting Compulsory License, Final rule and order*, 63 FR 49823, 49834 (Sept. 18, 1998))("[I]t is difficult to understand how a license negotiated under the constraints of a compulsory license, where the licensor has no choice to license, could truly reflect 'fair market value.'"). Furthermore, the agreements examined by Dr. Ordover represent a more robust data source from which to consider the outcomes of marketplace negotiations, as opposed to Dr. Noll's confined use of only the Last.fm agreements.[82, 83] His observation of a clustering of effective percentage of revenue rates between 60% and 65% for interactive subscription services is supported by empirical evidence and is not misleading or under inclusive.[84]

[80] The implicit monthly price is applied to the effective percentage-of-revenue rate of [REDACTED] from the Last.fm agreements that serve as the numerator in Dr. Noll's calculation.

[81] Likewise, Sirius XM has failed to demonstrate that it could successfully substitute away to other providers of music. If that were the case, Sirius XM could have operated its business under the Direct Licenses, for example, and avoided participation in this proceeding altogether.

[82] Dr. Noll identifies the non-interactive music services offered by Pandora, whom he categorizes as the "big elephant in the room," as highly comparable to the satellite radio service of Sirius XM. 6/5/12 Tr. 286:21–287:7 (Noll). While his comparison is to the compatible features of Pandora, the parties have interjected and argued the royalty rates paid by Pandora for its music services. I am expressly *not* considering the rates, terms or conditions of Pandora's royalty payments in relation to the rates in this proceeding, for to do so would violate the terms of the Webcaster Settlement Act of 2009. *See* 17 U.S.C. 114(f)(5).

[83] Dr. Noll also considered agreements involving Slacker and Turntable, but only *used* the Last.fm agreements in his analysis. As Sirius XM acknowledges, the Slacker and Turntable services are more interactive than Last.fm, thereby weakening their comparability. *Sirius XM RFF* ¶ 64.

[84] Sirius XM makes much of the fact that rates obtained by the major record labels have dropped

Ordover Third Corrected/Amended WDT at 21 Table 1, 26, Table 2, SX Trial Ex. 74.

I am not persuaded that Dr. Ordover's perceived "failure" to incorporate the costs of Sirius XM's satellite delivery platform renders his interactive subscription services benchmark fatally flawed or in need of adjustment. Dr. Noll asserts that the Sirius XM satellite radio service should be viewed as a bundle of three inputs—music content, non-music content, and the satellite platform for delivering the content—and attempts to separately value each component of the bundle. Noll Revised Amended WDT at 80, SXM Dir. Trial Ex. 1. Consumers do not value the satellite platform independent of the content it transmits, 6/7/12 Tr. 666:5–11 (Frear), and Sirius XM has not successfully demonstrated that the satellite platform can be unbundled and sold separately. *See SDARS–I,* 73 FR at 4089; *see also* Ordover Amended WRT at 33, SX Trial Ex. 218 (Cricket license agreements reflect that its delivery system provides services that have independent value to consumers). The value of Sirius XM's service is the end product to the consumer, as is the case with the interactive subscription service consumer, and no adjustment for the delivery mechanism is necessary.

To be sure, the rights licensed by interactive subscription services are not the same as those by non-interactive services such as the SDARS, and adjustment to the interactive benchmark is necessary to account for these differences. *See SDARS–I,* 73 FR at 4093. Dr. Ordover attempted to account for these differences by offering two alternative benchmarks. His first alternative begins with the average monthly per-subscriber fee paid by interactive services and reduces that fee in proportion to the ratio of the retail price of Dr. Ordover's hypothetical music-only satellite radio service to the retail price of interactive services. There are doubts as to whether this approach accurately adjusts the interactive service benchmark to account for differences in attributes and functionality between interactive subscription services and satellite radio, and SoundExchange backed away from advocacy of this model in its post-trial submissions. I focus, instead, on Dr. Ordover's second alternative approach, which begins with the average monthly per-subscriber fee paid by interactive services ($5.95) and then reduces that fee in proportion to the ratio of the average retail price of non-interactive music services to the retail price of the interactive services ($4.86/$9.99). Ordover Third Corrected/Amended WDT at 34, SX Trial Ex. 74.

It is readily apparent that Dr. Ordover's interactivity adjustment to his interactive subscription services benchmark in this proceeding is *not* the same as the one he performed in *SDARS–I.* Dr. Ordover based his adjustment in *SDARS–I* on per-play rates from non-interactive video streaming services, a market that both parties concede effectively no longer exists. *SX RFF* at 164; 8/15/12 Tr. 3573:22–3574:3 (Noll). However, I am not persuaded that the difference—using retail prices for non-interactive services in this proceeding rather than per-play rates—renders his analysis invalid. A straightforward comparison of per-play rates in the interactive and non-interactive markets would be flawed, in that it would not account for differences in intensity of use (average number of plays per subscriber) between the markets, and would involve analysis of non-interactive rates from a market subject to influences of the statutory license. Comparing retail prices between the markets, as Dr. Ordover does, is a reasonable approach as the value of interactivity to consumers will likely be reflected in retail prices. 8/16/12 Tr. 3836:5–11 (Salinger).

While I find Dr. Ordover's comparison of retail prices in the interactive and non-interactive markets conceptually sound, his analysis is not without warts. In deriving his average non-interactive service price for the five non-interactive services he examined, Dr. Ordover's averaging technique placed greater weight on the higher-priced services.[85] A more accurate method for calculating the average price is to include a single time-frame observation—the price of a year of service—for each of the five services. This procedure reduces the average price to $4.01. Noll Revised WRT at 25, SXM Reb. Trial Ex. 6. Dr. Ordover also did not weight his average by the number of subscribers to each service to account for differences in popularity, presumably because data was not available for all five services. It exists, however, for Pandora, Last.fm and Live365. I accept Dr. Noll's weighted adjustment to $3.15 because of the unlikelihood that the other two services used by Dr. Ordover, Musicovery and Sky.fm, would significantly impact the calculation. *Id.* at 25–26.

In converting his price for non-interactive services to a price for Sirius XM, Dr. Ordover used the monthly price charged to subscribers for the Sirius XM Select package. Ordover Third Corrected/Amended WDT at 43, SX Trial Ex. 74. Dr. Noll suggests that using Sirius XM's Average Revenue Per User ("ARPU") makes more sense, stating that "I doubt that Dr. Ordover disagrees that ARPU, not sticker price, is the correct basis for calculating royalties." Noll Revised WRT at 20 n.5, SXM Reb. Trial Ex. 6. ARPU was $11.22 in the first quarter of 2011 and rose to $11.49 in the first quarter of 2012 after the Sirius XM price increase. I use $11.49 as the most current ARPU figure in the record, and the one most representative for the coming licensing term.

Making the adjustments for the price of non-interactive services and revenues for Sirius XM[86] yields a percentage-of-revenue rate for Sirius XM of 16.2%.[87] Dr. Ordover opines that his second alternative benchmark generates a lower bound estimate of reasonable rates. Ordover Third Corrected/Amended WDT at 33, SX Trial Ex. 74. However, I am not confident that his benchmark fully adjusts for interactivity to the level of service offered by Sirius XM's satellite radio service. For example, Pandora and Last.fm allow more user control of content than Sirius XM. Noll Revised WRT at 27, SXM Reb. Trial Ex. 6. Musicovery allows users to create playlists within a social network, to ban songs and artists from certain customized channels, and to skip songs altogether, while Sky.fm permits caching for later listening. *Id.* at 28. Additionally, Dr. Ordover's use of the average per-subscriber royalty payment of $5.95, which is drawn from the 60% average royalty fee for interactive services, bakes in the interactive service

almost 20% since *SDARS–I* and argues that this logically must mean that music is worth less than in the prior proceeding. *Sirius XM PFF* ¶ 339. SoundExchange counters that the reason for the 20% drop is the decline in retail prices for interactive services, which SoundExchange concludes is an indication that consumers value interactivity less than before. *SX RFF* ¶ 145. Neither side provided empirical evidence to prove their point, and logic does not dictate that music is of any less, or more, value as a result of this occurrence.

[85] The five non-interactive services selected by Dr. Ordover listed one retail price for two services, two retail prices for one service, and three retail prices for two services. Ordover Third Corrected/Amended WDT at ¶ 54, Table 5, SX Trial Ex. 74. The differing prices reflect differing duration commitments for subscribers.

[86] While I am adopting these adjustments to Dr. Ordover's second alternative benchmark, I underscore that I am *not* adopting Dr. Noll's recommended use of the Last.fm non-interactive percentage rate (26.1%) for the same reasons that a five-year old agreement with two major record labels did not make for a useful benchmark.

[87] This is calculated by multiplying the interactivity ratio of .3153 ($3.15/$9.99) to the average per-subscriber royalty payment of $5.95, yielding an equivalent satellite radio payment of $1.87. The $1.87 per-subscriber rate is then divided by Sirius XM's ARPU ($11.49), resulting in the percentage-of-revenue rate of 16.2%.

royalty to his calculation by virtue of its use as a multiplier.

There are other concerns with Dr. Ordover's analysis. For example, Live 365, which charges the most of the non-interactive services that Dr. Ordover observed, offers more than 7,000 channels that are pre-programmed by independent entities and other content that does not closely resemble the Sirius XM satellite. This reduces my confidence that Dr. Ordover's 16.2% benchmark is as reliable as the one the Judges considered in *SDARS–I*. In sum, the 16.2% royalty rate marks the upper bound of reasonable rates in this proceeding, with the lower bound marked by the 5%–7% rates from the Direct Licenses. The appropriate royalty rates lie within this zone, identified by my Section 801(b) policy analysis described below.

4. The Section 801(b) Factors

In *SDARS–I*, the Judges determined that an evaluation of the marketplace evidence hued in the direction of Dr. Ordover's interactivity-adjusted interactive subscription market analysis that marked the upper bound of reasonable royalty rates in that proceeding. *See* 73 FR at 4094. For the reasons stated above, the market-based evidence presented in this proceeding does not weigh in favor of either SoundExchange's or Sirius XM's presentations. Rather, reasonable rates to be paid by Sirius XM for the 2013–2017 licensing period lie along the continuum of rates marked at the lower end by 5%–7% from Sirius XM's presentation and at the upper end by 16.2% by SoundExchange's presentation. Consideration of the Section 801(b) policy factors locates the appropriate royalty rates within that range.

a. Maximize Availability of Creative Works

The first policy objective set forth in Section 801(b)(1) is to "maximize the availability of creative works to the public." 17 U.S.C. 801(b)(1)(A). Sirius XM argues that application of the first factor favors adoption of rates at the lower end of the range for three reasons.[88] First, Sirius XM contends that its satellite radio service enhances the delivery and availability of sound recordings by providing nationwide transmissions of sound recordings not played elsewhere. Second, Sirius XM submits that royalties from the Section 114 SDARS license are too small a portion of record companies' overall revenue to be a driving force behind decisions to produce creative works. Thus, according to Sirius XM, a lower royalty rate will not reduce record companies' incentives. Third, Sirius XM argues that the promotional effects created by its artist-themed channels, special benefits and programming exert a direct promotional impact on the sale of sound recordings thereby generating revenue for rightsholders and inducing them further to create new sound recordings. *Sirius XM RFF* ¶ 99.

I am not persuaded that any of these reasons augurs in favor of rates at the lower end of the range of reasonable rates. While it is acknowledged that Sirius XM's signal is capable of reception in locations in the United States not served by over-the-air terrestrial broadcast radio or wireless Internet service, Dr. Noll could not estimate what percentage of the population (approximately 2% in the U.S.) in these unserved areas actually subscribes to Sirius XM's satellite radio service. Noll Revised Amended WDT at 18–21, SXM Dir. Trial Ex. 1. Even for those persons in unserved areas who do subscribe to Sirius XM, there is no evidence that this group depends upon Sirius XM in order to access music. In fact, Sirius XM's own internal survey demonstrates that subscribers who deactivate their Sirius XM service typically turn to consumption of music on CDs. SX Trial Ex. 8 at 23 (SXM_CRB_DIR_00042796).

With respect to the percentage of record company revenues represented by Sirius XM's Section 114 royalty payments, it is true that the percentages of the totals are low; nonetheless, there is testimony that the royalty payments contribute significantly to overall profitability. *See*, 6/13/12 Tr. 2141:1–10 (Ciongoli)(UMG); Ford Amended/Corrected WRT at 13, SX Trial Ex. 244 (Warner); PSS Trial Ex. 33 (Sony). Therefore, it cannot be said that Section 114 royalty rates—whether low or high within the range—have no impact whatsoever on record companies' incentives to create new sound recordings.

Finally, there is no objective, quantifiable evidence that Sirius XM's promotional activities with respect to its music offerings, events, and surrounding programming produce a *net* positive impact on record company revenues. While these activities, viewed individually, may have promotional effect on record sales, there is insufficient evidence in the record as to the overall effect of Sirius XM's satellite radio service on all streams of record company revenues from sound recordings. Indeed, Sirius XM's witness Steven Blatter conceded that his examples of on-the-air activities showed only a correlation between airplay and record sales and nothing more. 6/8/12 Tr. 1032:20–1033:7 (Blatter). It may be that Sirius XM's use of sound recordings has an overall substitutional effect upon record company revenues, as opposed to an overall promotional effect. Sufficient and creditable evidence is not present in this record to quantify the promotional/substitutional effect of Sirius XM's service.

In sum, I find that the policy goal of maximizing the availability of creative works to the public is not, due to the paucity of the evidentiary presentations, advanced by royalty rates at either the upper bound or the lower bound of the range of reasonable rates determined from my analysis of the marketplace evidence.

b. Afford Fair Return/Fair Income Under Existing Market Conditions

The second policy objective seeks "to afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions." 17 U.S.C. 801(b)(1)(B). SoundExchange contends that dramatic changes in the recorded music business within the last decade have placed a greater emphasis on digital exploitation of sound recordings versus physical sales, thereby increasing the importance of revenues generated by the Section 114 license. Sirius XM contends that lower royalty rates are necessary to enable it to recover the investments in its satellite business and achieve profitability.

Charles Ciongoli, Executive Vice President and Chief Financial Officer for Universal Music Group North America ("UMG"), testified that the recorded music business' new reliance on digital revenues is the result of consumers purchasing fewer physical products as they gain more widespread access to music through digital services. As a result, companies like UMG cannot rely solely on the sale of physical products or permanent downloads, as in years past, and must obtain substantial royalty revenues from "access" services, such as Sirius XM, in order to survive. Ciongoli Corrected WDT at 4–6, SX Trial Ex. 67. *See also* Bryan Corrected WDT at 3–4, SX Trial Ex. 66; 6/13/12 Tr. 1969:21–1970:12 (Bryan). SoundExchange submits that digital royalties are even more important for independent record companies to

[88] SoundExchange, citing Dr. Ordover's testimony, argues that the policy considerations of the first three factors are subsumed in the marketplace benchmarks it has proffered. *SX PFF* ¶¶ 502–507. Since I do not accept the benchmarks of either side as determinative of the rate to which Section 801(b) is applied, other than their ability to define the *range* of reasonable rates, SoundExchange's argument is inapposite.

ensure a fair return on their efforts to develop artists in the short and long terms. Van Arman WDT at 3, SX Trial Ex. 77.

Sirius XM states that the costs of its investments in the satellite business, expenses related to research, development, and permitting, and its operating losses must be measured cumulatively, not as a snapshot of annual operating costs, in considering fair return to the user under the second Section 801(b) factor. *Sirius XM PFF* ¶ 263. The evidence, according to Sirius XM, demonstrates that it is a long way from earning any return on its billions of dollars of expenditures, in contrast to the record companies which have "presented no evidence that the record industry is not currently earning a fair return on its investments in the production of creative works." *Id.* at ¶ 264.

Evaluating royalty rates that would enable recovery of expenditures of Sirius XM over more than a decade of operations is not required under the second Section 801(b) factor.[89] As the Judges observed in *SDARS–I*, "[a]ffording copyright users a fair income is not the same thing as guaranteeing them a profit in excess of the fair expectations of a highly leveraged enterprise." *SDARS I*, 73 FR at 4095 (footnote omitted). During the current five-year licensing period, Sirius XM has publicly reported in its SEC filings adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") of positive $2.1 billion, and net income of positive $3.2 billion. Frear WDT at 7, SXM Dir. Trial Ex. 12 (2008–2010 results); Lys WRT at SX Ex. 231–RP, SX Ex. 232–RP, SX Trial Ex. 40 (2011 and 2012 first quarter results), SX Trial Ex. 240; SX Trial Ex. 217 (2012 second quarter results and 2012 full-year guidance). By the end of 2012 under the current 8% of *Gross Revenues* royalty rate, Sirius XM expects to report cumulative adjusted EBITDA of positive $2.6 billion, net income of positive $3.4 billion, and free cash flow of positive $1 billion. SX Trial Ex. 217. EBITDA results are predicted to increase in the coming years, whether the royalty rates are set beginning at 9% in 2013 and rising 1% per year to end at 13% (Morgan Stanley's "base case" scenario), or beginning at 12% in 2013 and rising by 2% per year to end at 20% (Morgan Stanley's "bear case" scenario). SXM Reb. Trial Ex. 12 at 9; *SX PFF* ¶ 568. In sum, I cannot discern how selection of any rate within the range of reasonable rates suggested by the marketplace evidence will fail to enable Sirius XM to earn a fair income in the upcoming licensing period.

With respect to fair return to the copyright owner, I accept the testimony of Mr. Ciongoli and others that revenues from the statutory licenses are of greater importance to record labels as a result of the changes brought about by digital distribution of music and that such revenues contribute to the overall profits. Their importance may be offset somewhat by the gains achieved by the lower costs associated with digital distribution and the efficiencies achieved by the record industry in recent years through downsizing. At best, the record testimony suggests that a royalty rate above the existing 8% of *Gross Revenues* will promote a fair return to copyright owners in the upcoming licensing term, but the evidence does not permit quantification of an increase with accuracy. Nevertheless, I am satisfied that the rates set forth below incorporate the policy considerations of fair return/fair income prescribed in the second Section 801(b) factor.

c. Relative Roles of Copyright Owners and User

This policy factor requires that the rates adopted reflect the relative roles of the copyright owners and copyright user in the product made available with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of markets for creative expression and media for their communication. 17 U.S.C. 801(b)(1)(C). The majority of the evidence and arguments submitted by the parties on this factor can be generally described by a single inquiry: who spent more on their business? *Compare, SX PFF* ¶¶ 535–544 *with Sirius XM PFF* ¶¶ 278, 289–290, 294. Capital investments, costs and risk, however, are only part of the analysis required by the third Section 801(b) factor. Relative creative and technological contributions, as well as contributions to opening new markets must also be considered. Sirius XM contends that it has pioneered and built a complex satellite delivery system that assures uninterrupted, nationwide availability of programming content, thereby creating a satellite radio business that did not previously exist. *Sirius XM PFF* ¶¶ 280–286. SoundExchange counters that Sirius XM has exploited mostly existing technology, principally designed and built by WorldSpace, Boeing, PanAmSat and the United States Army. *SX RFF* ¶¶ 252–257.

As is stated with respect to the PSS, *supra*, the task is not to consider each element of the third factor separately and make unspecified, unquantified up or down adjustments to the chosen royalty rates. Rather, the task with respect to the SDARS rate is to consider the elements as a whole and determine whether such consideration warrants any directional change in the range of rates established by the evaluation of the marketplace evidence (i.e., 5%–7% on the lower end to 16.2% on the upper end). I conclude, upon careful weighing of the evidence, that the third Section 801(b) factor does not require royalty rates that hue to either end of the spectrum of reasonable rates. In fact, little has changed in the evidentiary record relevant to this factor since *SDARS–I*. Sirius XM continues to overstate the originality of its technological contributions, as well as its exposure to risk. Elbert Designated WRT *passim*, SX Trial Ex. 410. No new markets have been opened during the current licensing term, nor is there evidence suggesting that the situation will change in the upcoming term. As was the case in *SDARS–I*, Sirius XM and the record companies continue to invest large sums in operating and advancing their businesses, as well as developing products for the future. The evidence does not indicate that the output or efforts of either side warrants a higher or lower royalty rate.

d. Minimize Disruptive Impact

The fourth policy factor under Section 801(b) requires the Judges to determine rates that "minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices." 17 U.S.C. 801(b)(1)(D). The analytical framework for my evaluation of this factor is well established. A royalty rate may be considered disruptive "if it directly produces an adverse impact that is substantial, immediate and irreversible in the short-run because there is insufficient time for [the parties impacted by the rate] to adequately adapt to the changed circumstances produced by the rate change and, as a consequence, such adverse impacts threaten the viability of the music delivery service currently offered to consumers under this license." *SDARS–I*, 74 FR at 4097; *see also Phonorecords I*, 74 FR 4510, 4525 (Jan. 26, 2009).

In *SDARS–I*, it was the Judges' consideration of this factor that merited the adoption of a rate below the upper bound of the zone of reasonable market rates suggested by the interactivity-

[89] Indeed, it is difficult to imagine royalty rates, other than perhaps those approaching zero, that might make more than a dent in the recovery of billions of dollars of cumulative losses.

adjusted Ordover benchmark (i.e., 13%). It is, therefore, not surprising that the parties have devoted most of their argument under Section 801(b) to the fourth factor. Much of this argument is inapposite here, however, because it is made in support of the parties' respective rate proposals. The task here is to evaluate rates within the 5%–7% to 16.2% zone of reasonableness and select a rate or rates, consistent with the other Section 801(b) factors, that will not cause disruption. This requires consideration of the evidence on disruption presented in this proceeding, *not* the evidence that was presented or evaluated by the Judges in *SDARS–I*.

The record in this proceeding demonstrates that Sirius XM is in a far stronger financial position than it was at the time of *SDARS–I*. At the end of 2007, Sirius and XM [90] had a total of 17.3 million subscribers. SX Trial Ex. 16 at 18 (SXM_CRB_DIR_00021683). By the end of 2012, Sirius XM has announced that, with a net increase of 1.6 million subscribers this year, it will attain 23.5 million subscribers. SX Trial Ex. 217 at 7. In 2007, Sirius and XM had combined revenue of only $2.1 billion, with combined adjusted EBITDA of negative $565 million. SX Trial Ex. 16 at p. 14–15 (SXM_CRB_DIR_00021680–81). By the end of 2012, Sirius XM has announced that its revenue will be $3.4 billion, and its adjusted EBITDA will be approximately a positive $900 million. SX Trial Ex. 217 at 7. A similar situation applies to free cash flow, rising from negative $505 million in 2007 to approximately positive $700 million in 2012. SX Trial Ex. 16 at 16 (SXM_CRB_DIR_00021682); SX Trial Ex. 217 at 7; *see also* Lys Corrected WDT at 18–21, SX Trial Ex. 80. In 2007, Sirius and XM faced considerable expense in the completion of their satellite builds, the failure of which, the Judges recognized, "clearly raises the potential for disruption of the current consumer service." *SDARS–I*, 73 FR at 4097. Sirius XM has no plans to launch or invest in new satellites during the 2013–2017 licensing period. Lys WRT at SX Ex. 211–RP at 44, SX Trial Ex. 240; 6/6/12 Tr. 607:18–22 (Meyer).

Despite its strong financials in 2012, Sirius XM's witnesses attempt to paint a grim picture for the upcoming licensing term. David Stowell, professor of finance at Northwestern University's Kellogg School of Management, testified that Sirius XM's financial history and substantial accumulated losses evince a threat of disruption caused by higher royalty rates that is "equal to or even greater than the one it faced at the time of the last rate proceeding." Stowell WDT at 21, SXM Dir. Trial Ex. 18. David Frear, Sirius XM's Chief Financial Officer, testified that Sirius XM's brush with bankruptcy in late 2008 (where it struggled to repay the balance due on notes that matured on February 17, 2009, until receiving a loan from Liberty Media) requires that Sirius XM maintain a cash reserve of at least $750 million to guard against future calamity. Frear WDT at 4–5, SXM Dir. Trial Ex. 12; 6/7/12 Tr. 663:17–665:2 (Frear). Mr. Frear and Mel Karmazin, the Chief Executive Officer of Sirius XM, testified that the satellite delivery infrastructure of Sirius XM radio is inherently risky and that any number of events could seriously impact its ability to deliver programming and result in large, unanticipated expense. Frear WDT at 9, SXM Dir. Trial Ex. 12; Karmazin WDT at 17, SXM Dir. Trial Ex. 19. James Meyer, Sirius XM's President of Operations and Sales, testified that current economic uncertainty can affect the purchase of Sirius XM in automobiles and increase the number of current subscribers discontinuing service (described as the "churn rate"). 6/6/12 Tr. 566:21–568:16 (Meyer); Meyer WDT at 18–19, 29–30, SXM Dir. Trial Ex. 5. And William Rosenblatt, president of GiantSteps Media Technology Strategies, along with Messrs. Meyer, Karmazin, Frear and Professor Stowell, testified that rapidly evolving Internet-based competitors, advantaged by rapidly expanding wireless broadband capabilities and the explosion of smartphone use, present a potentially great disruptive challenge to Sirius XM during the 2013–2017 licensing period. Rosenblatt Corrected WDT *passim*, SXM Dir. Trial Ex. 17; Meyer WDT at 7–18, SXM Dir. Trial Ex. 5; Stowell WDT at 10–11, 22, SXM Dir. Trial Ex.18; 6/11/12 Tr. 1429:6–13 (Karmazin); 8/13/12 Tr. 3042:5–3043:9 (Frear).

The problem with Sirius XM's parade of horribles is that—with one exception—it is belied by the evidence and, in most instances, by Sirius XM's own public statements. Dr. Thomas Lys, SoundExchange's expert economist, presented data projecting Sirius XM's likely future EBITDA and free cash flow (two financial measures that the Judges focused on in considering the disruption factor in *SDARS–I*) using forecasts from Morgan Stanley and Sirius XM's own internal projections. Morgan Stanley projects significant positive EBITDA and free cash flow for Sirius XM in the upcoming license period under varying scenarios with different royalty rates and economic conditions. Lys WRT at 21–31, SX Trial Ex. 240. Particularly relevant to the consideration of reasonable rates is Morgan Stanley's recent 2012 baseline projection which assumes that royalty rates will begin at 9% in 2013 and rise 1% per year to end at 13%. SXM Reb. Trial Ex. 12 at 9. Under this projection, Sirius XM's EBITDA will increase each year despite the increases in rates and will be higher than Sirius XM has achieved in the history of its company. *Id.* Furthermore, projections made using Sirius XM's own internal forecasts generally corroborate these results. Lys WRT at 11, SX Trial Ex. 240.

Sirius XM vehemently opposes consideration of either the Morgan Stanley or its own internal projections, arguing that long-term financial projections for Sirius XM are not reliable. *Sirius XM RFF* ¶¶ 118–129. It is certainly true that the longer the term of forecast, the lesser the degree of accuracy that can be expected in the latter portion of the term. However, Sirius XM does not and cannot contend that short-term projections, either its own or those of Morgan Stanley, are highly unreliable.[91] Both show substantial EBITDA profitability and positive free cash flow, even under scenarios that exceed the range of reasonable rates I have identified in this proceeding. *See* Lys Corrected WDT at 25–28, SX Trial Ex. 80. A royalty rate can be disruptive under the fourth Section 801(b) factor if it "produces an adverse impact that is substantial, immediate and irreversible in the short-run." *SDARS–I*, 73 FR at 4097. The Morgan Stanley and Sirius XM internal projections convincingly reveal that disruption to Sirius XM will not occur in the short run by royalty rates within the range of reasonable rates identified in this proceeding.[92]

[90] The merger of the two companies did not occur until the following year. 6/7/12 Tr. 640:15 (Frear).

[91] The record in this proceeding is replete with public statements and assertions by the executive officers of Sirius XM that the company is and will be highly successful and profitable, both in the short term *and* the long term. *See, e.g.*, Lys Corrected WDT at 8, 10–11 (*quating* Mr. Karmazin from November 2011: "[W]e believe we have many, many years of subscriber growth ahead of us."), SX Trial Ex. 80; 8/13/12 Tr. 3179:7–10 (Frear)(Sirius XM revenue not just growing, but accelerating); Lys WRT at 31 & SX 238–RP (Mr. Karmazin in an April 2012 interview with Forbes magazine: "[W]e're a very profitable, successful company. If we want a performer, we can afford to pay more than anybody else because we're making more."), SX Ex. 226–RP (Mr. Karmazin: "Given the predictable nature of our business, we would prefer to take advantage of a prudent level of leverage, which should mean higher returns to our equity holders over time."), SX Trial Ex. 240.

[92] I find Professor Stowell's criticisms of equity analysts' forecasts flawed and unpersuasive. He ignores substantial, published research as to the improved accuracy of projections, particularly

There is also another element of Sirius XM's business operation that persuades me that rates within the reasonable range I have identified in this proceeding will not be disruptive: the Music Royalty Fee. The U.S. Music Royalty Fee was adopted by Sirius XM in July 2009, with the permission of the Federal Communications Commission, as a result of the Sirius and XM merger and in response to the royalty rates adopted in *SDARS–I*,[93] to pass through to subscribers Sirius XM's music royalty costs. After adopting the $1.98 per subscriber per month charge (it is currently $1.42), Mr. Karmazin informed investors that there was no "discernable impact on churn," meaning that the overall price increase to subscribers did not impact Sirius XM's ability to retain its subscribers. Lys WRT at 33–34, SX Trial Ex. 240. Sirius XM's long-range planning documents reveal an intention for future use of the Music Royalty Fee to recoup music licensing expenses, SX Trial Ex. 9 at 6 (SXM_CRB_DIR_00031738), and neither Messrs. Karmazin nor Frear denied that the Music Royalty Fee will continue to appear on customers' bills in some amount in the upcoming 2013–2017 licensing period. Sirius XM's demonstrated ability to pass through music licensing costs to its subscribers without discernible, negative impact to its satellite radio business further belies its claims that increased royalty fees from current levels will be disruptive.[94]

Sirius XM also posits several financial risks for the upcoming license period that it claims will be exacerbated by higher royalty rates. First, Sirius XM contends that higher royalty rates will reduce available levels of free cash flow to such an extent as to impair Sirius XM's ability to account for possible downturns in any of its key performance metrics such as churn, conversion from trial to paid subscriptions, and average revenue per user over the upcoming rate term. *Sirius XM RFF* ¶ 117. Unlike consideration of the Sirius XM or Morgan Stanley forecasts, which have reasonable reliability at least in the short term, Sirius XM's suggestions of possible downturns in its satellite radio business are no more than that. While downturns are possible, Sirius XM has not presented compelling testimony that any one or more events are probable and, therefore, must be considered closely.

Second, Sirius XM contends that its "brush with bankruptcy" in the aftermath of the July 2008 merger demonstrates the risk of its debt level and difficulty in accessing credit markets, all of which will be made worse by higher royalty rates. *Sirius XM PFF* ¶¶ 313–314. The "brush with bankruptcy" argument, however, is a red herring, as it was caused by the need to refinance during a global-wide credit crisis and had nothing to do with the Section 114 royalty rates. 8/20/12 Tr. 4040:14–4042:7 (Lys).[95] Professor Stowell's conclusion that Sirius XM has a "realistic possibility" of defaulting on its outstanding debt in the near future is speculative and not based upon the possibility of higher Section 114 royalty rates, since the ratings agencies do not discuss such royalties as a primary risk of Sirius XM in assessing its credit quality and likelihood of default. Lys WRT at 23, SX Trial Ex. 240; 8/20/12 Tr. 4049:2–4050:13 (Lys). Moreover, credit rating agencies have repeatedly raised Sirius XM's credit rating over the last few years and believe that it has strong liquidity and ability to finance its debt. Lys Corrected WDT at 31–32, SX Trial Ex. 80; Lys WRT at 47–48, SX Trial Ex. 240.

Third, Sirius XM argues that higher royalty rates will disrupt its ability to recoup billions of dollars of accumulated losses. *Sirius XM PFF* ¶ 312; *see also* Frear WDT at 7, SXM Dir. Trial Ex. 12 (discussing decrease in Sirius and XM stock prices from 2000 to 2007). Past losses and decreases in stock prices, however, do not have relevance to a disruption analysis under Section 801(b). There is no evidence that the expenditures of prior investors will have any impact on the future decision making or operation of the company. *See, e.g.*, 6/8/12 Tr. 1297:1–8 (Stowell) (Professor Stowell acknowledging that he did not know if any pre-2008 investors are still owners of Sirius XM stock today).

In sum, there is no persuasive evidence that an increase in royalty rates from the current level and within the range of reasonable rates identified by the analysis of market evidence will cause disruption to the operation of Sirius XM's satellite radio business in the beginning to middle of the 2013–2017 licensing period. There is, however, testimony that raises the potential for disruption in the latter portion of the licensing term. New Internet-based competitors, whose emergence is enabled by the explosion of wireless broadband capability and smartphone use, appear poised to offer the same advantages over terrestrial radio that Sirius XM once claimed only to itself, and without the expenses associated with a satellite-based delivery system. Meyer WDT at 5–11, SXM Direct Trial Ex. 5; Rosenblatt Corrected WDT at 12–14, 20–38, SXM Dir. Trial Ex. 17. Such competitors can also offer their customers the added benefits of increased customization and personalization which Sirius XM is incapable of providing on its satellite radio service. Meyer WDT at 8–9, SXM Dir. Trial Ex. 5; Rosenblatt Corrected WDT at 20–31, SXM Dir. Trial Ex. 17. Many of these competitive products are being introduced already, particularly in automobiles which lie at the core of Sirius XM's satellite radio business, and *could* cause disruption by 2016 or 2017. *See* Meyer WDT at 15 (all major car manufacturers expected to incorporate connected-car technology within the next three years), SXM Dir. Trial Ex. 5. SoundExchange counters that Sirius XM enjoys considerable advantages over Internet radio competitors, such as a head start in integration of satellite radios into the automobile dashboard, current agreements with auto manufacturers, and current limitations on network streaming technology. *SX PFF* ¶¶ 637, 639–640, 642, 645–648. Nevertheless, SoundExchange does acknowledge that Internet-based competitors will grow, along with Sirius XM, in the coming rate term. *Id.* ¶ 650.

The evidence suggests that competition from Internet-based radio, particularly in the automobile, may cause disruption to Sirius XM's business by the final two years of the upcoming licensing period. The potential for such disruption is underscored by the limitations afforded to long-term financial projections (four and five years from now), and the relative speed in technological development demonstrated in the marketplace in recent years for delivery of music. I cannot forecast with certainty the degree to which future

within recent years, as well as changes implemented by the Securities and Exchange Commission to eliminate analyst bias. Lys WRT at 11–12, SX Trial Ex. 240. He also ignores recent data criticizing the performance of equity analysts that follow Sirius XM, confining his analysis to only forecasts made prior to the Sirius and XM merger. *Id.* at 14.

[93] Indeed, Sirius XM originally considered calling the fee the "Copyright Royalty Board Fee" instead of the Music Royalty Fee. Lys WRT at 33 n.142, SX Trial Ex. 240.

[94] SoundExchange and Sirius XM disagree as to what percentage of licensing costs are passed through to subscribers in the Music Royalty Fee. SoundExchange contends 100%, Lys WRT at 32 & SX Ex. 240–RR, SX Trial Ex. 240, while Sirius XM contends 53%. Frear Revised WRT at 16, SXM Reb. Trial Ex. 1. A *substantial* portion of licensing fees is passed on to subscribers in either case, ameliorating the possibility of short-term negative effects of increased Section 114 fees.

[95] The odds of another such crisis occurring during the 2013–2017 licensing period are low since that type of crisis has happened only twice in the past 80 years. 8/20/12 Tr. 4046:5–9 (Lys).

Internet-based competition may cause disruption in Sirius XM's business and, therefore, cannot determine the amount to which royalty rates may or should be reduced to prevent such disruption. However, the potential for disruption is suggested sufficiently by the evidence and counsels against escalation of the royalty rates in the last two years of the 2013–2017 license period.

5. Conclusions Regarding Section 114 Rates

As discussed above, analysis of the market-based evidence presented in this case yields a range of reasonable royalty rates between 5%–7% on the lower end, and 16.2% on the upper end. I have analyzed and applied the Section 801(b) factors to this range of reasonable rates and conclude that only two of the factors—the second and the fourth—impact the selection of rates within the range for the upcoming 2013–2017 licensing term. The second factor (fair return/fair income under existing market conditions) suggests selection of royalty rates that are above the current 8% rate, albeit without specific quantification. The fourth factor (minimizing any disruptive impact on the structure of the industries involved and on generally prevailing industry practices) counsels against raising the royalty rates further in the final two years of the licensing term. I dissent from the rates adopted by the majority and submit that they should be as follows: for 2013: 10.0%; for 2014: 11.0%; for 2015: 12.0%; 2016: 12.0%; and for 2017: 12.0%.

Dated: February 14, 2013.

William J. Roberts, Jr.,
Copyright Royalty Judge.

List of Subjects in 37 CFR Part 382

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 382 as follows:

PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114 and 801(b)(1).

§ 382.1 [Amended]

■ 2. Section 382.1 is amended as follows:

■ a. In paragraph (a), by removing "114(d)(2)" and adding "114" in its place, and by removing "ephemeral phonorecords" and adding "Ephemeral Recordings" in it place;

■ b. In paragraph (c), by removing "ephemeral phonorecords" and adding "Ephemeral Recordings" in its place; and

■ c. By removing paragraph (d).

§§ 382.2 through 382.7 [Redesignated as §§ 382.3 through 382.8]

■ 3. Redesignate §§ 382.2 through 382.7 as §§ 382.3 through 382.8, respectively, and add new § 382.2 to read as follows:

§ 382.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2013–2017 license term, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114 and subject to the limitations specified in 17 U.S.C. 112(e).

GAAP shall mean generally accepted accounting principles in effect from time to time in the United States.

Gross Revenues. (1) Gross Revenues shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors, if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the programming service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (1)(i) through (vii) of this definition.

(2) Gross Revenues shall include such payments as set forth in paragraphs (1)(i) through (viii) of this definition to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "Gross Revenues" as defined in paragraph (1) of this definition for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C), and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

■ 4. Revise newly redesignated § 382.3 to read as follows:

§ 382.3 Royalty fees for the digital performance of sound recordings and the making of ephemeral recordings by preexisting subscription services.

(a) Commencing January 1, 2013, and continuing through December 31, 2017, the monthly royalty fee to be paid by a Licensee for the public performance of sound recordings pursuant to 17 U.S.C. 114 and the making of any number of Ephemeral Recordings to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be a percentage of monthly Gross Revenues resulting from residential services in the United States as follows: for 2013, 8%; and for 2014 through 2017, 8.5%.

(b) Each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114 and Ephemeral Recordings pursuant to 17 U.S.C. 112(e) shall make an advance

payment to the Collective of $100,000 per year, payable no later than January 20th of each year. The annual advance payment shall be nonrefundable, but it may be counted as an advance of the section 112 royalties due and payable for a given year or any month therein under paragraph (a) of this section; Provided, however, that any unused portion of an annual advance payment for a given year shall not carry over into a subsequent year.

(c) The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions for which it pays royalties as and when provided in this subpart shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for each payment or statement of account, or either of them, received by the Collective after the due date. Late fees shall accrue from the due date until payment and the statement of account are received.

■ 5. Revise newly redesignated § 382.4 to read as follows:

§ 382.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Licensee shall make the royalty payments due under § 382.3 to the Collective.

(b) *Timing of payment.* A Licensee shall make any payments due under § 382.3 on a monthly basis on or before the 45th day after the end of each month for that month.

(c) *Statements of Account.* Licensees shall submit monthly statements of account on a form provided by the Collective. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payments;

(2) The name, address, business title, telephone number, facsimile (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The signature of a duly authorized officer or representative of the Licensee;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) The title or official position held in relation to the Licensee by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned officer or representative of the Licensee, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(d) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall be responsible only for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.3 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (d)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with § 382.8.

(e) *Retention of records.* Both Licensees and the Collective shall maintain books and records relating to the payment of the license fees in accordance with generally accepted accounting principles for a period of three years after the end of the period for which the payment is made. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

■ 6. Newly redesignated § 382.5 is amended as follows:

■ a. By revising the section heading;

■ b. In paragraph (a), by removing "which has been" and by removing "§§ 382.5 and 382.6" and adding "§§ 382.6 and 382.7" in its place;

■ c. By removing paragraphs (b), (c), and (f);

■ d. By redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively;

■ e. In the introductory text of newly redesignated paragraph (b), by adding "subject to an appropriate confidentiality agreement and" after "be";

■ f. By revising newly redesignated paragraphs (b)(1) and (b)(3);

■ g. In newly redesignated paragraph (b)(2), by removing "qualified auditor" and adding "Qualified Auditor" in its place, by removing "copyright owner or performing artist" and adding "Copyright Owner or Performer" in its place, by removing "copyright owners" and adding "Copyright Owners" in its place, and by removing "payments." and adding "payments; and" in its place; and

■ h. In newly redesignated paragraph (c), by removing "(d)" and adding "(b)" in its place.

The revisions read as follows:

§ 382.5 Confidential information.

* * * * *

(b) * * *

(1) Those employees, agents, consultants and independent contractors of the Collective who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

* * * * *

(3) Copyright Owners and Performers whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, or agents thereof provided that the only confidential information that may be shared pursuant to this paragraph (b)(3) are the monthly statements of account that accompany royalty payments.

* * * * *

■ 7. Newly Redesignated § 382.6 is amended as follows:

■ a. In paragraph (c), by removing "with" and adding "to" in its place, by removing "parties'" and adding "party's" in its place, by removing "served" and adding "delivered" in its place, and by removing "on the party" and adding "to the party" in its place;

■ b. In paragraph (d), by adding "from the date of completion of the verification process" after "years";

■ c. In paragraph (e), by removing "auditor" and adding "and Qualified Auditor" in its place;

■ d. By revising paragraph (f); and

■ e. In paragraph (g), by removing "copyright owners" and adding "Copyright Owners" in its place.

The revision reads as follows:

§ 382.6 Verification of statements of account.

* * * * *

(f) *Costs of the verification procedure.* The interested party or parties requesting the verification procedure shall pay all costs of the verification procedure, unless an independent and Qualified Auditor concludes that during the period audited, the Licensee underpaid royalties by an amount of five (5) percent or more; in which case, the service that made the underpayment shall bear the costs of the verification procedure.

* * * * *

■ 8. Newly redesignated § 382.7 is amended as follows:

■ a. In paragraph (c), by removing "with" and adding "to" in its place, by removing "parties' " and adding "party's" in its place, by removing "interest" and adding "intent" in its place, by removing "served" and adding "delivered" in its place, and by removing "on the party" and adding "to the party" in its place;

■ b. In paragraph (d), by adding "after completion of the verification process" after "years"; and

■ c. In paragraph (e), by removing "auditor" and adding "and Qualified Auditor" in its place; and

■ d. By revising paragraph (f).

The revision reads as follows:

§ 382.7 Verification of royalty payments.

* * * * *

(f) *Costs of the verification procedure.* The interested party or parties requesting the verification procedure shall pay for all costs associated with the verification procedure, unless an independent and Qualified Auditor concludes that, during the period audited, the Licensee underpaid royalties in the amount of five (5) percent or more, in which case, the entity that made the underpayment shall bear the costs of the verification procedure.

* * * * *

■ 9. Newly redesignated § 382.8 is amended as follows:

■ a. By revising the section heading;

■ b. By removing "copyright owner or performer" and adding "Copyright Owner or Performer" in its place;

■ c. By removing "date of distribution" and adding "date of the last distribution from the royalty fund at issue" in its place; and

■ d. By removing "this period" and adding "the three-year claim period" in its place.

The revision reads as follows:

§ 382.8 Unclaimed funds.

* * * * *

§ 382.10 [Amended]

■ 10. Section 382.10 is amended as follows:

■ a. In paragraph (a), by removing "2007" and adding "2013" in its place and by removing "2012" and adding "2017" in its place;

■ b. In paragraph (b), by removing "112" and adding "112(e)" in its place; and

■ c. In paragraph (c), by adding "voluntary" before "license agreements".

■ 11. Section 382.11 is amended as follows:

■ a. In the definition of "*Collective*", by removing "2007–2012" and adding "2013–2017" in its place and by removing "period" and adding "term" in its place;

■ b. In the definition of "*Copyright Owners*", by removing "114(f)" and adding "114" in its place;

■ c. By adding in alphabetical order a definition for "*Directly-Licensed Recording*";

■ d. In the definition of "*Ephemeral Recording*", by removing "114(f)" and adding "114" in its place;

■ e. In paragraph (1)(i) of the definition of "*Gross Revenues*", by removing "residential";

■ f. In paragraph (3)(vi)(D) of the definition of "*Gross Revenues*", by removing "ephemeral recordings" and adding "Ephemeral Recordings" in its place.

■ g. By adding in alphabetical order a definition for "*Pre-1972Recording*";

■ h. By removing the definition for "*Residential*"; and

■ i. In the definition of "*Term*", by removing "2007" and adding "2013" in its place and by removing "2012" and adding "2017" in its place.

The additions read as follows:

§ 382.11 Definitions.

* * * * *

Directly-Licensed Recording is a sound recording for which the Licensee has previously obtained a license of all relevant rights from the Copyright Owner of such sound recording.

* * * * * *

Pre-1972 Recording is a sound recording fixed before February 15, 1972.

* * * * *

■ 12. Section 382.12 is revised to read as follows:

§ 382.12 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *In general.* The monthly royalty fee to be paid by a Licensee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of Ephemeral Recordings to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be a percentage of monthly Gross Revenues as follows: for 2013, 9.0%; for 2014, 9.5%; for 2015, 10.0%; for 2016, 10.5%; and for 2017, 11.0%, except that the royalty fee so determined may be reduced by the Direct License Share or the Pre-1972 Recording Share as described in paragraphs (d) and (e), respectively, of this section.

(b) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions for which it pays royalties as and when provided in this subpart shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

(c) *Ephemeral recordings minimum fee.* Each Licensee making Ephemeral Recordings pursuant to 17 U.S.C. 112(e) shall make an advance payment to the Collective of $100,000 per year, payable no later than January 20th of each year. The annual advance payment shall be nonrefundable, but it shall be considered as an advance of the Ephemeral Recordings royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) *Direct license share.* The percentage of monthly Gross Revenues royalty fee specified in paragraph (a) of this section may be reduced by a percentage as set forth in this paragraph (referred to herein as the "Direct License Share").

(1) Subject to paragraph (d)(3) of this section, for each month, the Direct License Share is the result of dividing the Internet Performances of Directly-Licensed Recordings on the Reference Channels by the total number of Internet Performances of all sound recordings on the Reference Channels.

(2) For purposes of paragraph (d)(1) of this section:

(i) A "Performance" is each instance in which any portion of a sound recording is publicly performed to a listener within the United States by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one listener) but excluding an incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief

performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(ii) The "Reference Channels" are Internet webcast channels offered by the Licensee that directly correspond to channels offered on the Licensee's SDARS that are capable of being received on all models of Sirius radio, all models of XM radio, or either or both, and on which the programming consists primarily of music.

(3) A Direct License Share adjustment as described in paragraph (d) of this section is available to a Licensee only if—

(i) The Reference Channels constitute a large majority of the music channels offered on the Licensee's SDARS and are generally representative of the music channels offered on the Licensee's SDARS; and

(ii) The Licensee timely provides the relevant information required by § 382.13(h).

(4) No performance shall be credited as an Internet Performance of a Directly-Licensed Sound Recording under this section if that performance is separately credited as an Internet Performance of a Pre-1972 sound recording under paragraph (e)(1) of this section.

(e) *Pre-1972 Recording Share.* The percentage of monthly Gross Revenues royalty fee specified in paragraph (a) of this section may be reduced by a percentage as set forth in this paragraph (referred to herein as the "Pre-1972 Recording Share").

(1) Subject to paragraph (e)(3) of this section, for each month, the Pre-1972 Recording Share is the result of dividing the Internet Performances of Pre-1972 Sound Recordings on the Reference Channels by the total number of Internet Performances of all sound recordings on the Reference Channels.

(2) For purposes of paragraph (e)(1) of this section:

(i) A "Performance" is each instance in which any portion of a sound recording is publicly performed to a listener within the United States by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one listener) but excluding an incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(ii) The "Reference Channels" are Internet webcast channels offered by the Licensee that directly correspond to channels offered on the Licensee's SDARS that are capable of being received on all models of Sirius radio, all models of XM radio or both, and on which the programming consists primarily of music.

(3) A Pre-1972 Recording Share adjustment as described in paragraph (e) of this section is available to a Licensee only if—

(i) The Reference Channels constitute a large majority of the music channels offered on the Licensee's SDARS and are generally representative of the music channels offered on the Licensee's SDARS; and

(ii) The Licensee timely provides the relevant information required by § 382.13(h).

■ 13. Section 382.13 is amended as follows:

■ a. By revising paragraphs (c) and (d);

■ b. In paragraph (e)(3), by removing "handwritten"; and

■ c. By adding paragraph (h).

The revisions and addition read as follows:

§ 382.13 Terms for making payment of royalty fees and statements of account.

* * * * *

(c) *Monthly payments.* A Licensee shall make any payments due under § 382.12 on a monthly basis on or before the 45th day after the end of each month for that month. All payments shall be rounded to the nearest cent.

(d) *Late payments and statements of account.* A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, each for any payment or statement of account, or either of them received by the Collective after the due date. Late fees shall accrue from the due date until payment and the statement of account are received by the Collective.

* * * * *

(h) *Notification of exclusions.* (1) As a condition to a Licensee's taking a Direct License Share adjustment as described in § 382.12(d), by no later than the due date for the relevant payment under paragraph (c) of this section, the Licensee must provide the Collective a list of each Copyright Owner from which the Licensee claims to have a direct license of rights to Directly-Licensed Recordings that is in effect for the month for which the payment is made, and of each sound recording as to which the Licensee takes such an adjustment (identified by featured artist name, sound recording title, and International Standard Recording Code (ISRC) number or, alternatively to the ISRC, album title and copyright owner name). Notwithstanding § 382.14, the Collective may disclose such information as reasonably necessary for it to confirm whether a claimed direct license exists and claimed sound recordings are properly excludable.

(2) As a condition to a Licensee's taking a Pre-1972 Recording Share adjustment as described in § 382.12(e), by no later than the due date for the relevant payment under paragraph (c) of this section, the Licensee must provide the Collective a list of each Pre-1972 Recording as to which the Licensee takes such an adjustment (identified by featured artist name, sound recording title, and International Standard Recording Code (ISRC) number or, alternatively to the ISRC, album title and copyright owner name).

§ 382.14 [Amended]

■ 14. Section 382.14 is amended as follows:

■ a. In the introductory text of paragraph (d), by adding ", subject to an appropriate confidentiality agreement," after "limited";

■ b. In paragraph (d)(1), by removing ", subject to an appropriate confidentiality agreement,";

■ c. In paragraph (d)(2), by removing ", subject to an appropriate confidentiality agreement,";

■ d. In paragraph (d)(3), by removing "114(f)" and adding "114" in its place and by removing ", subject to an appropriate confidentiality agreement," each place it appears; and

■ d. In paragraph (d)(4), by removing "114(f)" and adding "114" in its place.

■ 15. Section 382.15 is amended by revising paragraph (g) to read as follows:

§ 382.15 Verification of royalty payments.

* * * * *

(g) *Costs of the verification procedure.* The Collective shall pay all costs associated with the verification procedure, unless it determines that the Licensee underpaid royalties in an

amount of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

■ 16. Section 382.16 is amended by revising paragraph (g) to read as follows:

§ 382.16 Verification of royalty distributions.

* * * * *

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay all costs associated with the procedure, unless it is finally determined that the Licensee underpaid royalties in an amount of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

Dated: February 14, 2013.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 2013–08657 Filed 4–16–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Wednesday,
No. 74 April 17, 2013

Part IV

The President

Federal Register
Vol. 78, No. 74
Wednesday, April 17, 2013

Presidential Documents

Title 3—

The President

Proclamation 8957 of April 12, 2013

Pan American Day and Pan American Week, 2013

By the President of the United States of America

A Proclamation

One hundred and twenty-three years ago, countries across the Western Hemisphere came together to found the International Union of American Republics—a forerunner to the Organization of American States and a foundation for progress throughout the region. In the decades since, nations in the Americas have forged lasting partnerships in trade, security, and democracy that reflect our shared commitment to peace and prosperity. As we celebrate those ties this week, we recognize the Pan American community's accomplishments and recommit to advancing common goals.

Delivering prosperity for all our people takes strong, broad-based economic growth. That is why my Administration has worked tirelessly to boost trade with our partners abroad and open new markets for American products. We have worked together to increase lending through the Inter-American Development Bank, promote microfinance, reform tax systems, eliminate barriers to investment, and forge clean energy and climate partnerships. In the United States, we have secured trade agreements with Colombia and Panama. Alongside partners like Canada, Mexico, Chile, and Peru, we are making progress toward a Trans-Pacific Partnership. And inter-American trade is continuing to expand dramatically, supporting millions of jobs here in the United States and still more abroad.

These initiatives are strengthening economies across the Americas. And just as the benefits of trade and development should be shared between nations, we also know they should be shared within nations. That takes the assurance of security and transparency, education and equality, human rights and the rule of law. As countries throughout the hemisphere build up those fundamental protections and opportunities for their citizens, the United States will work alongside them. It is a commitment we make not only because it is the right thing to do—we make it knowing that our futures depend on what we can do together as partners in progress.

On Pan American Day and during Pan American Week, we renew the bonds of friendship that unite us across cultures and continents. Let us mark this week by reinvesting in the prosperity and dignity of our peoples, confident that the Americas' best days are still ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2013, as Pan American Day and April 14 through April 20, 2013, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of the other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of April, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

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Federal Register

Vol. 78, No. 74

Wednesday, April 17, 2013

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
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Presidential Documents	
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Other Services	
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Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, APRIL

19393–19584 1
19585–19978 2
19979–20212 3
20213–20408 4
20409–20782 5
20783–21014 8
21015–21210 9
21211–21502 10
21503–21816 11
21817–22150 12
22151–22410 15
22411–22766 16
22767–23104 17

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8948 20213
8949 20215
8950 20217
8951 20219
8952 20221
8953 20223
8954 20409
8955 21813
8956 21815
8957 23103
Executive Orders:
13635 (superseded by 13641) 21503
13639 19979
13640 21211
13641 21503
Administrative Orders:
Order of April 10, 2013 22409
Memorandums:
Memo. of May 31, 2011 (revoked by Memo. of March 29, 2013) 20225
Memo. of March 29, 2013 20225
Memo. of April 5, 2013 21213
Memorandum of April 5, 2013 22763
Presidential Determinations:
No. 2013–07 of April 8, 2013 22765

5 CFR

532 21515
1201 21517
9601 22767
Proposed Rules:
733 20497
950 20820

7 CFR

272 20411
457 22411
800 22151
922 21518
923 21520
927 21521
1437 21015
3201 ..... 19393, 20783
Proposed Rules:
985 22202
4280 22044

8 CFR

103 22770
208 22770
1292 19400

10 CFR

72 22411
430 21215
Proposed Rules:
2 20498
26 22209
50 21275
52 21275
73 21567
429 ..... 19606, 20832, 22431
430 ..... 19606, 20502, 20832, 20842
431 20503

12 CFR

Ch. III 22771
Ch. X 21218
240 21019
242 20756
272 19981
615 21035
621 21035
652 21035

13 CFR

Proposed Rules:
Ch. III 22801

14 CFR

25 ..... 19981, 21037
33 19982
39 ..... 19983, 20227, 20229, 20234, 21227, 21230, 21233, 21236, 22166, 22168, 22170, 22172, 22175, 22178, 22180, 22182, 22185
71 ..... 19985, 21043, 21044, 22189, 22190, 22413, 22414, 22415, 22416, 22417
73 21817
95 20783
97 ..... 21239, 21242
1209 20422
Proposed Rules:
39 ..... 19628, 20503, 20505, 20507, 20509, 20844, 21072, 21074, 21077, 21079, 21082, 21276, 21279, 21569, 21571, 21573, 21576, 21578, 21854, 22209, 22213, 22215, 22432, 22435, 22439, 22802, 22806
71 ..... 20846, 21084, 21856
121 19630

15 CFR

730 22660
732 22660
734 22660
736 22660
738 22660
740 22660
742 22660

743.....22660
744.....22660
746.....22660
748.....22660
750.....22660
756.....22660
758.....22660
762.....22660
764.....22660
770.....22660
772.....22660
774.....22660
902.....22950

16 CFR

Proposed Rules:
1112.....20511
1226.....20511

17 CFR

1.....21045, 22418
3.....20788, 22418
5.....22418
9.....22418
11.....22418
23.....20788, 21045
31.....22418
40.....22418
41.....22418
50.....21750
140.....21522, 22418
145.....22418
170.....22418
171.....22418
190.....22418
240.....21046
249.....21046

Proposed Rules:
23.....20848

18 CFR

40.....22773
154.....19409
376.....21245

19 CFR

351.....21246, 22773

20 CFR

Proposed Rules:
638.....19632
670.....19632

21 CFR

73.....19413
510.....19986, 21058
520.....21058
522.....19986, 21058
524.....21058
526.....21058
529.....21058
558.....19986, 21058
600.....19585
1308.....21818

Proposed Rules:
Ch. I.....21085
107.....22442
876.....20268
882.....20268
892.....20268
1308.....21858

22 CFR

120.....21523, 22740
121.....22740
123.....22740
126.....21523

23 CFR

Proposed Rules:
771.....20074

25 CFR

518.....20236
558.....21826
581.....21060
584.....21060
585.....21060

Proposed Rules:
170.....21861

26 CFR

Proposed Rules:
1.....19950, 20523
53.....20523

27 CFR

Proposed Rules:
9.....20544

28 CFR

Proposed Rules:
0.....21862

29 CFR

4022.....22192

Proposed Rules:
15.....19632
4000.....20039
4001.....20039
4043.....20039
4204.....20039
4206.....20039
4231.....20039

30 CFR

250.....20423
1206.....20244

Proposed Rules:
701.....20394, 22451
736.....20394, 22451
737.....20394, 22451
738.....20394, 22451
750.....20394, 22451

32 CFR

103.....20443
105.....21716
182.....21826
226.....21256
706.....22421

33 CFR

100.....21258, 22193, 22777
117.....19415, 19585, 20451, 21063, 21064, 21537, 21839, 22423
165.....19988, 20454, 20792, 21260, 22195, 22778

Proposed Rules:
100.....19632, 20066, 20277, 20849, 21864, 22808, 22811, 22814
101.....20289, 20558, 22218
104.....20289, 20558, 22218
105.....20289, 20558, 22218
106.....20289, 20558, 22218
165.....19431, 20277, 20559, 20852

34 CFR

Ch. III.....22780, 22783

Proposed Rules:
Ch. II.....22452
Ch. III.....20069, 22817
Ch. VI.....22467

36 CFR

Proposed Rules:
7.....22470
1280.....20563

37 CFR

1.....19416, 20180
2.....20180
7.....20180
10.....20180
11.....20180
41.....20180
382.....23054

Proposed Rules:
1.....21788
3.....21788

38 CFR

17.....19586
59.....21262

Proposed Rules:
17.....22219

39 CFR

Proposed Rules:
3001.....22820
3010.....22490

40 CFR

52.....19421, 19596, 19599, 19602, 19990, 19991, 19994, 19998, 20001, 20244, 20793, 21065, 21537, 21540, 21542, 21545, 21547, 21841, 22197, 22198, 22423, 22785
62.....21846
63.....20246
70.....19602
80.....22788
81.....20001, 21547, 22425
82.....20004
98.....19605
131.....20252
180.....20029, 20032, 20461, 21267, 22789
239.....20035
258.....20035

Proposed Rules:
52.....19434, 19636, 20290, 20855, 20856, 20868, 21281, 21296, 21302, 21580, 21581, 21582, 21583, 21867, 22827, 22840
60.....22126
62.....21871
63.....22370
70.....19636
80.....20881
81.....20856, 20868, 21583, 22501
82.....21871
98.....19802
239.....20073
258.....20073
450.....19434

42 CFR

68.....20466
88.....22794
433.....19918

Proposed Rules:
411.....21308
488.....20564
489.....20564
1001.....21314

44 CFR

67.....22221, 22222

Proposed Rules:
67.....22221, 22222

45 CFR

60.....20473
61.....20473

Proposed Rules:
155.....20581
1184.....22501

47 CFR

1.....19424, 21555
2.....21555
20.....21555
22.....19424, 21555
24.....19424, 21555
27.....19424, 21555
54.....20796, 22198
73.....21565, 21849
76.....20255
90.....19424, 21555

Proposed Rules:
Ch. I.....21879
15.....21320
20.....19442
64.....21891
73.....21337

48 CFR

215.....21850
235.....21850
237.....21850
1552.....22795

Proposed Rules:
226.....22841
252.....22841

49 CFR

107.....22798
171.....22798
571.....21850

Proposed Rules:
575.....20597
622.....20074

50 CFR

17.....22626
217.....20800
622.....22950
635.....20258
640.....22950
648.....20037, 20260, 21071
679.....20037

Proposed Rules:
17.....20074, 21086, 22506
20.....21200
216.....20604
218.....22096
223.....20718
224.....20718
600.....20291
622.....20292, 20496
635.....21584

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S. 716/P.L. 113–7
To modify the requirements under the STOCK Act regarding online access to certain financial disclosure statements and related forms. (Apr. 15, 2013; 127 Stat. 438)
Last List March 28, 2013

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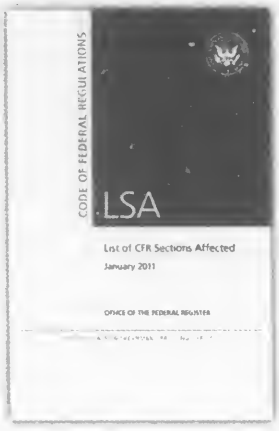

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